

February 11, 2010

To Charles R. Hoppin, Frances Spivy-Weber, Arthur G. Baggett, Jr., Tam M. Doduc, and Walter G. Pettit, individually and as members of the California State Water Resources Control Board:

Supplement to Petition for Reconsideration of 01/12/2010 for Ap. 18115

Dear Chairman Hoppin and the other Board Members:

Assuming they were not adequately described in my petition filed 01/12/2010 for my protest of 10/01/2009 of the Petition for Extension of permit under Ap 18115, I would like to add the following five issues:

1) This goes to the general nature of your inquiry into events affecting listed species (Salmon) on the Stony Creek Watershed since your last environmental review, if any, under Ap. 18115. In the mid-1990s and since then there has been a series of EISs, RODs, and MOUs binding on the Northwest Forests, including Mendocino on Upper Stony Creek, many of which are collected at <http://www.reo.gov/library/index.htm> or <http://www.fs.fed.us/r6/pdx/northwest-forest-plan.shtml>. Department of Interior (parent to Reclamation) is signatory on many of these, and U.S. Army Corps of Engineers (and thus the State and Reclamation as successors in interest to Black Butte waters) is signatory on at least one set and thus bound. Although the requirements among the various parallel and serial sets of documents sometime seem contradictory, and the subtle differences among document names are a source for confusion, the interplay among all of them, and especially the FSEIS for changes to The Aquatic Conservation Strategy in October 2003 would seem to require Forestry, Reclamation, and other Federal regulatory partners to include environmental consultation and review for listed Chinook and Steelhead in the Upper Stony Creek Watershed every time there is an event on the watershed that affects these extirpated listed species. Reclamation's Petition for Extension under Ap. 18115 would seem to be such an event, as would my protest calling for fish bypasses around Black Butte Dam, Stony Gorge, etc., and thus further examination of this body of EISs, RODs and MOUs is required, followed by Section 7 consultation with NMFS for the upper Watershed to supplement the several consultations on the Lower Watershed that have occurred since your last environmental review, and all this is required before you grant further extension to the permit under Ap. 18115.

2. I also wish to modify the last sentence of Paragraph "V.B.3.2)" of the Supplement to my protest to insert the following language after "River" : "and between Rainbow Diversion Dam and the intersection of Little Stony Creek".

3) American Indian trust resources have never been addressed in the cumulative impacts of USA's ever-increasing grip on Stony Creek and its tributaries. Grindstone Rancheria is astride Stony Creek at the confluence with Grindstone Creek, and the Indian people of that Rancheria are entitled to restoration of their historic chinook and steelhead fishery. You have a duty to see this is done.

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4) I am having trouble finding where you have ANY statutory authority to reject my protest. Your regulations on protests also seem broader than the authority under which they are promulgated.

5) I do not find either an Angle Decree right or an SWRCB permit for the Elk Creek Community Service District, which apparently is the supplier of M & I water to the town of Elk Creek, or for the old Setzer/Glenco/Commander Industries/Louisiana Pacific Lumber Mill, both of which are apparently supplied by Reclamation from Stony Gorge, see comments collected under para. 2M of <http://www.mjbarkl.com/limits2.htm> . This seems to be yet another example of Reclamation doing what they want when you are not watching, and ties in with the cumulative effects I recite in my Protest.

I would appreciate the opportunity to brief these issues fully before you finish your review of Reclamation's Ap. 18115 Petition for Extension.

FYI, the hearing date for the related motion in the Angle case in the United States District Court, Eastern District, Case # 80-583 has been delayed to 10:00 a.m. on 04/05/2010, see the Court's CM/ECF filing, copy at <http://www.mjbarkl.com/309.pdf> . Although the State of California has not appeared in this case since 06/24/1922, it is a party to the Decree most significantly because of its partnership with the U.S. Army Corps of Engineers in the waters of Black Butte Dam before assigning them to Reclamation. The assignment, of course, did not sever the Court's jurisdiction over the State and, of course, over you.

Thank you for your consideration,

Respectfully submitted,

Michael J. Barkley
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cc: Bob Colella, Reclamation