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Petitioner, in propria persona

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**04/12/2010**  
**awoodward**  
 By \_\_\_\_\_, Deputy  
 Case Number:  
**34-2010-80000513**

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SACRAMENTO

Michael J. Barkley,	)	No.
	)	
Petitioner,	)	PETITION FOR WRIT OF MANDATE
	)	
v.	)	CCP §1085 [traditional mandamus]
	)	CCP §1094.5 [administrative mandamus]
State Water Resources Control Board,	)	Calif Publ Resources Code §21000 et seq [CEQA]
	)	42 USC §4321 et seq [NEPA]
Respondent.	)	16 USC §1531 et seq [ESA]
	)	Calif Fish & Game Code §2050 et seq [CalESA]
Bob Colella, U.S. Bureau of Reclamation,	)	16 USC §668 [Bald & Golden Eagle Protection
Real Parties in Interest	)	Act of 1940]
	)	Calif Gov't Code §11340.5 [underground
	)	regulations]

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19 I. Introduction

20 1. For a bit more than a century USA through its Bureau of Reclamation agency, aided in part by  
21 the U.S. District Court Angle Decree of 01/13/1930 and in later years by the State Water Resources  
22 Control Board and its predecessors (SWRCB) has through its projects, policies, plans, and procedures  
23 exercised an ever-increasing stranglehold on the 741-square-mile upper Stony Creek Watershed. It has  
24 had disastrous cumulative effects on demographics, commerce, and infrastructure and chinook salmon  
25 and steelhead have been extirpated, needlessly. Over the past 18 months petitioner has been looking into  
26 and documenting all of this. On 09/03/2009 SWRCB noticed a petition for extension of time on one of  
27 USA's component parts of its Stony Creek projects & policies. Petitioner filed a protest. On 12/14/2009  
28 SWRCB apparently rejected petitioner's protest. Except for one California Public Records Act Request,  
29 petitioner's considerable subsequent efforts to persuade SWRCB to follow its own procedures as well as  
30 comply with CEQA, NEPA, ESA, Cal-ESA, Bald and Golden Eagle Protection Act of 1940,  
31 underground regulation portions of the Government Code, and SWRCB's enabling statutes and  
32 regulations, SWRCB's response has been dead silence. This petition appears to be the only appropriate  
33 remedy.

34  
35 II. Petitioner

2. Petitioner is Michael J. Barkley, address 161 N. Sheridan Ave. #1, Manteca, San Joaquin County, California. who files this Petition with a Verification: he intends this to be as testimony, a truthful statement of what he knows, believes, has seen, has heard, and has read. With his siblings, petitioner owns lands and appropriative water rights on North Fork Stony Creek, Glenn and Tehama Counties, California. Petitioner's ancestors settled on these lands as early as the mid-1850s. Although petitioner is a member of several environmental organizations, he brings this action as an individual with a deep abiding love of the land and a horror at what USA has done to the Upper Stony Creek watershed. Petitioner is a member of the California Bar, but by the time he became admitted he was employed as a computer programmer and petitioner has never practiced law. He will undoubtedly make mistakes in bringing and prosecuting this petition but asks that the court be generous in allowing amendments to cure those mistakes.

3. Along with this petition, petitioner attaches Exhibit A that lists on-line web pages of documents and indexes to add context to the allegations in his petition for convenience of everyone until the administrative record arrives as well as to facilitate settlement discussions. Petitioner has placed portions of the administrative record on his website referenced in that Exhibit A (and will cite each document for example as #A1.3.2 , etc.); petitioner's verification extends to those web pages that he originated. In instances where the page is in progress and it is relevant to do so, petitioner has cited to a "frozen" copy of that page. Within 24 hours of filing his petition petitioner will place on his web page at <http://www.mjbarkl.com/exhibita.htm> a page of that Exhibit A with embedded HTML hyperlinks to each of the pages referenced here to make it easier for anyone to click on each page rather than cutting, pasting, or typing..

### III. Respondent & Real Parties in Interest

4. Respondent is State Water Resources Control Board which, itself, and through its Division of Water Rights, manages among other things appropriations of flowing waters within and on behalf of the State of California since, with its predecessor agencies, the adoption by referendum of the Water Commission Act of 1913 effective 12/19/1914. The State of California is also subject to the Angle Decree ( #A1. ), see generally Section II of Protest Supplement at #A3.6.3. The State of California was dismissed from the Angle case by Section IV of the Court's order of 06/24/1922, see link at that date at #A1.1. , but has since returned as an unrecognized party as an *in rem* and *in personam* successor and assign from the following actions, among others:

1) Participation in the development of Black Butte Dam and Reservoir on Stony Creek, as successor and assign of USA, as well as of a number of holders of Angle Decree appropriative and riparian rights to lands taken for that project, and lands of other defendants divested of rights by the Angle Decree, although subsequently assigning it back to USA, see for instance #A3.3. and the 24 to 28 other

1 documents listed in #A3.1. concerning the CWC or California Water Commission;

2 2) taking of Orland Project, USA-owned, and defendant owned lands for the construction of Interstate 5  
3 through Glenn & Tehama Counties and for widening and realignment of State Route 32 between Orland  
4 and Hamilton City, Glenn County ;

5 3) assignment by USA to California Division of Forestry and California Department of Corrections of  
6 the Salt Creek Conservation Camp west of Paskenta in Tehama County, #A9.1.

7 4) various other assignments still to be determined. The State of California is bound by the Angle  
8 Decree.

9 5. SWRCB has identified Bob Colella and U.S. Bureau of Reclamation (collectively, "USA"), as  
10 "Real Parties in Interest" in its Notice #A3.4.4. and Rejection of Protest #A3.7.1. and USA has done so  
11 in its Petition Supplement #A3.4.3. As plaintiff in that case, USA is subject to the Angle Decree, see  
12 generally Section II of Protest Supplement at #A3.6.3., and most particularly paragraphs II.C & II.D of  
13 #A3.6.3.

#### 14 15 IV. Nature of Case

16 6. The major issues are whether or not SWRCB has jurisdiction over surface flows in the Stony  
17 Creek Watershed (Para. II.A., #A.3.6.3 ) in light of the Angle Decree, the devastating cumulative  
18 adverse effects on human beings and listed species by USA's (and the State's) projects, plans, policies,  
19 and procedures within the Upper Stony Creek Watershed, the failure of SWRCB to follow its own  
20 procedures for handling protests, and the SWRCB's use of what amounts to underground regulations for  
21 handling protests.

#### 22 23 V. Related Case/Simple or Complex?

24 7. Petitioner is filing concurrently a Civil Case Cover Sheet Form CM-010 indicating that this  
25 case is not complex plus a Notice of Related Case Form CM-015. The Related Case is the Angle Case  
26 identified above. All parties in this case are parties in that case, and the issues concerned here are  
27 issues that are concerned there in the continuing administration of the Decree. There were some 600  
28 parties to the Angle case, and they and their successors and assigns are bound *in rem* and *in personam* by  
29 the Decree. The last mailing list petitioner has seen includes some 70 parties or groups of parties, which  
30 list petitioner presumes is the Water Master's list for billing Decreed Appropriators for assessments.  
31 Petitioner suspects, but does not know that the total pool of parties, successors, and assigns may by now  
32 be some 10,000 or 20,000 people and entities. Additionally, SWRCB has some 322 sets of files that  
33 petitioner has identified so far, plus an unknown number that have disappeared, related to  
34 Appropriations, Statements of Water Diversion and Use, and so on. The Angle record seems to be some  
35 30,000 - 40,000 pages; the relevant SWRCB records may total some 20,000 pages or more.

8. At the moment, this case seems to be simple. That could change if intervenors emerge.

# VI. What Happened?

9. A 03/27/2009 letter from Kathy Mrowka at the Division of Water Rights to Sahlberg/Reclamation indicated 3 choices to move forward on Reclamation's Central Valley Project time extension petitions, #A3.4.1. Choice #3, paraphrased, 3) Division cancels the 1985 petitions because of no CEQA document. Petitioner thought he had a copy of this letter but cannot locate it so has asked for it in the request for administrative record filed concurrently with this petition, relying in the meantime on his notes at #A3.1. USA filed its petition for extension 06/23/2009. A response from Ms. Mrowka 07/14/2009 listed for USA what needed to be done to tidy up the application, #A3.4.1. By 09/03/2009 everything was ready: #A3.4.2. - #A3.4.4. are the Petition, Supplement, and Notice.

10. Trading emails with Ms. Mrowka #A3.5.1. , petitioner was pointed towards protest forms #A3.5.2. and denied any extensions of time beyond the usual 30 days to file a protest. USA had more than 5 months to get its act together. Note from #A3.1. that from the first Ap 18115 application to the Public Notice was 04/11/1958 - 05/11/1961, some 3 years to prepare. In examining various SWRCB files, this pattern is consistent. The applicant or petitioner gets months or years plus extensive hand-holding but the public gets 30 days. Applicants and protestants are treated equally in the Water Code, but not by SWRCB. So much for equal protection. (On that note, contrast the "Storing water without permit" reason on #A3.10.2 with the table & chart at #A3.13.3 & #A3.13.4, also an equal protection problem.)

11. Nevertheless, having spent most of the previous year consumed by the Angle case and its repercussions, petitioner was able to file a protest #A3.6. - #A3.6.4. Aware from his digging through SWRCB files that SWRCB tends to reject summarily most protests (see for instance #A3.10.2. ), petitioner did a fairly thorough job of presenting the primary issues of SWRCB jurisdiction and massive cumulative adverse environmental effect, and did so within the 5 corners of the SWRCB protest procedure: water rights, jurisdiction, public interest, contrary to law, and adverse environmental impact.

12. It was with great surprise that petitioner received the 12/14/2009 Division of Water Rights rejection, #A3.7.1. It reads as if staff did not bother to read petitioner's protest. No discussion of jurisdiction appears at all even though that is fundamental. Its abrupt dismissal of any environmental consideration is contradicted by the CEQA comment in staff's 03/27/2009 letter, #A3.4.1. No consideration of NEPA appears. The Angle Decree eliminates the upstream/downstream rule whereby upstream diverters hold the power but that was ignored as well. Petitioner has not found anywhere in the Water Code where staff even has the power to reject any protest from petitioner, let alone this one.

13. Increasingly aware that Division of Water Rights staff was following a handbook that was



1 not publicly revealed, petitioner began asking staff to set aside and reconsider, and thereafter to discover  
 2 under the California Public Records Act just what that procedural handbook is, #A3.8.1., #A3.8.2.,  
 3 #A3.9.1., #A3.9.2.; by phone call 7 days before what petitioner believes to have been the deadline, and  
 4 by spoken aside in the SWRCB public forum the next day petitioner was informed of the water code and  
 5 regulation sections governing petitions for reconsideration, and filed his petition withn that time, A3.10.  
 6 through #A3.10.5. The response? Dead silence. Ever hopeful, petitioner filed more comments,  
 7 #A3.11.1. - #A3.13.8., still dead silence.

8 14. Thus it is with some surprise that staff's 03/25/2010 Order appeared on staff's website  
 9 #A3.14. By that Order, The Division of Water Rights seems to have made massive changes in the terms  
 10 under Ap-018115/Permit 13776, and has done so without any environmental inquiry whatsoever, at least  
 11 as to the Upper Stony Creek Watershed. It would appear from staff's 03/29/2009 letter and this Order  
 12 that staff's justification for ignoring cumulative environmental effects in its 12/14/2009 letter is  
 13 blatantly false.

14 15. Petitioner believes he has done an adequate job of presenting these issues in his filings  
 15 #A3.6. - #A3.13.8. Respondent's "dead silence" treatment of petitioner in response has been totally  
 16 outrageous.

## 18 VII. Exhaustion of Remedies/Statutes of Limitation

19 16. Petitioner believes he has gone way beyond exhaustion of remedies. At every step he has  
 20 asked for relief, only to encounter dead silence. Petitioner knows of no remaining administrative  
 21 remedies other than this petition.

22 17. Respondent's manner of handling protests have left petitioner not knowing whether this  
 23 petition is premature, timely, or tardy. As petitioner describes at Para I.B. of #A3.10. he received a  
 24 phone call on 01/04/2010 informing him the procedure for requesting reconsideration of a staff denial of  
 25 the right to protest is under California Water Code Section 1122 and 23 CCR Sections 768 & 769 of the  
 26 board's regulations. This was a surprise since the rejection letter does not use the words "decision" or  
 27 "order" (Water Code Section 1120), there's no mention of "adoption by the board" (Regulation Section  
 28 768), it was not served by personal delivery or registered mail (Section 1121), and so on. Delegations to  
 29 the Division of Water Rights are very limited in the Water Code, principally under four groups of Code  
 30 Sections ( 174-188.5, 1228-1229.1, 1345-1348, 1700-1707, per the Legislature's Code website); in none  
 31 of these code sections does the power to reject petitioner's protest appear independent of some specific  
 32 delegation of authority. If that authority exists, where is it? Absent that delegation, the rejection would  
 33 need all the elements of "decision" or "order" (Water Code Section 1120) "by the board" (Regulation  
 34 Section 768) properly served (Water Code Section 1121) to be valid. Is there no statute of limitations at  
 35 all because the 12/14/2009 letter is just a letter without authority?

1 18. Water Code Section 1122 requires a petition for reconsideration "not later than 30 days from  
 2 the date the board adopts a decision or order." Assuming that applies in this case, Petitioner's  
 3 01/12/2010 petition (for which he has a SWRCB date stamp) was timely. Water Code Section 1122 also  
 4 requires that "The board shall order or deny reconsideration on a petition therefor not later than 90 days  
 5 from the date the board adopts the decision or order." Would that have been 03/14/2010, by "pocket  
 6 veto" since no order or denial has appeared? Water Code Section 1126. subdivision (b) states in part  
 7 "(b) Any party aggrieved by any decision or order may, not later than 30 days from the date of final  
 8 action by the board, file a petition for a writ of mandate for review of the decision or order." Would that  
 9 be 04/13/2010 if

10 1) the 12/14/2009 letter was valid despite the missing elements, and

11 2) the dead silence of the Board by 03/14/2010 works as a pocket denial of the petition for  
 12 reconsideration, and a "final action by the board"?

13 It is all such a secret. Subdivision (b) goes on: "The time for filing the petition for writ of mandate and  
 14 the time for filing an action or proceeding in which the board is a respondent under Section 21167 of the  
 15 Public Resources Code shall be extended for any person who seeks reconsideration by the board  
 16 pursuant to this article." That seems to apply to this petition.

17 19. Is petitioner premature? timely? tardy? Petitioner believes he is timely, but would not be  
 18 surprised by some other, hidden interpretation held by the Board or its staff. This entire process is brutal  
 19 on protestants in comparison to the generosity the Board shows to applicants in general and the USA in  
 20 particular.

## 21 VIII. Traditional Mandamus or Administrative Mandamus?

22 20. California Water Code Section 1126. subdivision (a) states in part "It is the intent of the  
 23 Legislature that all issues relating to state water law decided by the board be reviewed in state courts, if a  
 24 party seeks judicial review." This is why petitioner has filed his petition here rather than as a motion in  
 25 the Angle Court, where it may more properly be. California Water Code Section 1126 subdivision (c)  
 26 states in part "Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings under  
 27 this section." As petitioner understands it, that is for where a proper record is developed from a proper  
 28 hearing. In this case, where the protest and hearing were summarily denied, petitioner is puzzled as to  
 29 whether the remedy is under CCP Section 1085 or 1094.5 or both. Various California Continuing  
 30 Education of the Bar treatises urge seeking relief under both where there is doubt (e.g. CEB California  
 31 Administrative Mandamus, Third Edition, Oakland, 2009; §1.11 & §6,24 ) Hence, this petition follows  
 32 that suggestion.

## 33 IX. Remedies

1 21. The easiest remedy is to remand with instructions to accept the protest, after which SWRCB  
2 would follow its usual procedures to whatever result may come. Petitioner would prefer this remedy.

3 22. All other remedies will require the court to do SWRCB's work for it, to substitute its own  
4 evaluation for the evaluation that SWRCB has shirked, such as examining the questions of jurisdiction,  
5 cumulative environmental effects, underground regulations, and so on.

6 23. Petitioner has no plain, speedy and adequate remedy in the ordinary course of law to reduce  
7 or halt the irreparable harm he, his family, his neighbors and the Upper Stony Creek watershed  
8 environsment have all suffered over the decades during which USA has steadily increased its grip on the  
9 watershed and thus petitioner must bring this petition.

10 -o-0-o-

11  
12 First Cause of Action - Traditional mandamus, CCP §1985 & Water Code & regs [accept protest,  
13 hearing required]

14 24. Petitioner incorporates all of the above.

15 25. The court should find that SWRCB has no statutory or regulatory basis for rejecting  
16 petitioner's protest, and remand for SWRCB's acceptance of the protest and proceedings thereafter in  
17 SWRCB's usual course.

18  
19 Second Cause of Action - Traditional mandamus, CCP §1985 & Water Code & regs [preemption by  
20 Federal Decree]

21 26. Petitioner incorporates all of the above.

22 27. The court should find that the Angle Decree preempts State jurisdiction to allocate surface  
23 flows to anyone bound by the Decree, which includes USA, and therefore SWRCB has no jurisdiction to  
24 even consider Ap 18115 and any petitions thereunder and must set aside any orders it has ever issued  
25 regarding Ap 18115 and dismiss the Application and its related Permit.

26  
27 Third Cause of Action - Administrative mandamus, CCP §1994.5 & Water Code [hearing results]

28 28. Petitioner incorporates all of the above.

29 29. Based on the sworn submissions by petitioner and in the absence of any substantive response  
30 by SWRCB, the court should find that petitioner's submissions constitute the entire record, petitioner's  
31 protest is accepted and his settlement terms at Paragraph V of his Protest, #A3.6.3. , as modified by  
32 paragraph #2 of his 02/11/2010 filing (#A3.11.1. ) are adopted as required terms of any grant of  
33 extension of the petition for extension under Ap. 18115.

34  
35 Fourth Cause of Action - California Environmental Quality Act (California Public Resources Code  
Petition for Writ of Mandate



§21000 et seq.) & Guidelines [cumulative effects, project]

30. Petitioner incorporates all of the above.

31. As far as petitioner knows, no notices have been filed by SWRCB under Public Resources Code §21108 for the extension petition, and that the only "environmental document" SWRCB contemplates is the 12/14/2009 rejection letter asserting that no environmental review is required.

32. On 03/15/2010 petitioner delivered to the SWRCB Mail Room a copy of his Supplement #A3.12.1. which contained therein a notice to SWRCB under California Public Resources Code Section 21167.5 of commencement of this action, for the cumulative project (for which USA's petition for extension is only the latest manifestation) described in Section I.I (One-Eye) of the Supplement to Petitioner's 10/01/2009 Petition A3.6.3. Concurrently with the filing of this petition, petitioner is also filing a separate, additional "Proof of prior service by mail upon the public agency [SWRCB] carrying out or approving the project of a written notice of the commencement of [this] action or proceeding described in [California Public Resources Code] Section 21167 identifying the project..."

33. Immediately following the filing of this petition, petitioner will furnish the Attorney General of the State of California with a copy of this petition pursuant to California Public Resources Code Section 21167.7.

34. The cumulative Ap. 18115 Environmental Review listing at #A3.10.5. , and especially for efforts of the CSPA (California Sportfishing Protection Alliance) to restore the Stony Creek fishery, filings such as the CSPA 01/31/1994 protest shows that SWRCB regularly disposes of protests before beginning environmental reviews and thereby effectively blunts the ability of the public to negotiate for environmental mitigations.

35. SWRCB's protest procedures, whatever they may be, improperly shift the burden of proof for environmental issues from the applicant to the protestant.

36. Based on the sworn submissions by petitioner and in the absence of any substantive response by SWRCB, the court should find that petitioner's submissions constitute the entire record, petitioner's protest is accepted and his settlement terms at Paragraph V of his Protest, #A3.6.3. , as modified by paragraph #2 of his 02/11/2010 filing (#A3.11.1. ) are adopted as required mitigations for any grant of extension of the petition for extension under Ap. 18115.

Fifth Cause of Action - National Environmental Policy Act (42 USC 4321 et seq.) & Regs  
[cumulative effects, proposal or plan, major federal action]

37. Petitioner incorporates all of the above.

38. Based on the sworn submissions by petitioner and in the absence of any substantive response by SWRCB or any compliance whatsoever with the requirements of review, assessment and reporting of the National Environmental Policy Act, the court should find that petitioner's submissions constitute the

entire record, that the cumulative project, plan, proposals, and policies as described in the Fourth Cause of Action constitute a major federal action, and petitioner's protest is accepted and his settlement terms at Paragraph V of his Protest, #A3.6.3. , as modified by paragraph #2 of his 02/11/2010 filing (#A3.11.1. ) are adopted as required mitigations for any grant of extension of the petition for extension under Ap. 18115.

Sixth Cause of Action - Endangered Species Act (16 USC §1538(a)(1) , 16 USC §§1531 - 1543 ) & Regulations [take of chinook, Steelhead, listed Raptors]

39. Petitioner incorporates all of the above.

40. Based on the sworn submissions by petitioner and in the absence of any substantive response by SWRCB, the court should find that petitioner's submissions constitute the entire record, petitioner's protest is accepted, the "take" of chinook salmon and steelhead caused by USA's barriers on Stony Creek are capable of reduction by properly constructed fish channel bypasses, etc. and his settlement terms at Paragraph V of his Protest, #A3.6.3. , as modified by paragraph #2 of his 02/11/2010 filing (#A3.11.1. ) are adopted as required conditions for any take of these species and for any grant of extension of the petition for extension under Ap. 18115.

Seventh Cause of Action - California Endangered Species Act (California Fish & Game Code §§2050-2098) & Regulations [take of Bald Eagles, other state listed raptors ]

41. Petitioner incorporates all of the above.

42. Based on the sworn submissions by petitioner and in the absence of any substantive response by SWRCB, the court should find that petitioner's submissions constitute the entire record, petitioner's protest is accepted, chinook salmon and steelhead are an important source of food for Bald Eagles, Golden Eagles, and other protected raptors, "take" in the Bald and Golden Eagle Protection Act of 1940 is sufficiently similar to "take" in the Endangered Species Act to require properly constructed fish channel bypasses , etc. to restore that food supply and petitioner's settlement terms at Paragraph V of his Protest, #A3.6.3. , as modified by paragraph #2 of his 02/11/2010 filing (#A3.11.1. ) are adopted as required conditions for any take of these species and for any grant of extension of the petition for extension under Ap. 18115.

Eighth Cause of Action - Bald and Golden Eagle Protection Act of 1940 16 USC §668 [take of Bald Eagles]

43. Petitioner incorporates all of the above.

44. Based on the sworn submissions by petitioner and in the absence of any substantive response by SWRCB, the court should find that petitioner's submissions constitute the entire record, petitioner's

1 protest is accepted, chinook salmon and steelhead are an important source of food for Bald Eagles,  
 2 Golden Eagles, and other protected raptors, "take" in the Bald and Golden Eagle Protection Act of 1940  
 3 is sufficiently similar to "take" in the Endangered Species Act to require properly constructed fish  
 4 channel bypasses , etc. to restore that food supply and petitioner's settlement terms at Paragraph V of his  
 5 Protest, #A3.6.3. , as modified by paragraph #2 of his 02/11/2010 filing (#A3.11.1. ) are adopted as  
 6 required conditions for any take of these species and for any grant of extension of the petition for  
 7 extension under Ap. 18115.

8  
 9 Ninth Cause of Action - Underground regulations, Government Code Section 11340.5 [protest the  
 10 process]

11 45. Petitioner incorporates all of the above.

12 46. SWRCB's response to petitioner's CPRA request, #A3.9.2., sheds some light on the process  
 13 but in the process demonstrated that SWRCB's handling of protests is indeed governed by underground  
 14 regulations.

15 47. Based on the sworn submissions by petitioner and in the absence of any substantive response  
 16 by SWRCB, the court should find that petitioner's submissions plus the SWRCB response mentioned in  
 17 paragraph 46 constitute the entire record, and that SWRCB's internal unpublished procedures produce a  
 18 nightmare of uncertainty among the general public as to how protests are to be handled and are exactly  
 19 the sort of underground regulations prohibited by Government Code Section 11340.5 subdivision (a),  
 20 and that SWRCB should immediately halt the rejection of protests and failing to inform the public of its  
 21 protest denial and appeal procedures, and further begin the process towards proper rulemaking that will  
 22 henceforth adequately describe these processes for the general public.

23  
 24 Plea,

25 1. That, under Cause Number One this honorable Court should find that SWRCB has no  
 26 statutory or regulatory basis for rejecting petitioner's protest, and remand for SWRCB's acceptance of it  
 27 and proceedings thereafter in SWRCB's usual course (response from applicant, negotiations, public  
 28 hearing if needed, etc.), and issue its order and writ so requiring, but, failing that, proceed as described  
 29 above for Causes Two through Nine,

30 2. For award of costs of suit, and

31 3. For such other relief as the Court may deem appropriate,

32 ///

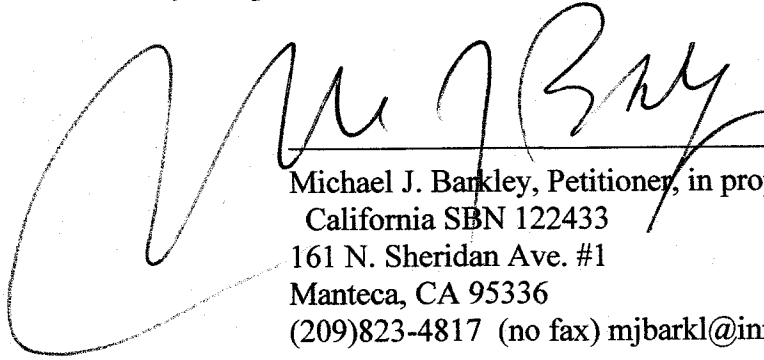
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1 Respectfully submitted this 12th Day of April, 2010,

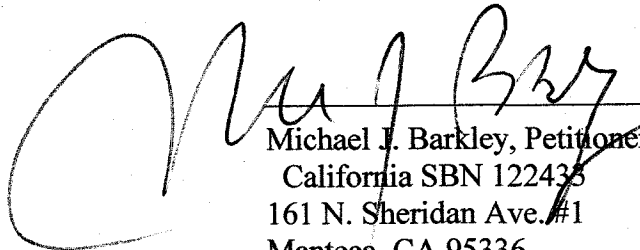
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VERIFICATION

I declare under penalty of perjury under the laws of the United States of America that the allegations and factual contentions and recitations in this petition and attached and referenced exhibits are true and correct, except for those submitted on information and belief and as for those I believe them to be true and correct. Executed on April 12, 2010,



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 209/823-4817 [mjbarkl@inreach.com](mailto:mjbarkl@inreach.com)

Petitioner, in propria persona

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SACRAMENTO

_____	)	No.
Michael J. Barkley,	)	
	)	EXHIBIT A
Petitioner,	)	TO
	)	PETITION FOR WRIT OF MANDATE
v.	)	
	)	
State Water Resources Control Board,	)	
	)	
Respondent.	)	
	)	
	)	
Bob Colella, U.S. Bureau of Reclamation,	)	
Real Parties in Interest	)	
_____	)	

Petitioner presents this exhibit listing on-line web pages of documents and indexes to add context to the allegations in his petition for convenience of everyone until the administrative record arrives as well as to facilitate settlement discussions. Petitioner has placed portions of the administrative record on his website referenced in this Exhibit A (and will cite each document for example as #A1.3.2 , etc.); petitioner's verification extends to those web pages that he originated. In instances where the page is in progress and it is relevant to do so, petitioner has cited to a "frozen" copy of that page. Within 24 hours of filing his petition petitioner will place on his web page at <http://www.mjbarkl.com/exhibita.htm> this page with embedded hyperlinks to each of the pages referenced here to make is easier for anyone to click on each page rather than cutting, pasting, or typing..

=====

A1. From the Angle Case, United States District Court, [now] Eastern District, California, filed 05/28/1918 in Northern Division, Northern District as Equity #30, now #80-583

1  
2 A1.1. <http://www.mjbarkl.com/Aindex.htm> - case index

3  
4 A1.2. Decree Book, 04/19/1928

5 A1.2.1. <http://www.mjbarkl.com/brief.htm> - Transcription of Plaintiff's [USA's] Opening Brief

6 A1.2.2. <http://www.mjbarkl.com/find.htm> - Transcription of Findings of Fact and Conclusions of Law

7 A1.2.3. <http://www.mjbarkl.com/settlem.htm> - The Settlement of the Findings - Amendments Made in  
8 Printed Findings of Fact and Conclusions of Law and Suggested Decree, with 09/18/1929 transcript

9 A1.2.4. <http://www.mjbarkl.com/278-cd1.pdf> - Angle Decree, version printed after 01/13/1930 before  
10 04/15/1930 - copy filed with USDC ED on 09/05/2008 by USA

11  
12 A1.3.1. <http://www.mjbarkl.com/041530.htm> - Transcription of 04/15/1930 Order Re: Appointment of  
13 Water Master to Carry Out Provisions of the Decree, Fixing His compensation, Providing a Fund for the  
14 Payment Therof and Apportioning the costs in the Premises - Also Fixing a Date for the Installation of  
15 Head Gates and/or Measuring Devices and Correcting Certain Minor Errors in Decree

16 A1.3.2. <http://www.mjbarkl.com/decree.htm> - Transcription of Corrected Decree after 04/18/1930  
17 changes

18  
19 A1.4.1. <http://www.mjbarkl.com/307.pdf> Petitioner's Motion related to this protest filed 12/21/2009  
20 Doc #307 to require changes in practices of the Water Master, Motion Hearing set for 02/08/2010, reset  
21 at 04/05/2010 at 10:00 AM before Senior Judge Lawrence K. Karlton. (Attachments:

22 A1.4.2. <http://www.mjbarkl.com/307-2.pdf> #307-2 Memorandum in support of Motion;

23 A1.4.3. <http://www.mjbarkl.com/307-3.pdf> #307-3 Exhibits in support of motion;

24 A1.4.4. <http://www.mjbarkl.com/307-4.pdf> #307-4 Proof of service, CM/ECF;

25 A1.4.5. <http://www.mjbarkl.com/307-5.pdf> #307-5 Proof of service, mail;

26 A1.4.6. <http://www.mjbarkl.com/307-6.pdf> #307-6 Proposed order)

27  
28 A1.4.7. <http://www.mjbarkl.com/309.pdf> #309 Hearing postponed to 04/05/2010 10:00 a.m.

29  
30 A1.4.8. <http://www.mjbarkl.com/310.pdf> #310 Response by USA , plus attachments:

31 A1.4.9. <http://www.mjbarkl.com/310-2.pdf> #310-2 (Response by Water Master)

32 A1.4.10. <http://www.mjbarkl.com/310-3.pdf> #310-3

33 A1.4.11. <http://www.mjbarkl.com/310-4.pdf> #310-4

34 A1.4.12. <http://www.mjbarkl.com/310-5.pdf> #310-5

35 A1.4.13. <http://www.mjbarkl.com/310-6.pdf> #310-6

1 A1.4.14. <http://www.mjbarkl.com/310-7.pdf> #310-7

2 A1.4.15. <http://www.mjbarkl.com/310-8.pdf> #310-8

4 A1.4.16. <http://www.mjbarkl.com/311.pdf> #311 Response by OUWUA & GCID

6 A1.4.17. <http://www.mjbarkl.com/312.pdf> #312 Petitioner's Reply Brief

7 A1.4.18. <http://www.mjbarkl.com/312-2.pdf> Attachments to Reply Brief

9 At the hearing, 04/05/2010, Judge Karlton indicated he would be sending the motion back to petitioner  
10 for refile as a Motion for Declaratory Relief, and that he wanted to hear what the State had to say  
11 before proceeding.

12 =====  
13 A2.1 Ap. A 2212

14 [http://www.swrcb.ca.gov/waterrights/board\\_decisions/adopted\\_orders/decisions/d0050\\_d0099/wrd83.pdf](http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d0050_d0099/wrd83.pdf)  
15 f - Stony Gorge, Decision D 83

16 -----  
17 A3. Ap. A 18115 - Black Butte

18  
19 A3.1. <http://www.mjbarkl.com/18115.htm> - case index

20 A3.2.

21 [http://www.swrcb.ca.gov/waterrights/board\\_decisions/adopted\\_orders/decisions/d1100\\_d1149/wrd1100.](http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d1100_d1149/wrd1100.pdf)  
22 pdf Decision D 1100

23  
24 A3.3. <http://www.mjbarkl.com/111560as.pdf> - Assignment, California Water Commission to  
25 Reclamation

26 A3.4.1. <http://www.mjbarkl.com/recl2009.htm> - Summaries of 2009 Correspondence between  
27 Reclamation & Division of Water Rights

28 A3.4.2. <http://www.mjbarkl.com/090309pe.pdf> - 2009 Petition for Extension

29 A3.4.3. <http://www.mjbarkl.com/090309su.pdf> - Supplement to Petition for Extension

30 A3.4.4. <http://www.mjbarkl.com/090309no.pdf> - Notice of Petition for Extension

31  
32 A3.5.1. <http://www.mjbarkl.com/090309em.txt> - emails 09/2009 between M.J. Barkley & Division of  
33 Water Rights

34 A3.5.2. <http://www.mjbarkl.com/090309fo.pdf> - Division of Water Rights Protest Forms

1 A3.6. Protest against Extension of Time for Bureau of Reclamation's (USA's) Application 18115, Permit  
2 13776 Black Butte storage and diversion, filed 10/01/2009:

3 A3.6.1. <http://www.mjbarkl.com/EX-A.pdf> Table of Contents (not filed with protest, prepared later);

4 A3.6.2. <http://www.mjbarkl.com/p1.pdf> Forms

5 A3.6.3. <http://www.mjbarkl.com/p2.pdf> Supplement,

6 A3.6.4. <http://www.mjbarkl.com/p3.pdf> Exhibits

7  
8 A3.7.1. <http://www.mjbarkl.com/swrb1214.pdf> SWRCB rejection of protest

9  
10 A3.8.1. <http://www.mjbarkl.com/whitney.pdf> first follow up letter

11 A3.8.2. <http://www.mjbarkl.com/rice.pdf> second follow up letter

12  
13 A3.9.1. <http://www.mjbarkl.com/swrc0105.pdf> first petition, California Public

14 Records Act regarding protest & appeal procedures & underground regulations;

15 A3.9.2. <http://www.mjbarkl.com/cpra5.pdf> SWRCB Response to CPRA petition

16  
17 A3.10. <http://www.mjbarkl.com/appeal.pdf> Petition for Reconsideration of Denial of Protest

18 A3.10.1. <http://www.mjbarkl.com/panda.pdf> points & authorities in support of petition for  
19 reconsideration

20 A3.10.2. <http://www.mjbarkl.com/18115pro.htm> Ap. 18115 protests over the years, 67 received, 58  
21 rejected, etc.;

22 A3.10.3. <http://www.mjbarkl.com/issues.pdf> possible issues list

23 A3.10.4. <http://www.mjbarkl.com/salmon2.htm> salmon page at 01/12/2009

24 A3.10.5. <http://www.mjbarkl.com/ea.htm> Ap. 18115 Orders, Decisions, Decrees, Environmental  
25 Reviews

26  
27 A3.11.1. <http://www.mjbarkl.com/021110.pdf> Supplement to reconsideration petition

28 A3.11.2. [contrera.pdf](#) - Mendocino National Forest Letter

29  
30 A3.12.1. <http://www.mjbarkl.com/031410.pdf> Second Supplement to reconsideration petition

31  
32 A3.13.1. <http://www.mjbarkl.com/040610.pdf> Third Supplement to second petition ; with web pages  
33 frozen at 04/06/2010 for filing of a petition for writ:

34 A3.13.2. <http://www.mjbarkl.com/EX-A.pdf> Exhibit A - 10/01/2009 Protest Table of Contents

35 A3.13.3. <http://www.mjbarkl.com/EX-B.pdf> Exhibit B - Excess Diversions by Orland Project - Table

1 A3.13.4. <http://www.mjbarkl.com/EX-C.pdf> Exhibit C - Excess Diversions by Orland Project - Bar  
2 Chart

3 A3.13.5. <http://www.mjbarkl.com/EX-D.pdf> Exhibit D - Diversion Limits in the Angle Decree &  
4 Excess Diversions by USA and GCID

5 A3.13.6. <http://www.mjbarkl.com/EX-E.pdf> Exhibit E - Forces that Led to the Decline of the Upper  
6 Stony Creek Watershed

7 A3.13.7. <http://www.mjbarkl.com/EX-F.pdf> Exhibit F - Collected References to Salmon on Stony  
8 Creek

9 A3.13.8. <http://www.mjbarkl.com/EX-G.pdf> Exhibit G - Siesmic Issues with USA Dams on Stony  
10 Creek

11  
12 A3.14. <http://swrcb2.waterboards.ca.gov/ewrims/wrims-permits/p013776.pdf> - 03/25/2010, In the  
13 Matter of Permit 13776 (Application 18115) of Untled States Bureau of Reclamation ORDER  
14 SUPERSEDING AND REPLACING JULY 18, 1994 ORDER AMENDING PERMIT 13776 TO  
15 CONFORM WITH DECISION 1629 AND INCORPORATING TERMS OF CONCURRENT ORDER  
16 ON AUGUST 9,2007 AND JULY 16, 2009 PETITIONS TO CHANGE

17 -----  
18 A4. Ap. 19355 - Cesari [file is "gone", not in eWrims, archives, microfiche, Apache, etc.]

19 A4.1.

20 [http://www.swrcb.ca.gov/waterrights/board\\_decisions/adopted\\_orders/decisions/d1000\\_d1049/wrd1042.](http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d1000_d1049/wrd1042.pdf)  
21 pdf - D 1042

22 -----  
23 A5. Ap 20104 - Retzlöff, from underflow

24 A5.1. <http://www.mjbarkl.com/20104.htm> - Index

25 -----  
26 A6. Ap. 20948 - Davies [not in eWrims]

27 A6.1.

28 [http://www.swrcb.ca.gov/waterrights/board\\_decisions/adopted\\_orders/decisions/d1150\\_d1199/wrd1170.](http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d1150_d1199/wrd1170.pdf)  
29 pdf - D1170

30 -----  
31 A7. Ap. 24758 Andreotti, et al.

32 A7.1. <http://www.mjbarkl.com/24758.htm> - Index

33 A7.2.

34 [http://www.swrcb.ca.gov/waterrights/board\\_decisions/adopted\\_orders/decisions/d1550\\_d1599/wrd1558.](http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d1550_d1599/wrd1558.pdf)  
35 pdf - D-1558



1 A7.3. [http://www.swrcb.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/1980/wro80-13.pdf](http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/orders/1980/wro80-13.pdf) -  
2 WR 80-13,

3 A7.4. [http://www.swrcb.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/1980/wro80-18.pdf](http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/orders/1980/wro80-18.pdf) -  
4 WR 80-18,

5 A7.5. [http://www.swrcb.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/1982/wro82-10.pdf](http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/orders/1982/wro82-10.pdf) -  
6 WR 82-10,

7 -----  
8 A8. Ap. 27382 Colusa/Stonyford domestic water supply

9 A8.1. <http://www.mjbarkl.com/27382.htm> - Index,

10 A8.2. [http://www.swrcb.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/1979/wro79\\_06.pdf](http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/orders/1979/wro79_06.pdf) -  
11 - WR 79-6,

12 A8.3. [http://www.swrcb.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/1980/wro80-11.pdf](http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/orders/1980/wro80-11.pdf)  
13 - WR 80-11

14 -----  
15 A9. Ap. 30010 Salt Creek Saddle Conservation Camp

16 A9.1. <http://www.mjbarkl.com/30010.htm> - Index

17 -----  
18 A10. Designation of Fully Appropriated Streams -

19 [END]  
20  
21  
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MICHAEL J. BARKLEY, CA SBN 122433  
161 N. Sheridan Ave. #1  
Manteca, CA 95336  
209/823-4817 [mjbarkl@inreach.com](mailto:mjbarkl@inreach.com)

Petitioner, in propria persona

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**04/12/2010**  
**awoodward**  
By \_\_\_\_\_, Deputy  
Case Number:  
**34-2010-80000513**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

Michael J. Barkley,

Petitioner,

v.

State Water Resources Control Board,

Respondent.

Bob Colella, U.S. Bureau of Reclamation,  
Real Parties in Interest

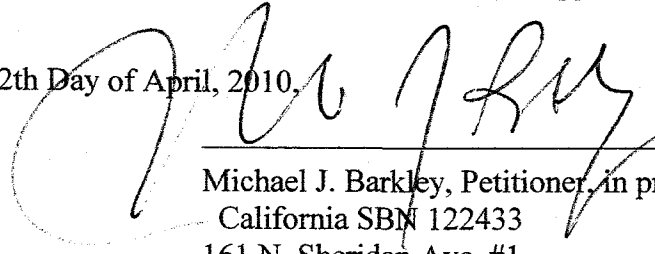
No.

WRITTEN NOTICE OF THE COMMENCEMENT  
OF ACTION DESCRIBED IN CALIFORNIA  
PUBLIC RESOURCES CODE §21167  
IDENTIFYING THE PROJECT,  
PETITION FOR WRIT OF MANDATE  
(PUBLIC RESOURCES CODE §21167.5)

NOTICE TO ALL PARTIES:

I am today commencing action in this court under California Public Resources Code §21167 regarding the cumulative project most recently manifesting itself in the form of a petition for extension of time for completion under the California State Water Resources Control Board Application 18115 & Permit 13776.

Respectfully submitted this 12th Day of April, 2010.

  
\_\_\_\_\_  
Michael J. Barkley, Petitioner, in propria persona  
California SBN 122433  
161 N. Sheridan Ave. #1  
Manteca, CA 95336  
(209)823-4817 (no fax) [mjbarkl@inreach.com](mailto:mjbarkl@inreach.com)

Attorney or party without attorney  
Name, Address & Telephone No.

MICHAEL J. BARKLEY, SBN 122433  
161 N. Sheridan Ave. #1  
Manteca, CA 95336  
209/823-4817  
Attorney for (name) Petitioner



# SUPERIOR COURT OF CALIFORNIA

County of Sacramento  
720 Ninth Street, Room 102  
Sacramento, CA 95814-1380  
(916) 874-5522

Case Title

BARKLEY v SWRCB

Case No.

Proof of Service

**I served a copy of the following documents (list the title of each document served):**

WRITTEN NOTICE OF THE COMMENCEMENT OF ACTION DESCRIBED IN SECTION 21167  
OF THE CALIFORNIA PUBLIC RESOURCES CODE IDENTIFYING THE PROJECT

**On (person served):** State Water Resources Control Board, P.O. Box 2000,  
Sacramento, CA 95812

☐ **By personally delivering copies to the person served, as follows:**

Date:

Time:

Address:

☒ **By mailing copies to the person served, as follows:**

Date: 04/12/2010

Place of mailing (address): United States Post Office, Manteca, CA

At the time of service I was at least 18 years of age and not a party to this cause.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Date: 04/12/2010

Laura Ann Barkley  
161 N. Sheridan Ave. #1  
Manteca, CA 95336

Type or Print Name and Address

*Laura Ann Barkley*  
Signature

Proof of Service

CM-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Michael J. Barkley, SBN 122433</b> <b>161 N. Sheridan Ave. #1</b> <b>Manteca, CA 95336</b>  TELEPHONE NO: 209/823-4817 FAX NO. (Optional): None E-MAIL ADDRESS (Optional): <b>mjbarkl@inreach.com</b> ATTORNEY FOR (Name): <b>Petitioner</b>		FOR COURT USE ONLY  <b>FILED</b> <b>Superior Court Of California,</b> <b>Sacramento</b> <b>04/12/2010</b> <b>awoodward</b> By _____, Deputy <b>Case Number:</b> <b>34-2010-80000513</b>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento</b> STREET ADDRESS: <b>720 9th Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Sacramento, CA 95814</b> BRANCH NAME: <b>Gordon D. Schaber Sacramento Cty Ct Hse</b>			
PLAINTIFF/PETITIONER: <b>MICHAEL J. BARKLEY</b>  DEFENDANT/RESPONDENT: <b>STATE WATER RESOURCES CONTROL BD</b>		CASE NUMBER:  JUDICIAL OFFICER:  DEPT.:	
<b>NOTICE OF RELATED CASE</b>			

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: **USA v H.C. Angle, et al.,**  
 b. Case number: **Equity 30, now 80-583**  
 c. Court: ☐ same as above  
☒ other state or federal court (name and address): **U.S. District Court, Eastern District California, 501 I St., Sacramento, CA 95817**  
 d. Department: **Sacramento Division**  
 e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☒ other (specify): **Equity**  
 f. Filing date: **05/28/1918 (Nineteen Eighteen)**  
 g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No  
 h. Relationship of this case to the case referenced above (check all that apply):  
☒ involves the same parties and is based on the same or similar claims.  
☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.  
☐ involves claims against, title to, possession of, or damages to the same property.  
☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.  
☐ Additional explanation is attached in attachment 1h  
 i. Status of case:  
☐ pending  
☐ dismissed ☐ with ☐ without prejudice  
☒ disposed of by judgment, Court administers the Decree
2. a. Title:  
 b. Case number:  
 c. Court: ☐ same as above  
☐ other state or federal court (name and address):  
 d. Department:

PLAINTIFF/PETITIONER: BARKLEY DEFENDANT/RESPONDENT: SWRCB	CASE NUMBER:
--	--------------

**PROOF OF SERVICE BY FIRST-CLASS MAIL  
NOTICE OF RELATED CASE**

**(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)**

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):
  
2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and (*check one*):
  - a. ☐ deposited the sealed envelope with the United States Postal Service.
  - b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
  
3. The *Notice of Related Case* was mailed:
  - a. on (*date*):
  - b. from (*city and state*):
  
4. The envelope was addressed and mailed as follows:
 

<ol style="list-style-type: none"> <li>a. Name of person served:</li>   <li>Street address:</li> <li>City:</li> <li>State and zip code:</li>   <li>b. Name of person served:</li>   <li>Street address:</li> <li>City:</li> <li>State and zip code:</li> </ol>	<ol style="list-style-type: none"> <li>c. Name of person served:</li>   <li>Street address:</li> <li>City:</li> <li>State and zip code:</li>   <li>d. Name of person served:</li>   <li>Street address:</li> <li>City:</li> <li>State and zip code:</li> </ol>
--	--

☐ Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF DECLARANT)

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

FOR COURT USE ONLY

Michael J. Barkley, SBN 122493  
 161 N. Sheridan Ave. #1  
 Manteca, CA 95336 209/823-4817 No fax.  
 TELEPHONE NO.: FAX NO.:

Case 2:80-cv-00583-LKK Document 314-3 Filed 04/19/2010 Page 24 of 43

ATTORNEY FOR (Name): Petitioner

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento

STREET ADDRESS: 720 9th Street

MAILING ADDRESS:

CITY AND ZIP CODE: Sacramento, CA 95814

BRANCH NAME: Gordon D. Schaber Sacramento County CtHse

CASE NAME: Barkley v. SWRCB

FILED

Superior Court Of California,  
Sacramento

04/12/2010

awoodward

By \_\_\_\_\_, Deputy  
Case Number:

34-2010-80000513

## CIVIL CASE COVER SHEET

☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)

## Complex Case Designation

☐ Counter ☐ JoinderFiled with first appearance by defendant  
(Cal. Rules of Court, rule 3.402)

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

## Auto Tort

- ☐ Auto (22)  
☐ Uninsured motorist (46)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- ☐ Asbestos (04)  
☐ Product liability (24)  
☐ Medical malpractice (45)  
☐ Other PI/PD/WD (23)

## Non-PI/PD/WD (Other) Tort

- ☐ Business tort/unfair business practice (07)  
☐ Civil rights (08)  
☐ Defamation (13)  
☐ Fraud (16)  
☐ Intellectual property (19)  
☐ Professional negligence (25)  
☐ Other non-PI/PD/WD tort (35)

## Employment

- ☐ Wrongful termination (36)  
☐ Other employment (15)

## Contract

- ☐ Breach of contract/warranty (06)  
☐ Rule 3.740 collections (09)  
☐ Other collections (09)  
☐ Insurance coverage (18)  
☐ Other contract (37)

## Real Property

- ☐ Eminent domain/Inverse condemnation (14)  
☐ Wrongful eviction (33)  
☐ Other real property (26)

## Unlawful Detainer

- ☐ Commercial (31)  
☐ Residential (32)  
☐ Drugs (38)

## Judicial Review

- ☐ Asset forfeiture (05)  
☐ Petition re: arbitration award (11)  
☒ Writ of mandate (02)  
☐ Other judicial review (39)

Provisionally Complex Civil Litigation  
(Cal. Rules of Court, rules 3.400-3.403)

- ☐ Antitrust/Trade regulation (03)  
☐ Construction defect (10)  
☐ Mass tort (40)  
☐ Securities litigation (28)  
☐ Environmental/Toxic tort (30)  
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

## Enforcement of Judgment

- ☐ Enforcement of judgment (20)

## Miscellaneous Civil Complaint

- ☐ RICO (27)  
☐ Other complaint (not specified above) (42)

## Miscellaneous Civil Petition

- ☐ Partnership and corporate governance (21)  
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses  
 b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
 c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): nine

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.) CM-015 prepared

Date: 04/12/2010

Michael J. Barkley

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Filed  
4-12-2010

MICHAEL J. BARKLEY, CA SBN 122433  
161 N. Sheridan Ave. #1  
Manteca, CA 95336  
209/823-4817 [mjbarkl@inreach.com](mailto:mjbarkl@inreach.com)

Petitioner, in propria persona

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

Michael J. Barkley,

Petitioner,

v.

State Water Resources Control Board,

Respondent.

Bob Colella, U.S. Bureau of Reclamation,  
Real Parties in Interest

No. 34-2d0-8000513

REQUEST FOR PREPARATION OF  
ADMINISTRATIVE RECORD FOR  
PETITION FOR WRIT OF MANDATE

Petitioner does not have sufficient funds to afford the entire record for Ap. 18115, and therefore asks that the SWRCB prepare only the portions of the record relevant to the issues petitioner raised in his 10/01/2009 Protest and in later filings. This record is to include:

- 1) All those documents identified in California Public Resources Code Section 21167.6 subdivision (e), plus
- 2) Records listed in Section A3. (documents for A018115) of Exhibit A attached to the Petition, except for #A3.1. the case index,
- 3) All documents referenced in the Order of 03/25/2010 at #A3.14.
- 4) Documents listed on Exhibit A as #A4.1., #A6.1., #A7.2, #A7.3, #A7.4., #A7.5, #A8.2. #A8.3., and #A10.1.
- 5) Documents listed in Exhibit A, "Protests and Their Dispositions in SWRCB AP. 18115" attached to Petitioner's 01/12/2010 "Petition for Reconsideration of Staff Denial of Protest Letter of 12/14/2009",

Request for Preparation of Administrative Record

1

No. \_\_\_\_\_

1 which listing is also on petitioner's web page at <http://www.mjbarkl.com/18115pro.htm> :

2 6) Documents listed in Exhibit D, "Orders, Decisions, Decrees, and Environmental Reviews  
3 Mentioned in SWRCB AP. 18115" attached to Petitioner's 01/12/2010 "Petition for Reconsideration of  
4 Staff Denial of Protest Letter of 12/14/2009", which listing is also on petitioner's web page at  
5 <http://www.mjbarkl.com/ea.htm> :

6 a) All documents listed under "Orders" except:

7 i) 10/05/1992 91-1128 Order from Judge Levi

8 ii) 01/19/1992 Order from Judge Levi

9 b) the 09/22/1995 letter Stackhouse/Reclamation to Anton/Div Water Rights under Decisions

10 c) The Angle Decree listed under "Decree"

11 d) All documents listed under "Environmental Review"

12 7) Documents listed in the page referenced at Exhibit A, #A3.4.1. at

13 <http://www.mjbarkl.com/recl2009.htm> - Summaries of 2009 Correspondence between Reclamation &  
14 Division of Water Rights

15 a) 03/27/2009 letter KDM ??/Div WRights to Sahlberg/Reclamation re Reclamation 02/17/2009  
16 request for "a status update regarding its pending time extension petitions for the " CVP permits; [this is  
17 also listed under 4) d) above - please don't duplicate it]

18 b) That 02/17/2009 letter which is not in the A 018115 files

19 c) 04/29/2009 letter Woodley/Reclamation to Whitney/Div WRights ; re Kathy Mrowka 03/27/2009  
20 letter:

21 d) 06/23/2009 Petition for Extension of Time Ap 018115 Permit 13776 & Supplement to Petition  
22 [swrcb/18115ext.pdf] --

23 e) 07/14/2009 letter KDM/Div WRights to Woodley/Reclamation sig page missing

24 8) Additional Ap 18115 documents on 18115 list attached

25 9) In the "litigation files", 263.311 Regular Functional Activities - Supervision of Water Rights:  
26 Report of Referee, 06/1980 Report of Referee , 45 pp, iv, Appendix pp A-1 - A11 (Colusa/Stonyford  
27 litigation); if this is unclear, see petitioner's Ap. 27382 index at <http://www.mjbarkl.com/27382.htm>  
28 where the report is heavily quoted.

29 10) All Progress reports in A002212 & A018115 .

30 11) All reports of diversions and acreage irrigated in Supplemental Statements of Water Diversion and  
31 Use # S006353.

32 12) From Retzloff file, Ap. 20104,

33 a) 04/10/1961 letter Hill/XO to Retzloff, returned for clarification & Completion

34 b) 04/26/1961 letter Retzloff to Hill/SWRB,

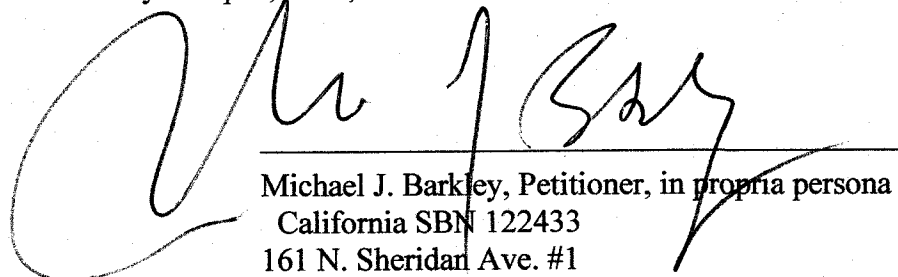
35 c) 08/24/1961 letter Hill/XO to Retzloff,

- 1 d) 09/29/1961 Report on Field Investigation of Unprotested Application,  
2 e) 09/16/1966 F Report of Inspection; accompanied by Mr. Retzloff;  
3 f) 06/28/1996 Contact Report Retzloff called Chandler/Div WRights  
4 g) 01/14/1997 letter Anton/Div WRights to Retzloff, rejecting complaint  
5 h) 01/14/1997 staff analysis, Complaints by Robert Retzloff Regarding the Operation of Black Butte  
6 Reservoir by the Orland Unit Water Users Association and the U.S. Army Corps of Engineers, Stony  
7 Creek in Glenn and Tehama Counties Complaints 262.0(11-04-04 and 11-04-05)

8 13) The entirety of the Stony Creek Complaint file (except for the 01/14/1997 Retzloff analysis)

9 Please exclude duplicates. Please let petitioner know an estimated cost for this record and  
10 whether or not you wish any sort of advance deposit. If you wish physical assistance with any of this,  
11 please let petitioner know.

12 Respectfully submitted this 12th Day of April, 2010,

13  
14  
15  
16   
17 Michael J. Barkley, Petitioner, in propria persona  
18 California SBN 122433  
19 161 N. Sheridan Ave. #1  
20 Manteca, CA 95336  
21 (209)823-4817 (no fax) [mjbarkl@inreach.com](mailto:mjbarkl@inreach.com)  
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1 ADDITIONAL AP 18115 DOCUMENTS REQUESTED:

2 Correspondence vol. 1

3  
4 111560 Assignment by the California Water Commission to the United States of America of Application  
5 No. 18115

6 Correspondence vol. 2

7  
8 072661 f Protest Sacramento River and Delta Water Association, 07/26/1961 water needed to flush  
9 salinity in the Delta

10 072661 Exhibit "A" "Sacramento River and Delta Water Association" list, 69 names & addresses  
11 072861 letter Sullivan/Reclamation to SWRB enclosed Answer of United States to the protest of Edna  
12 L. Knight, not within protest period, no notice of extension, protest should not be accepted

13 072861 Answer of United States to the protest of Edna L. Knight, only 28 acres of land riparian in the  
14 Angle schedule, riparian not within SWRB jurisdiction --

15 080361 letter Sullivan/Reclamation to SWRB encl "Answer of the United States to the protest of the  
16 Sacramento River and Delta Water Association"

17 080361 letter Sullivan/Reclamation to SWRB encl "Answer of the United States to the protest of  
18 E.A. Wright"

19  
20 080361 "Answer of the United States to the protest of E.A. Wright" No Angle riparian rights in Mr.  
21 Wright? "dispute involving the riparian status of the protestant's land does not fall within the jurisdiction  
22 of the board." --

23 080361 "Answer of the United States to the protest of the Sacramento River and Delta Water  
24 Association" During season, no Stony Creek water reaches the River, refuting protestant's claim that it is  
25 used to flush the Delta; protest filed late --

26 080461 letter Hill/SWRB to Dugan/Reclamation acknowledge receipt of your answers to protests of  
27 State Fish & Game and Edna L. Knight

28 080461 letter Dugan/Reclamation to SWRB enclosed Answer of United States to the protest of the  
29 Stony Creek Water Users Association copy to atty McDonough & 54 members [GET]; protestants  
30 claiming reservoirs violated the Angle Decree & state procedures for appropriation and cannot have  
31 illegally acquired rights protected; & 1) issues not within SWRB jurisdiction, 2) all upstream can take  
32 the water to which they are entitled before it reaches applicant's diversion, 3) protestants claim  
33 interference with appropriations that started since 12/19/1914 without compliance with statutory  
34 procedure, 4) protests not filed within time states and no showing of diligence; McDonough's mailing  
35 list attached

080861 letter Hill/SWRB to atty McDonough received Sacramento River and Delta Water Association



1 protest --

2 080961 letter atty McDonough to Hill/SWRB, Stony Creek Water Users Association not attacking  
3 Angle, application is for a separate project; many ponds have permits, the others have applied for them --  
4 [on back of Hill letter]

5 080961 letter atty McDonough to Hill/SWRB, assertion River & Delta, & Stony Creek Water Users'  
6 Association filed late; were filed within the time granted for extension, Reclamation assertion that time  
7 extended is for negotiation is wrong since it's allowed for any good cause shown

8 081761 letter Hill/SWRB to atty Geis, cannot accept Knight & Wright protests, board policy of rejecting  
9 protests by upstream users who have the opportunity to divert under any rights before it reaches  
10 applicant's diversion point; terms of the assignment preserve county of origin protections. --

11 081761 letter Hill/SWRB to atty McDonough, cannot accept individual upstream protests 1) opportunity  
12 to use water before applicant gets it under any right they may have, 2) storing water without permit,  
13 protest based on a claim after 12/19/1914 without compliance cannot be accepted; joint protest still  
14 accepted [copied on back of Geis letter] --

15 082561 letter atty McDonough to DUGAN/Reclamation failure to send copy of 08/23/1961 letter an  
16 oversight

17 091861 Staff Summary for Hearing of Applications 18115 & 19451; 19451 gross area of 17,000 -  
18 50,000 acres, net, within the 9,025,000 acres in 18115; submit on 1) unappropriated water, 2) anticipated  
19 injury, 3) special terms & conditions

20 121361 letter Sullivan/Reclamation to SWRB,  
21 021362 letter Moore/Stonyford Soil Conservation District to SWRB  
22 092762 letter Hill/SWRB to Applicant, Protestants, and Interested Parties, enclosed D 1100;  
23 122762 4 letter Dugan/Reclamation to SWRB

24 Correspondence vol. 3

25  
26 082065 letter Kay A. Booth to DWR  
27 090265 letter Hill/SWRB to Kay A. Booth

28 Correspondence vol. 5

29 012293 letter Hoffman/Reclamation to Parkinson/SWRCB  
30 041293 letter Hoffman/Reclamation to Anton/SWRCB,  
31 042093 memo J.Mensch?/DFG to Falkenstein/DivWaterRights,  
32 050793 memo Anton to Pettit & State Board Members, summary,  
33 121393 letter Johnson/SWRCB to Baiocchi/CSPA

34 Correspondence vol. 6

1 030994 letter Broddrick/CDFG to Colon/Reclamation

2 Correspondence vol. 7

3  
4 070595 letter Matt Brown/USFWS to Stony Creek Technical Team, [out of order  
5 in file, between 080795 & 081195]

6 080195 letter Meroney/SWRCB to CDFG

7  
8 Correspondence vol. 8

9 092295 letter Stackhouse/Reclamation to Anton/Div WR

10 092195 letter Stackhouse/Reclamation to Anton/Div WRights [out of sequence,  
11 between 11/15/1995 & 11/24/1995]

12 022396 letter Anton/SWRCB to Stackhouse/Reclamation, Baiocchi/CSPA, - Hirtzel/USFWS,

13  
14 Correspondence vol. 9

15 111196 letter Baiocchi/CSPA to Stackhouse/Reclamation;

16 012897 letter Stackhouse/Reclamation to Baiocchi/CSPA;

17 032597 letter Baiocchi/CSPA to Hanson/Reclamation

18 112597 letter Biocchi/CSPA to Trout/Reclamation,

19 122397 letter Ryan/Reclamation to Baiocchi/CSPA

20 Correspondence vol. 11

21 122997 letter Felix Smith to Ryan/Reclamation;

22 040698 letter Anton/Div WRights to Trout/Reclamation;

23 100598 letter Baiocchi/CSPA to Smith/Reclamation

24 110598 Walter Cook/Atty [ret] to Trout/Reclamation`

25 120398 memo Pierce/USFWS to Manager/Reclamation Shasta,

26 Correspondence vol. 12

27 021199 letter Stackhouse/Reclamation to Schueller/Div WRights

28 071405 letter Whitney/Div WRights to Lindgard/Reclamation;

29 121906 letter Mrowka/Div WRights to Stevenson/Reclamation ,[WITH ATTACHMDENTS]

30 050107 - 051507 2007 Constant Head Orifice (CHO) Operations Report [WITH ATTACHMENTS]

31 120808 letter Woodley/Reclamation to Whitney/Div WRights [WITH ATTACHMENTS]

32 ---

33 Correspondence re Hearings, Folder 3 [where are 1 & 2?]

34 091362 letter Dugan/Reclamation to California Water Commission

35 == =

[END]

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80-cv-00583-LKK Document 314-3 Filed 04/19/2010 Page 32 of 43  
**SUPERIOR COURT OF CALIFORNIA**  
**County of Sacramento**  
**720 Ninth Street ~ Room 102**  
**Sacramento, CA 95814-1380**  
**(916) 874-5522—Website www.saccourt.com**

**NOTICE OF CASE ASSIGNMENT**  
**Proceeding for Writ of Mandate and/or Prohibition**

Case Number: *34-2010-80000513*

This case has been assigned for all purposes to the judicial officer indicated below pursuant to rule 3.734 of the California Rules of Court and Sacramento Superior Court Local Rule 2.01; it is exempt from the requirements of the Trial Court Delay Reduction Act and the Case Management Program under Chapter 11 of the Sacramento Superior Court Local Rules.

JUDGE	COURT LOCATION	DEPT.	PHONE
Hon. Patrick Marlette	Gordon D. Schaber Courthouse	19	(916) 874-7071

The petitioner shall serve all parties with a copy of this order and a copy of the Sacramento Superior Court Guide to the Procedures for Prosecuting Petitions for Prerogative Writs. The Guide is available in Room 102 of the courthouse, from the clerk of the department to which this matter has been assigned, and on the "Civil" page of the Sacramento Superior Court internet website ([www.saccourt.com](http://www.saccourt.com)).

**Scheduling**


Contact the clerk in the assigned department to schedule any judicial proceedings in this matter, including hearings on ex parte applications and noticed motions.

**Other Information**

Pursuant to Local Rule 2.01, revised January 1, 2007, all documents submitted for filing in this case shall be filed in person at the Civil Front Counter (Room 102) or by mail addressed to the Clerk of the Sacramento Superior Court, Attn: Civil Division-Room 102, with the exception of certain documents filed on the day of the hearing. For specific requirements, please see the Sacramento Superior Court Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

Any administrative record must be lodged with the assigned department.

Date: APR 12 2010

Signed:  **A. WOODWARD**  
Deputy Clerk



**SUPERIOR COURT OF CALIFORNIA**  
**County of Sacramento**  
**720 Ninth Street ~ Room 102**  
**Sacramento, CA 95814-1380**  
**(916) 874-5522 — Website [www.saccourt.com](http://www.saccourt.com)**

**GUIDE TO THE PROCEDURES FOR PROSECUTING PETITIONS  
FOR PREROGATIVE WRITS  
(as specified in Local Rule 2.01(E))**

This guide to the procedures for prosecuting petitions for writs of mandate and other prerogative writs in the Sacramento Superior Court is made available for your general information pursuant to Local Rule 2.01(E). A protocol for each department to which writs are assigned (hereinafter "assigned writ department") supplements these procedures with respect to the filing of documents, the scheduling of hearings, and the use of tentative rulings. The protocol is available from the assigned writ department and on the "Civil" page of the court's website under Prerogative Writ Departments and Protocol.

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Serving a Writ Petition.....	2
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Noticing Related Writ Cases and Possible Consolidation.....	3
Applying for a Temporary Stay in Administrative Mandate Proceedings (CCP § 1094.5 (g) or (h)).....	4
Applying for a Temporary Stay in Traditional Mandate Proceedings (CCP § 1085) .....	5
Bringing Motions before the Hearing on the Merits of a Writ Petition.....	6
Setting a Hearing on the Merits of a Writ Petition.....	7
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Dismissing a Writ Petition .....	10
Lodging an Administrative Record.....	10
The Hearing on the Merits .....	10
Appearing by Telephone.....	11
Preparing a Judgment and Peremptory Writ.....	11

**Filing a Writ Petition:**

Step	Action
1.	File an original and two copies of the petition and a civil case cover sheet at the civil front counter in Room 102 on the first floor of the main courthouse. <u>Or</u> mail an original and two copies of the petition and a civil case cover sheet to the Civil Division - Room 102, 720 9th Street, Sacramento, CA 95814.
2.	Pay the filing fee pursuant to Government Code section 70611 in Room 102.
3.	Receive from the civil front counter clerk a Notice of Case Assignment and a copy of this Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

**Serving a Writ Petition:**

Step	Action
1.	Serve the writ petition on respondent(s) and real party(ies) in compliance with the requirements of Code of Civil Procedure (CCP) sections 1107 and 1088.5. Until compliance with these statutory service requirements is established by the filing of an appropriate proof of service, the court cannot hear or act on the petition.
2.	Along with the writ petition, serve copies of the Notice of Case Assignment and this Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

For service of an application for an alternative writ, see below, "Setting a Hearing on the Merits of a Writ Petition, (2) Securing issuance of an alternative writ."

**Filing Subsequent Documents:**

Step	Action
1.	File an original and two copies of all subsequent documents related to the writ petition either at the civil front counter in Room 102 or by mail addressed to the Civil Division - Room 102, 720 9th Street, Sacramento, CA 95814. <i>Exception:</i> Documents filed one day before or on the day of the hearing shall be filed with the courtroom clerk in the assigned writ department after any applicable fees have been paid in Room 102.
2.	File documents by fax in compliance with rule 2.303 of the California Rules of Court and Local Rule 9.20. Documents faxed directly to the court <b>will not be filed</b> .
3.	Specify on the first page of each document the date, time and department of any scheduled hearing to which the document applies. To set a hearing, see below, "Bringing Motions before the Hearing on the Merits of a Writ Petition" and "Setting a Hearing on the Merits of a Writ Petition."





**Noticing Related  
Writ Cases and  
Possible Consolidation:**

Step	Action
1.	When filing a Notice of Related Case pursuant to rule 3.300(d) of the California Rules of Court regarding two or more writ cases assigned to different judges in this court, file the Notice <b>in each writ case</b> .
2.	When filing a Response to a Notice of Related Case pursuant to rule 3.300(g) of the California Rules of Court, file the Response <b>in each writ case</b> .
3.	Serve the Notice or Response on <b>each party to each case</b> .

Note that the court proceeds with respect to related writ cases under rule 3.300(h)(1) of the California Rules of Court (CRC) as follows:

- The judges assigned to civil writ cases listed in a Notice Of Related Case filed and served pursuant to CRC 3.300(d) identify which one of them is assigned to the earliest filed case, information which should be included in the Notice of Related Case pursuant to CRC 3.300(c)(2). That judge proceeds under CRC 3.300(h)(1)(A) to determine whether the cases are related within the meaning of CRC 3.300(a).
- If the judge assigned to the earliest filed case determines that the cases are related, the judge orders the cases related and assigned to his or her department. That order is filed in each of the related cases and served on the parties to each of the related cases pursuant to CRC 3.300(i). In addition, an Amended Notice of Case Assignment, reassigning to the judge each of the related cases not previously assigned to him or her, is filed and served upon all parties to each reassigned case. Courtesy copies of the order and Amended Notice(s) of Case Assignment are sent to the judges previously assigned to any of the related cases.
- If the judge assigned to the earliest filed case determines that the cases are not related within the meaning of CRC 3.300(a), the judge issues a minute order stating and briefly explaining the determination. This minute order is filed in each of the cases listed in the Notice of Related Case and is served on all parties to the listed cases pursuant to CRC 3.300(i).
- In response to an order determining that the cases are not related, any party to any of the cases listed in the Notice of Related Case may file a motion pursuant to CRC 3.300(h)(1)(D) to have the cases related. The motion must be filed with the Presiding judge or a judge designated by the Presiding Judge.



**Applying for a  
Temporary Stay in  
Administrative Mandate  
Proceedings (CCP § 1094.5 (g) or (h)):**

Step	Action
1.	<p>Prepare an ex parte application for an order temporarily staying operation of the administrative decision under review in the proceeding. Identify whether the temporary stay order is requested pursuant to subdivision (g) or (h) of the CCP § 1094.5. Specify "Ex Parte" in the title of the application.</p> <p>Pursuant to rules 3.1201 and 3.1202 of the California Rules of Court and this Guide to the Procedures for Prosecuting Petitions for Prerogative Writs, an ex parte application for a stay order includes the following supporting documents and papers:</p> <ul style="list-style-type: none"> <li>▪ Endorsed copy of the petition.</li> <li>▪ Points and authorities, declarations and other supporting documents, including relevant portions of the administrative record if available.</li> <li>▪ Proposed order to show cause why the administrative decision under review in the proceeding should not be temporarily stayed pending a hearing on the merits of the writ petition (OSC). This proposed OSC should contain: <ul style="list-style-type: none"> <li>- blank spaces for the date and time of the hearing on the OSC,</li> <li>- an order for service of the OSC and any supporting papers not previously served with a blank space for a date of service prior to the hearing on the OSC, and</li> <li>- an order staying the administrative decision pending the hearing on the OSC.</li> </ul> </li> <li>▪ Proposed stay order.</li> <li>▪ Notice of hearing on the petition with blank spaces for date and time (unless the stay is being requested in conjunction with an application for an alternative writ).</li> <li>▪ Declaration regarding notice, as specified in rule 3.1204.</li> </ul> <p>In addition, CCP § 1094.5 (g) and (h) require that proof of service of a copy of the application on the respondent accompany an application for a stay. See subdivisions (g) and (h) for required manner of service.</p>
2.	<p>Contact the assigned writ department to reserve an ex parte hearing date and time and to determine whether the assigned writ department requires any of the documents or papers listed above in Step 1 to be filed before the hearing. Note that some writ departments hear writ matters only on Fridays.</p>
3.	<p>Notify respondent(s) and real party(ies) of the hearing on the ex parte stay application in accordance with rule 3.1203 of the California Rules of Court. Include the details of this notification in the declaration regarding notice prepared pursuant to rule 3.1204.</p> <p><b>Note:</b> The Court prefers at least 48 hours' notice but, upon a showing of urgency, will accept less notice.</p>
4.	<p>If the assigned writ department does not require any of the documents listed above in Step 1 to be filed before the ex parte hearing, file and serve the documents and papers as soon as possible and no later than the time of the hearing. (See rule 3.1206 of the California Rules of Court.)</p>

At the ex parte hearing, depending on the nature of the factual and legal issues raised by the stay application and the practical exigencies of the matter, the court



will either rule on the stay application immediately or issue the proposed OSC with or without a temporary stay order pending the hearing on the OSC at a specified date and time.

If the court grants a stay at the ex parte hearing or the hearing on the OSC, the court will sign and file the proposed stay order and set a date and time for a hearing on the merits of the petition. The court clerk will record the hearing date and time in the notice of hearing on the petition, or if the court has ordered the issuance of an alternative writ, in the alternative writ.

If the Court denies a stay at the ex parte hearing or the hearing on the OSC, the court, upon petitioner's request, will set a date and time for a hearing on the merits of the petition. The clerk will record the hearing date and time in the notice of hearing on the petition, or if the court has ordered the issuance of an alternative writ, in the alternative writ.

**Applying for a  
Temporary Stay  
in Traditional Mandate  
Proceedings (CCP § 1085):**

Step	Action
1.	Follow the statutory and regulatory provisions for obtaining a temporary restraining order (TRO), an order to show cause why a preliminary injunction should not be issued (OSC), and/or a preliminary injunction, set forth in the Code of Civil Procedure (including but not limited to CCP §§ 525, 526, 527, 528 and 529) and rule 3.1150 of the California Rules of Court. These provisions constitute rules of practice for temporary stays in mandate proceedings brought under CCP § 1085 in the absence of temporary stay provisions specific to such mandate proceedings. (See CCP § 1109.)
2.	When following the statutory and regulatory procedures for obtaining a TRO and/or an OSC, comply with the ex parte procedures outlined above in "Applying for a Temporary Stay in Administrative Mandate Proceedings" and in rule 3.1201 et seq. of the California Rules of Court.
3.	If no TRO or OSC is sought, notice a motion for a preliminary injunction following the procedures set forth below in "Bringing Motions Before the Hearing on the Merits"

Note that a temporary stay in proceedings on a petition for a writ of prohibition may be obtained by following the procedures set forth below under "Setting a Hearing on the Merits of a Petition, (2) Securing issuance of alternative writ." An alternative writ of prohibition, unlike an alternative writ of mandate, stays specified action by the respondent until further order of the court. (See CCP §§ 1087, 1104.)



### Bringing Motions before The Hearing on the Merits of a Writ Petition:

Motions on the pleadings and other pretrial matters brought in civil actions -- including motions for change of venue, demurrers, motions to strike, motions to dismiss, discovery motions, and motions for summary judgment -- may generally be brought in writ proceedings. (See CCP § 1109.)

Motions addressing the merits of the petition in whole or in part should be calendared for a hearing at the same time as the hearing on the merits. Motions directed at resolving issues preliminary to and distinct from the issues related to the merits of the petition, such as untimeliness of the petition under an applicable statute of limitations, should be calendared before the hearing on the merits of a writ petition. The court, in the exercise of its discretion to control the order of litigation before it, may advance the hearing on a motion to a date before the hearing on the merits or may postpone a motion to the hearing on the merits when such advancement or postponement will promote the efficient conduct and disposition of the proceeding.

Because a writ petition is usually disposed of by a hearing on the merits which is limited to oral argument on written briefs and documentary evidence, the usefulness of a motion for summary judgment or summary adjudication in economically disposing of an unmeritorious case or claim is substantially reduced in writ proceedings. Thus, before bringing a motion for summary judgment or summary adjudication, counsel should carefully evaluate whether the purpose of the motion can be achieved more directly and completely through a hearing on the merits of the petition.

Step	Action
1.	Contact the assigned writ department to reserve a date and time available on the department's calendar for a hearing on the motion. Prior to reserving a date, contact the other parties to the writ petition and determine their availability on the date. Some assigned writ departments hear writ matters only on Fridays.
2.	Notice the motion in accordance with the civil law and motion procedures in CCP § 1005 and in compliance with the California Rules of Court, including rules 3.1110 through 3.1113, 3.1115-3.1116, 3.1300, and 3.1320 through 3.1324. Comply with the page limits for memoranda set forth in rule 3.1113.  If the assigned writ department uses the tentative ruling system, the notice of motion must contain tentative ruling language available from the department.



### Setting a Hearing on the Merits of a Writ Petition:

If a hearing on the merits of a writ petition has not been set in conjunction with an ex parte hearing on an application for a temporary stay, it may be set either by (1) noticing a hearing on the petition or (2) securing issuance of an alternative writ.

**Note:** The court prefers, as more efficient and economical for both itself and the parties, the procedure of noticing a hearing on the petition.

The date set for a hearing on the merits of a writ petition, whether by notice or alternative writ, should allow the parties to file briefs in accordance with the following schedule established in Local Rule 2.01(D):

Opening brief:	Due 45 days before the hearing
Opposition brief:	Due 25 days before the hearing
Reply brief:	Due 15 days before the hearing

Note that Local Rule 2.01(D) limits the length of each of these briefs to 50 pages instead of the page limits in rule 3.1113 of the California Rules of Court.

The date of the hearing on the merits may be expedited and the briefing schedule shortened upon an application setting forth circumstances warranting an expedited hearing. The application for an expedited hearing may be made orally at a hearing for a temporary stay or alternative writ or on an ex parte basis in accordance with rules 3.1201 through 3.1206 of the California Rules of Court.

#### (1) Noticing a hearing on a writ petition

Step	Action
1.	Contact the assigned writ department to reserve an available date and time for a hearing on the writ petition. Prior to reserving a date, contact the other parties to the writ petition and determine their availability on the date. Writ petitions are normally heard on Fridays.
2.	Prepare and file a notice of hearing on the writ petition specifying the reserved hearing date and time. If the assigned writ department uses the tentative ruling system, the notice of hearing must contain tentative ruling language available from the department.
3.	File the notice of hearing either at the civil front counter in Room 102 or by mail addressed to the Civil Division - Room 102, 720 9th Street, Sacramento, CA 95814.
4.	Serve a copy of the notice of hearing on respondent(s) and real party(ies) no later than the time allowed for filing and serving the opening brief. If not previously served, the writ petition, the Notice of Assignment, and this Guide should also be served no later than the time for filing and serving the opening brief.





## (2) Securing issuance of an alternative writ

The alternative writ is an order to show cause that calendars a writ petition for a hearing on the merits. With the exception of an alternative writ of prohibition issued pursuant to CCP § 1104, the alternative writ does not, in and of itself, accomplish a stay or afford any affirmative relief.

Note that, with the alternative writ method, two writs may be issued in the proceeding. First, the alternative writ is issued to set a hearing on the merits of the petition. Second, a peremptory writ may issue after the hearing on the merits.

Step	Action
1.	<p>Prepare an ex parte application for an alternative writ. Specify "Ex Parte" in the title of the application.</p> <p>As provided in rules 3.1201 and 3.1202 of the California Rules of Court and this Guide, an ex parte application for an alternative writ includes the following supporting documents and papers:</p> <ul style="list-style-type: none"> <li>▪ Endorsed copy of the petition.</li> <li>▪ Points and authorities and any other supporting documents.</li> <li>▪ Proposed order directing issuance of alternative writ.</li> <li>▪ Proposed alternative writ with blank spaces for the date and time of a hearing on the petition. (Include a signature block for the clerk, not the judge.)</li> <li>▪ Declaration regarding notice, as specified in rule 3.1204.</li> </ul>
2.	<p>Contact the assigned writ department to reserve an available date and time for an ex parte hearing on the application for an alternative writ and to determine whether the department requires the papers listed above in Step 1 to be filed before the hearing.</p> <p>Note that some writ departments hear writ matters only on Fridays. Also note that, absent a showing of good cause or waiver by the respondent(s) and real party(ies), some departments will not issue an alternative writ unless the writ petition and application for the alternative writ have been served on respondent(s) and real party(ies) at least five days before the ex parte hearing. (See CCP § 1088, requiring service of copy of petition in conjunction with application for alternative writ; CCP § 1107, providing a five-day period for respondent(s) and real party(ies) to respond to a writ petition after receiving service of the petition.)</p>
3.	<p>Notify the respondent(s) and real party(ies) of the date and time of the ex parte hearing on the alternative writ pursuant to rule 3.1203 of the California Rules of Court. Include the details of this notification in the declaration regarding notice pursuant to rule 3.1204.</p> <p><b>Note:</b> The Court prefers at least 48 hours' notice but, upon a showing of urgency, will accept less notice.</p>
4.	<p>If the assigned writ department does not require any of the documents listed above in Step 1 to be filed before the hearing, file and serve on all parties the documents and papers as soon as possible and no later than the time of the hearing.</p>

If the court grants the application for an alternative writ, the court signs and files the proposed order directing issuance of the alternative writ that sets the petition for a hearing on the merits. The clerk then issues the proposed alternative writ with the





date and time of the hearing and provides it to the petitioner after the petitioner has paid the issuance fee in Room 102. The writ must be served upon respondent(s) and real party(ies) in the same manner as a summons in a civil action unless the court expressly orders otherwise. (See CCP §§ 1073, 1096.) Once served, the writ must be filed with a proof of service.

### Applying for a Continuance:

After a hearing has been set on a motion or on the merits of a petition, it may be continued only upon approval of the Court. If the continuance requires a change in the briefing schedule, such change must also be approved.

Step	Action
1.	<p>Present a telephone request for a continuance of the hearing to the clerk in the assigned writ department, including the reason(s) for the continuance and any necessary changes in the briefing schedule. Present the request as far in advance of the scheduled hearing date as possible.</p> <p>Upon the court's approval, the clerk will provide available dates on the court's calendar to which the hearing may be continued.</p>
2.	<p>Promptly confer with all counsel to agree upon a mutually convenient hearing date from among the dates provided by the clerk and any necessary changes in the briefing schedule.</p> <p>If counsel cannot agree to a continuance, a new hearing date and/or changes in the briefing schedule, the party seeking the continuance may apply for a continuance by noticed motion.</p>
3.	<p>Promptly present to the court a stipulation signed by all parties, including the reason for the continuance, the agreed upon hearing date and any agreed upon changes in the briefing schedule, with a proposed order.</p> <p>Pay the filing fee for the stipulation pursuant to subdivision (c) of Government Code section 70617 in Room 102.</p>
4.	<p>When the stipulation and order has been signed and filed by the Court, serve the stipulation and order on all parties.</p>

Note that these procedures do not apply when a motion is dropped from the calendar by the moving party. In such circumstances, the moving party must telephonically notify the court and all other parties as far as possible in advance of the date on which the motion is to be heard and send a confirming letter to the court with copies to the other parties.

**Dismissing a  
Writ Petition:**

Step	Action
1.	Promptly notify the assigned writ department pursuant to rule 3.1385 of the California Rules of Court when a writ proceeding is settled or otherwise disposed of.
2.	File a dismissal of the writ proceeding in the assigned writ department within 45 days after the date of the settlement pursuant to rule 3.1385(b) or after the date specified in the notice of conditional settlement pursuant to rule 3.1385(c).

**Lodging an  
Administrative Record:**

Step	Action
1.	When securing a date and time for a hearing on the merits of the petition, inform the clerk in the assigned writ department about the size of any administrative record in the case. Determine the department's preferences regarding the format, binding and container for the administrative record.
2.	Lodge the administrative record with the assigned writ department no later than 25 days prior to the hearing on the merits of a writ petition. If the record is not lodged by this time, some assigned writ departments may take the matter off calendar.  Consult with the assigned writ department if you wish to lodge the administrative record more than 25 days before the hearing on the merits of a writ petition.
3.	Attach a cover sheet to the administrative record and any boxes containing the record that lists the: <ul style="list-style-type: none"> <li>• Case name,</li> <li>• Case number,</li> <li>• Date and time of the hearing.</li> </ul>

At the hearing on the merits of the petition, the court will mark the administrative record as an exhibit and admit it into evidence. At the conclusion of the proceedings on the petition, the court may return the administrative record to the party who lodged it or destroy it pursuant to CCP § 1952 through 1952.3.

**The Hearing on the Merits:**

All hearings on writ petitions proceed by way of oral argument. If a party wishes to present oral testimony at the hearing, the party must obtain permission pursuant to rule 3.1306 of the California Rules of Court.

If the assigned writ department uses a tentative ruling system and posts a tentative ruling on the court day before the hearing on the writ petition, a party desiring to be heard must contact the clerk and request oral argument by the time designated in



the posted tentative ruling. When requesting oral argument, the party must advise the clerk that all other parties have been notified.

### Appearing by Telephone:

Parties may appear by telephone in accordance with Local Rule 9.10.

Note that some assigned writ departments permit telephonic appearances in hearings on motions only on a limited basis and in hearings on the merits of a writ petition only under compelling circumstances.

### Preparing a Judgment and Peremptory Writ:

**If the court denies the writ petition,** the party designated by the court shall, pursuant to rule 3.1312 of the California Rules of Court, prepare, serve on all parties, and present to the court a judgment denying the petition.

#### **If the court grants the writ petition:**

Step	Action
1.	The party designated by the court prepares (1) a judgment granting the writ petition and (2) a peremptory writ. The peremptory writ includes a signature block for the clerk, not the judge.
2.	Pursuant to rule 3.1312 of the California Rules of Court, prepare, serve on all parties, and present to the court a judgment granting the petition and the peremptory writ. The judgment, when approved, will be signed by the court. The clerk will issue the peremptory writ and provide it to the petitioner for service upon respondent(s) and real party(ies) after the petitioner pays the issuance fee in Room 102.
3.	Serve a copy of both the judgment granting the writ petition and the peremptory writ on the respondent(s) and real party(ies). The writ must be served in the same manner as summons in a civil action. (CCP §§ 1073, 1097.)
4.	Return the original peremptory writ with a proof of service to the assigned writ department for filing.
5.	Prepare, serve, and file in the assigned writ department a notice of entry of judgment pursuant to CCP § 664.5(a).