

March 14, 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:

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

Dear Chairman Hoppin and the other Board Members:

1. At Doc. 310-3 filed in case 80-583 (Angle) with USDC ED California on 02/22/2010, "Declaration of Charles R. Shockey [attorney with the US DOJ] in Support of United States' Response to Defendant Barkley's Motion to Require Changes in Practices of Water Master" he states:

"5. On February 19, 2010, I contacted Ms. Katherine Mrowka, Chief, Inland Streams Unit, Division of Water Rights, State Water Resources Control Board, California Department of Water Resources. I inquired regarding the status of the Petition for Reconsideration, which Mr. Michael J. Barkley filed from the denial of his Protest to the Bureau of Reclamation's Application 18115 for Extension of Time for the right to store water at Black Butte Reservoir. Ms. Mrowka informed me that Mr. Barkley's Petition for Reconsideration remains pending before the Board."

Should you wish, a true copy of USA's filings in this related motion are on my web page, <http://www.mjbarl.com> at 310.pdf, 310-2.pdf, 310-3.pdf, 310-4.pdf, 310-5.pdf, 310-6.pdf, 310-7.pdf, 310-7WP.wpd, 310-8.pdf, and OUWUA & GCID's are at 311.pdf.

I suspect the dates are running under CEQA, CCP and the Water Code and Regulations Sections you identified as the procedures to follow in case of a rejection of protest, if these dates have not already run. What is your position on my Petition for Reconsideration?

2. I am concerned, but am not certain, that your 12/14/2009 staff letter rejecting my right to protest is also a final statement by the Board as to its position on any CEQA review of USA's Petition for Extension. In that case this is formal written notification of my intention to sue ("notice of commencement of action") under California Public Resources Code §21167.5, for the reasons previously given in my filings to date under Ap. 18115. If your 12/14/2009 letter is NOT your final CEQA statement on USA's Petition for Extension, it would be helpful for you to let me know so that I might withhold that "action", in which case this is my written request under California Public Resources Code §21092 for a written copy by mail or email ( [mjbarl.com@inreach.com](mailto:mjbarl.com@inreach.com) ) of any CEQA-related notices on Ap. 18115 & its related permit and petitions from 10/01/2009 forward.

3. Despite your comments in your 12/14/2009 letter I find that Bald Eagles are still a California listed species, and failure to restore their chinook and steelhead food supply on the length of Stony Creek when it is feasible as it is now would seem to be an unpermitted "take" in violation of CESA, CEQA, and NEPA.

4. In further support of Paragraph IV.G. Seismic Warning portion of my Supplement to my 10/01/2009 Protest, I have recently found considerable geologic and seismic information in other files in your possession much of which I have extracted and set forth at <http://www.mjbarkl.com/seismic.htm> - based on the passages quoted therein I am quite concerned about the apparently fragile nature of the abutments at Black Butte Dam, the existence of a newer upscale subdivision someone built in Orland between I-5 & 99-W right up against Stony Creek without what would seem to be prudent protection against large-scale releases from Black Butte, and the existence of a lawsuit which I have not yet found wherein the U.S. Army Corps of Engineers sued its engineer on the Black Butte project for professional negligence or some such.

5. I continue to supplement my schedule of excess diversions by USA and by the Orland Project at <http://www.mjbarkl.com/limits2.htm> , including with quotes at paragraph 2.M. from your records showing delivery of water to the Elk Creek Community Services District for the entire town of Elk Creek without apparent authority from either you or the Angle Decree. I also note the loss of some 30,000 to 40,000 acre-feet per year at paragraph 2.N to the watershed through evaporation from USA reservoirs in a manner not authorized by the Angle Decree. My brother, having found the limits2.htm schedule too complex to explain to people, has taken the Orland Project Excess Diversions from that schedule and shown them in a Microsoft Excel bar chart, paragraph 2.O , or <http://www.mjbarkl.com/excess.xls> - as you can see from that chart, diversions by the project in excess of what the Decree allows the Project average more than triple the combined diversions of all upstream users. The cumulative excess exceeds 2,500,000 acre-feet to date, and if you add in reservoir evaporation and all other USA uses, may approach 5,000,000 acre-feet, all in violation of the Angle Decree and the California Water Code. Why aren't you listening? Does the legislature need to find someone else to manage California's water?

6. Adding to the information on cumulative impacts, I have built a web page on effects leading to the decline of the Upper Stony Creek Watershed, at <http://www.mjbarkl.com/decline.htm> . Note the moratoria on the Upper Watershed going back at least 30 years for both Glenn and Colusa Counties. While the Upper Stony Creek Watershed was thus in the grip of the cumulative impacts of USA and its Bureau of Reclamation, its primary beneficiary the downstream town of Orland has tripled in size since the 1950s.

7. Acting without holding a required hearing (that would be the issuance of your 12/14/2009 letter and issuance of any permit extension) is acting in excess of jurisdiction, CEB California Administrative Mandamus, §6.24 p. 177.

All of this and more I would have presented at the hearing to which I am entitled on my Protest had you not denied me that right. With your 12/14/2009 letter still being deficient in its form and content as to the Water Code and Regulations Sections you cited as containing the procedure for appealing it, I trust my Petition for Reconsideration is still open for all purposes including filing this Second Supplement. I need to hear from you ASAP to be certain that statutes are not

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running.

Thank you for your consideration,

Respectfully submitted,

Michael J. Barkley  
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cc: Bob Colella, Reclamation