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July 30, 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:

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

Dear Chairman Hoppin and the other Board Members:

Please note my new mailing address, above.

1. Cultural Resources:

In reviewing various SWRCB files related to the Stony Creek watershed I had been puzzled by how little discussion appeared of the archaeological traces of the pre-invasion Indian populations. A sense of how large the population on Stony Creek was may be gathered from Glenn County Sketchbook, by Thelma Bulkley White, Butte County Branch National League of American Pen Women, 1995 208 pp (one of a number of such narratives in the various modern and historical literature as well as in contemporary newspapers of the day):

Bidwell's 07/02/1844 journey p. 21

"Bidwell Reaches County"

"On July 2, 1844, with only his horse, his gun, and an old Indian who had been civilized in Mission San Solano in Sonoma County, John Bidwell, age 24, left the Sacramento at a point near what is now Colusa. He was in search of a land grant for the children of Thomas O. Larkin, prominent business man and American Consul at Monterey.

"The first night they made camp on a slough a few miles west of Colusa. The following day they continued due west under a blistering sky. Not until nightfall did they find water, which, much to their astonishment and disappointment, was so salty that it was unfit for man or beat. They were obligated to sleep without quenching their thirst.

"At daylight they were in the saddle again, making their way toward the high mountains to the west, feeling sure of finding water there. About 10 or 11 o'clock in the morning, they saw from the top of the ridge a glorious sight, a large, clear flowing stream. This they reached as soon as possible, and their nearly dehydrated horses plunged in. At the same time they saw a great number of Indians, men, women and children, in a state of flight, running and screaming.

"Bidwell and his companion unsaddled their horses under a wide-spreading oak, so they could eat the wild oats which were abundant. [photo, "Looking southwest from Bidwell Point, points of interest marked are, from left to right: Bruetty Ridge, St. John, Felkner Ridge, Noel Springs Ridge, Sheetiron, Dixon Orchard, McGill ridge, Summit Springs Hill, Alder Springs, and Grassy patch. Elk Creek is in the right foreground."]

"'We were absolutely obliged,' said Bidwell, 'to give them rest. In less than an hour the Indians that we had seen fleeing from us, the men I mean, were seen coming toward us from many directions. The Indian with me became alarmed. I had a gun [to p. 22] but he had none.

"'By certain signs, I gave them to understand that they must not approach us, but still large numbers had come very near. We saddled our horses, jaded as they were, so as to be ready if obliged to retreat.

"'To our surprise, the number of Indians increased to many hundreds. They asked what we came for. They said they had never seen white men before. These Indians certainly proved anything but hostile. Hundreds were before and behind us and the villages were made aware of our approach before we reached them.

"'I generally found the ground carpeted with branches and weeds, and made ready for me as a place to stop and talk.

"'Women ran in haste and brought baskets full of provisions of all kinds, apparently to pacify me. In fact, I found myself almost barricaded with baskets full of acorn bread, grasshoppers, various kinds of seeds, etc. The sun began to go down over the mountains and we were still traveling in the midst of a vast multitude of Indians, and every village added to the number.

"'Seeing a conical hill, I determined to make that my camp for the night. In great obedience, the Indians were soon all out of sight. I made a barricade near the top of the hill by piling rocks around us, and tied our horses near us.

"'The Indian lay awake half the night and I the other half, but not an Indian appeared during the night. But soon after daylight the mountain seemed to be alive with Indians and we thought it best to continue our journey down the stream."

"Whether or not the 1,196 foot butte (designated by the U.S. Forest Service as Elk Creek Butte) is the conical hill referred to by Bidwell, we shall never know for sure. It commands a sweeping view of the little valley east of Elk Creek and the eastern boundary of the Mendocino National Forest. Certainly there was no X to mark the spot, nor any landmark mentioned that would indicate beyond a shadow of a doubt that this was the place.

"Some who know the area well feel that Bidwell, having made a dry camp the night before in the vicinity of Sites would not have pushed his jaded horses so far in a single day. Furthermore, this butte is extremely steep, with neither forage nor water at the top.

"However, the Willows Chapter of Daughters of the American Revolution, on June 24, 1937, firmly convinced that this was the 'conical hill', dedicated a bronze plaque on Lookout Hill, commemorating it as 'Bidwell Point.' Destroyed by vandals, this marker was replaced with a wooden plaque on June 14, 1962. [to p. 23]

"The D.A.R. based their conviction on information secured by Edna Purkett Knight, while she was teaching school at Elk Creek about the turn of the century. Mrs. Knight talked to a very old Indian chief, who had been alive at the time and remembered the occasion well."

Also, p. 248 , 1844 John Bidwell's excursion, "very dry year which caused him to turn toward the mountains in search of water. This brought him to the valley of Stony Creek. He found thousands of Indians living along the stream at that time also in search of water"

Yet, there is only a hint of archaeological traces and examinations here or there in the Board's

many Stony Creek files until I looked at Ap. 28994 (see index at <http://www.mjbarkl.com/28994.htm>) and found your full archaeological review requirements, including the full 11/30/1990 "Cultural Resource Survey Report" which, after I pointed it out to the Records Unit staff, has since been removed by staff to the Board's more secure archaeological storage .

As a child I remember riding out west of Orland to the family ranches with my grandfather and him pointing to Indian mounds on the south side of the road along North Fork Stony Creek, in lands that came to him and his wife from her parents, George and Nora Clark but which were lost to USA in the Black Butte Reservoir condemnation actions in U.S. District Court (now Eastern District) cases #8065, 8178, 8220, 8339, 8464, 8638, cases I have not yet examined because the National Archives will not release the case files back to the Court and the Archives are difficult to get to.

In digging through historical literature I also found a book, Archaeology of the Black Butte Reservoir Region, Glenn and Tehama Counties, California, San Francisco State College Anthropology Museum Occasional papers Number 2, 02/1969, Adam E. Treganza and Martin H. Heickson

The State Library has a copy of this in its West Sacramento storage. It was published some years after a last-minute attempt to collect some of the archaeological record before inundation by the Black Butte reservoir, using methods that might now be considered hasty, crude and damaging such as at p. 33 "a truck mounted with a heavy-duty drilling rig." And p. 34, "William Auger Drill mounted on the rear of a two-ton 4-wheel drive truck" "auger sizes range from 6 to 36 inches in diameter." "18 inch size was selected"; the mind boggles

Following p. 53 is Map 1, Archaeological Sites in the Black Butte Reservoir Area [reservoir footprint, Stony up to Julian rocks, North Fork to Kendrick Creek]. Within the Black Butte Reservoir footprint are the following archaeological sites:

Glenn 1 2 3 4 6 5 6 7 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26
27 28 29 30 31 32 33 34 35 36 37 38 52 63 64 65 66 75 76 77 83
Tehama 1 2 3 4 5 6 7 9 225 226 227 228 229 230 231 232

Of these the San Francisco State Archaeological party excavated parts of Gle 10, 11 & 12, and did drilling at site #15, and this was apparently the last and only "cultural resources" investigation associated in any way with Ap. 18115 and it wasn't even done by USA but in response to the imminent threat of inundation. Many more sites are shown around the fringes of the footprint but still within lands taken for the reservoir project.

Incidentally, at p. 64 this book also mentions Bidwell's 1844 journey down Stony & contact with Indian villages along the way. In digging through the 18115 files I find nothing on such cultural inquiries and resources.

There is a hint of some cultural resource mitigations in the Santa Clara Power and other Stony Creek watershed files but not the full scale examination as imposed on Mr. Whitney in 28994.

The requirements set forth in the files for Ap. 28994 should also be applied to this petition for extension of Ap. 18115. Each fall the reservoir is drained in advance of flood control needs. During such periods of low reservoir levels, the applicant should be required to continue the archaeological examinations that should have been conducted in the first place. Presumably each year the archaeological evidence deteriorates further with the periodic inundation, and eventually will be gone so there is some urgency.

Please ensure that these studies are started and that they continue for as many years as necessary until complete.

2) Kathy Mrowka:

In February 1991 in Application 28994 SWRCB caused the petitioner to publish a Notice of Preparation of a Negative Declaration in the Willows Journal, which included instructions for anyone interested to file objections to the issuance of that Negative Declaration. On March 14, within the time period you set, our neighbor Bernie Millsaps filed an objection stating that the proposed dam would cover and extinguish a spring of historical interest and use and asked that be mitigated. Kathy Mrowka of your Water Rights Division drafted a letter slamming him with a rejection, asserting that it was a water rights protest, ignoring his request for CEQA mitigation.

It would appear that Ms. Mrowka shaded the facts to fit a predetermined goal, and issued a black and white opinion on the gray nuances of CEQA and the Angle Decree. Per her initials on your 12/14/2010 rejection letter of my 10/01/2010 Protest I am already aware that she did the same thing to my Protest. What other instances are in your files? Please list for me every Application for which she issued a Protest or Environmental Comment, including those she signed and those which she drafted. And I would like to hear whether or not it is just her, or everyone in the Division that does this.

3) Diligence:

How can any requirement of diligence in putting water to reasonable and beneficial use be expanded to the 48 years since the filing of Application 18115 for Black Butte waters, or, for that matter, the 70 years that USA wants under its petition for extension. Imagine that, an entire human life span of 70 years to apply water constitutes "diligence" to the SWRCB. It makes the statutory requirement of diligence quite meaningless.

4) Public Trust:

On the issue of protection of public trust resources, and the mitigations required to support that protection, the failure to adopt feasible mitigations to restore the extirpated chinook and

steelhead to the Stony Creek watershed is an abridgment of my right to fish under California Constitution Art I Section 25 from whatever State lands are on Stony Creek, including the bridge rights of way on State Routes 45, 32, 162, and Interstate 5, as well as the Black Butte project footprint against which the California Water Commission shared in USA's proposed or perfected claim even though CWC subsequently assigned their part to Reclamation

5) All USA:

At lines 7 - 9 of p. 10 of Judge Karlton's 04/28/2010 Order (Doc 316 in the Angle Case, Case #80-583 if you look it up on the USDC ED CM-ECF website, or, if you prefer, a copy on my web site at <http://www.mjbarkl.com/316.pdf>) he affirms that USA is subject to the Decree, which presumably covers Reclamation, USACE, FERC, BLM, Interior, USDA, United States Forest Service, Mendocino National Forest, and any other agency of USA. As a party, all agencies of USA are subject to the Decree, not just Reclamation, and of course any successor or assign of USA is subject as well.

Thank you for your consideration,

Respectfully submitted,

Michael J. Barkley
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cc: Bob Colella, Reclamation