



**CONTENTS**

1

2 **AUTHORITIES . . . . . iii**

3 **I. DEFENDANT . . . . . 2**

4 **II. A DIFFERENT VERSION OF STONY CREEK HISTORY . . . . . 2**

5 **III. PLAINTIFF'S MOTION IS AN EFFORT TO AVERT THE INEVITABLE**

6 **EXTINCTION OF THE RATIONALE FOR THE ORLAND PROJECT, IN A**

7 **MANNER UNFAIR TO UPSTREAM FARMERS . . . . . 9**

8 **IV. THE ANGLE DECREE UNFAIRLY INTERFERES WITH THE ORDERLY**

9 **ADMINISTRATION OF AREA OF ORIGIN WATER RIGHTS UNDER**

10 **CALIFORNIA LAW, AND PLAINTIFFS MOTION PERPETUATES THAT**

11 **INTERFERENCE . . . . . 11**

12 **V. SUMMARY . . . . . 13**

13 **A. CHANGED CIRCUMSTANCES . . . . . 13**

14 **B. ERRORS IN THE ORIGINAL DECREE . . . . . 13**

15 **VERIFICATION . . . . . 16**

16

17

18

19

20

21

22

23

24

25

26

27

AUTHORITIES

1

2 A Treatise on Federal Practice, Civil and Criminal, by Roger Foster, Chicago, Callaghan &

3 Company, 1920, viewed at

4 <http://books.google.com/books?hl=en&id=qu89AAAAIAAJ&dq=%22A+Treatise+on+Federal+Practice>

5 [%22&printsec=frontcover&source=web&ots=6JpFWRDRwP&sig=b6V1IJvcYWaCDHp09h9Q7T84Ju4](http://books.google.com/books?hl=en&id=qu89AAAAIAAJ&dq=%22A+Treatise+on+Federal+Practice%22&printsec=frontcover&source=web&ots=6JpFWRDRwP&sig=b6V1IJvcYWaCDHp09h9Q7T84Ju4)

6  [&sa=X&oi=book\\_result&resnum=6&ct=result](http://books.google.com/books?hl=en&id=qu89AAAAIAAJ&dq=%22A+Treatise+on+Federal+Practice%22&printsec=frontcover&source=web&ots=6JpFWRDRwP&sig=b6V1IJvcYWaCDHp09h9Q7T84Ju4&sa=X&oi=book_result&resnum=6&ct=result) . . . . . Page 2

7 Equity and Equitable Remedies, Cases and Materials, Edward D. Re, Foundation Press, Mineola,

8 N.Y., 1975 . . . . . Page 14

9 Federal Equity Practice, Vol II, By Thomas Atkins Street, Edward Thompson Company,

10 Northport, Long Island, N.Y. 1909, viewed at

11 <http://books.google.com/books?id=NPo9AAAAIAAJ&pg=PA613&dq=%22federal+equity+practice%22>

12 [+street+Volume+II#PPA1254,M1](http://books.google.com/books?id=NPo9AAAAIAAJ&pg=PA613&dq=%22federal+equity+practice%22+street+Volume+II#PPA1254,M1) . . . . . Page 8

13 Federal Rules of Civil Procedure 60(d)(1) or (3). . . . . Page 8

14 Federal Rules of Civil Procedure 60(e) . . . . . Page 8

15 California Water Code

16 Section 11460 . . . . . Pages 11, 12

17 Sections 79069-79069.12, . . . . . Page 12

18 Section 79085.5 subdivision (d). . . . . Page 12

19 California Attorney General Opinions,

20 25 Ops.Atty.Gen 8 (1955) . . . . . Page 11

21 25 Opp.Atty.Gen 136 (1957) . . . . . Page 11

22 State Water Rights Board Decision D1042, viewed at

23 <http://www.waterrights.ca.gov/hearings/decisions/WRD1042.PDF> . . . . . Page 4

24

25

26

27

1 DEFENDANT

2 Comes now Defendant Michael J. Barkley, one of several heirs to D. H. Masterson, Mrs. D. H.  
3 Masterson, James Masterson, Frank (F. P.) Masterson, George Clark, Nora Clark, and possibly heir or  
4 successor in interest to various other Mastersons, Clarks, Cleeks, Bedfords, and Cushmans, fourth  
5 generation Defendant in this case and part owner of the land being operated as Masterson Properties  
6 partnerships, with ancestry on the North Fork Stony Creek dating back to before the Gold Rush, and  
7 recognizes that Plaintiff has moved to re-open the Angle case and opposes Plaintiffs Motion and offers his  
8 own Counter-Motion. In his first opposition memorandum, Defendant stated:

9 "Defendant prays the Court will forgive the hastily prepared nature of this Opposition.  
10 Plaintiff has been working on its Motion for 2+ years, but Defendant only received a copy,  
11 forwarded from his brother, on September 17, 2008. As it is, the bulk of this memorandum  
12 is assembled from notes Defendant compiled in 2001; Plaintiff's motion to reopen the  
13 Angle case seems to be the first opportunity since then that Defendant or anyone else  
14 would be allowed to bring these facts and issues before the Court. Defendant is quite ready  
15 to do a better job of citation to the voluminous, unindexed early Angle record, and other  
16 relevant sources and authorities should the Court grant the further opportunity."

17 That has turned out to have been an overly bold promise. Factual and legal sources relevant to these  
18 issues approach the infinite, whereas time, resources, and Defendant's legal skills are quite the opposite.  
19 A more precise way to cite the Angle Archives eludes Defendant. Nevertheless, Defendant prays that he  
20 has presented these matters in an appropriate, adequate, and respectful manner sufficient to induce all  
21 parties to conclude that the Angle Decree is an injustice that warrants correction. One other  
22 lawyer/defendant has expressed a desire to file an opposition, but it would appear he has not done so - he  
23 did state that he was not current on California water law and perhaps the learning curve was too great to  
24 overcome. Certainly there is an adequate water law bar in this state, but just as certainly, all of its  
25 members are on the other side of this litigation in some fashion or other. Upstream Stony Creek  
26 Watershed property owners and tenants are alone and unprotected while OUWUA has for some reason  
27 earned legal representation in perpetuity from Plaintiff.

28 On p. 14 in Plaintiff's memorandum appears the language "The United States is not aware of any  
dispute, controversy, or opposition to this proposed change from any landowner or water rights holder  
under the Decree." All that says is that memories are short or no one is listening. A quote is

1 enlightening: "There is considerable hard feeling against the Orland Project among many of the Defendant  
2 Water Uners (sic), they seem to have the feeling that the Orland Project is forever trying to take away  
3 from them the water allowed them in the Decree" (letter from Water Master E.A. Garland dated December  
4 6, 1963, on file in the Court's Angle Archives). Being "aware of opposition" depends on who is asked and  
5 how they are asked.

6 As he was growing up, Defendant was always curious how, on the drive out to the ranch, there  
7 were so many lush green well-irrigated fields, which ended and turned dry and sun-burnt beyond Black  
8 Butte, except for one field at "Floyd Corner" irrigated from what defendant was told was an artesian well.  
9 His questions were always answered, "the Government stole our water". All of it? At times there is as  
10 much as 25,000 cubic feet per second (cite pending) flowing past the family's North Fork Stony Creek  
11 ranches. "All of it except enough to irrigate 13 acres." That was stunning. At the time, Defendant's  
12 grandfather operated somewhere around 6,000 acres along that valley, with maybe 1200 irrigable, nearly  
13 all reduced to dry farming.

14 During law school, concurrent with his Equity course, Defendant learned of the Angle decision  
15 and visited the Archives to gain a greater understanding of the problem. He was surprised to find, but  
16 should not have been, that it was a Federal Equity case. How could that be? Didn't the maxims of equity  
17 apply? "He who seeks equity must do equity. The maxims enforced by other courts of equity are  
18 followed by the Federal courts....", for instance (A Treatise on Federal Practice, Civil and Criminal, by  
19 Roger Foster, Chicago, Callaghan & Company, 1920, Section 79a, p. 556, viewed at  
20 [http://books.google.com/books?hl=en&id=qu89AAAIAAJ&dq=%22A+Treatise+on+Federal+Practice  
21 %22&printsec=frontcover&source=web&ots=6JpFWRDRwP&sig=b6V1IJvcYWaCDHp09h9Q7T84Ju4  
22 &sa=X&oi=book\\_result&resnum=6&ct=result](http://books.google.com/books?hl=en&id=qu89AAAIAAJ&dq=%22A+Treatise+on+Federal+Practice+&printsec=frontcover&source=web&ots=6JpFWRDRwP&sig=b6V1IJvcYWaCDHp09h9Q7T84Ju4&sa=X&oi=book_result&resnum=6&ct=result) ) Didn't this apply? or any of the other maxims? Yes, it  
23 appears the maxims have fallen in disfavor as with all of Equity, but during the years the Angle case was  
24 pending, 1918 through 1930, weren't they well-regarded? If so, how could Plaintiff The United States  
25 Bureau of Reclamation (Reclamation) have gotten away with all that they did?

## 26 II. A DIFFERENT VERSION OF STONY CREEK HISTORY

27 In the Angle case, on May 28, 1918 Reclamation brought suit against a handful of riparians on  
28

1 Stony Creek upstream of Black Butte to stop them from diverting from the creek water that they felt  
2 belonged to their client agency, the Orland Unit Water Users Association (OUWUA), having been stored  
3 in Reclamation reservoirs upstream during winter flows for their use later in the season. But the real  
4 reason was that Reclamation had used erroneous rainfall statistics for their first Orland reservoir  
5 (mountain rainfall statistics instead of much-lower, foothill statistics) (cite pending), and then oversold  
6 the Orland Project in good years. When shortages developed in bad years they sought a succession of  
7 increased storages and stream appropriations to cover up their mistakes, protect their jobs, and keep  
8 Reclamation from being disbanded for having fumbled the Orland Project, their first project (cite  
9 pending). They did not stop there: they expanded their litigation to strip water rights from all persons  
10 possibly having a claim to upstream Stony Creek water regardless of whether or not Orland Project waters  
11 flowed past their lands. Over the next 12 years Reclamation settled out the few defendants with enough  
12 resources to defend themselves, and then reduced all possible claims through aggressive  
13 litigation tactics until only a handful of upstream users remained, and only those users who could prove  
14 what they'd appropriated and actually used, were allowed any further usage under the Decree. Many  
15 defendants, cowed by Reclamation's aggression walked away from their rightful claims. Others, even after  
16 their rights were acknowledged, walked away from their entitlements rather than try to pay the water  
17 master fees (backed up with contempt of court citations, arrest, and imprisonment) levied  
18 during the Depression. Buried within the Decree is the end result of an incredibly slick and ruthless bit of  
19 Federal lawyerly mischief: the Decree stripped every upstream riparian of all riparian rights, rights  
20 still enjoyed by pioneering Californians on every other watershed but this one, and it recognized only  
21 actual use.

22 For Plaintiff's irrigation district clients, proving their appropriation and use was no problem since  
23 they were the Plaintiffs and arms-length records were available - for the upstream farmers, proof was  
24 a very tough task. Still, many upstream users were aided in their proofs by a 1911 report from a  
25 Reclamation survey team that made a record of all upstream diversion facilities, including blueprints of  
26 diversion and conveyance systems (blueprints in the court's Angle Archives). All, that is, except any on  
27 North Fork, where no such survey was made, North Fork along which Defendant's lands lay. For

1 North Fork, Reclamation's heavy handed actions were a death sentence, effectively stripping lands  
2 upstream of Black Butte of water they'd enjoyed for 80 - 90 years. These upstream lands were settled in  
3 the late 1840s because of good arable land, plus year-round water especially at water gaps like Newville  
4 and where Bedford Creek meets North Fork. At one time the town of Newville was the largest town in  
5 Colusi County (later split to form Tehama, Colusa and Glenn Counties) (cites pending). The year-round  
6 water is essential for these upstream communities since temperatures are significantly warmer than in  
7 downstream Central Valley locations, reaching up to 120 degrees in the shade in the summer in  
8 Defendant's experience. But the upstream farmers made a fatal mistake: accustomed to year-round water  
9 over the 70 years since settling the Stony Creek foothill lands, they did not realize that they  
10 needed to "appropriate" what was always there for them (regardless of riparian rights) and did not  
11 adequately understand the coalescing forces of evil downstream. The Angle Decree led to a 70 or 80 year  
12 period of oppression for this upstream region with dwindling population, economic hardship, and  
13 hastened the death of the town of Newville, already waning since the railroad linked the valley towns and  
14 not those in the foothills.

15 Overall the irrigable acreage upstream exceeds the size of the Orland Project, but the Decree  
16 limited irrigation water upstream of Black Butte to 11,967.30 acre-feet (or 13,073.30 a-<sup>2</sup>?, see Decree),  
17 delivering by fiat some 100,000 to 150,000 acre-feet to the Orland Project, and the balance to  
18 Glenn-Colusa Irrigation District or to flow to the Sacramento River to be picked up by other appropriators  
19 who were not subjected to the arbitrary and punitive limits imposed on the upstream farmers, farmers kept  
20 by Angle from gaining their own appropriations (see, for instance, State Water Rights Board Decision  
21 D1042, <http://www.waterrights.ca.gov/hearings/decisions/WRD1042.PDF> ).

22 North Fork was hit hardest, though never a part of the conveyance system that Reclamation  
23 originally tried to protect. With thousands of irrigable acres, and a highly seasonal stream flow of up to  
24 56,100 acre-feet ( cite for instance, California Department of Water Resources, "Thomes-Newville and  
25 Glenn Reservoir Plans Engineering Feasibility", November 1980, p. 2-7, flow of 55,000 acre-feet in 1969  
26 at an Army Corps of Engineers guage 2 miles upstream from the west end of Black Butte Reservoir  
27 northern arm, other cites pending), North Fork riparians were limited by the Decree to exactly 130.5

1 acre-feet of water, to be applied to 3 specific parcels. Although there is a potential small project dam site  
2 on North Fork's Salt Creek tributary at Conklin Ranch which could be supplemented by flume from  
3 Thomes Creek, all but two of the Fork's riparians were stripped of their water rights by the Decree, and  
4 threats of arrest and water cutoffs had a very real chilling effect on any development efforts. The Salt  
5 Creek dam site is seismically questionable and would have required condemning a neighbor's (or  
6 relative's) land, a tough prospect for a district as small as a Newville Irrigation District would be. Newville  
7 is now gone. Subsequently U.S Army Corps of Engineers was able to take for Black Butte Dam  
8 Defendant's best North Fork bottom land for pennies on the dollar compared to what it would have been  
9 worth irrigated. If Reclamation had treated Defendant and his neighbors with the same generosity it  
10 treated Orland, Newville and North Fork would still be alive, well-populated, and economically healthy.

11 This oppression continues today with little water available even though, after the Angle Decree,  
12 there is enough water for users downstream of Black Butte to do anything they might wish. For those  
13 along North Fork, every year an average of 23,000 acre-feet of water (DWR November 1980  
14 report, above, p. 2-7) flows through their lands, water they are forbidden to touch. Every request they  
15 make for an appropriation is fought tooth and nail by Plaintiff and their client, OUWUA, and discouraged  
16 by the State Water Resources Control Board. While watching downstream users enjoy their abundance,  
17 Defendant is reduced to using a maximum of somewhere below 70 acre-feet, plus a few  
18 expensively-regulated stock ponds, and a few low-flow water wells and springs ("seeps", actually). For the  
19 rest of the upstream areas, in any given year, half or less of the 12,000 (or 13,000?) allotted acre-feet is  
20 used upstream, with the rest going to Reclamation's clients as an unearned dividend of their aggression, or  
21 to subsequent appropriators, but none of it is returned to those upstream farmers from whom it was taken  
22 by force.

23 Examples of the oppressive activity over the past 80 years from the Court's Angle Archive include  
24 contempt of court filings/Arrests/Water Master cutting off water, a partial list (these are included to  
25 suggest what the upstream Stony Creek farmers have suffered):  
26 --St.John Outing Club, D. E. Studybaker, Bruce H. Sutliff, M. G. Bedford, Geo. W. Lewis and Frank W.  
27 Lewis, 1931, non-payment of Water Master assessments



1 --Henry Werth and Mrs. May E. Werth, 1932, diversions, barred Water Master from property, tore down  
2 his signs; order for arrest; bench warrant; jail sentence suspended; probation officer requested termination  
3 and discharge of probation after one year.... (since filing his first memorandum,  
4 Defendant has heard from a descendant of the Werths who told him Mr. Werth was held in jail for a week,  
5 released too late to make the stage, and had to walk home from Colusa to Stonyford.)

6 --Ben F. Provence and Jane Doe Provence, 1933, pumped water out of a ditch onto 3 acres; order for  
7 arrest; bench warrant....

8 --E. A. Wright, 1947, flushing his toilet without a meter, served by a U.S. Marshall with an order to  
9 appear in District Court in Sacramento with his attorney....

10 --Gary Gregory, 1985, irrigating outside of his irrigation season but inside OUWUA's season, clear  
11 unequal treatment in favor of Plaintiff's client....

12 -- Joseph M. Castro, 1992, needed a better measuring weir so the Water Master cut off his water....

13 All this while downstream users have diverted water far in excess of their rights under the decree, see for  
14 instance unprosecuted diversions by OUWUA at lines 1 through 10 of p. 3 of Plaintiff's Memorandum  
15 dated September 5, 2008. Similar are the contortions Colusa County had to go through to provide  
16 adequate municipal water to Stonyford (twenty years of various filings and letters in the Angle Archives,  
17 various year 2000 letters including from Reclamation and the Water Master in the file at SWRCB for  
18 application 27382 for permit <http://swrcb2.waterboards.ca.gov/ewrims/wrims-permits/p020308.pdf> ,  
19 Colusa County Superior Court case number 14932 in 1981, etc. ), and the U.S. Forest Service to serve its  
20 site at Fouts Springs (United States Department of Agriculture Forest Service, "Fouts Springs Youth  
21 Facility Environmental Assessment", March 2000, viewed in 2001 at  
22 <http://www.r5.fs.fed.us/mendocino/fouts.pdf> , since disappeared, so see web archive at  
23 <http://web.archive.org/web/20000830083155/http://www.r5.fs.fed.us/mendocino/fouts.pdf> : "[because of  
24 the Angle Decree] Opportunities to acquire water for domestic purposes are very limited in the entire  
25 Stony Creek watershed. This has contributed to the slow development and low population densities in the  
26 watershed", p. 3-38, or pdf p. 81 in the web archive page)). No one downstream from Black Butte  
27 has been subjected to the level of oppression that has been levied on those with lands upstream. No one,

1 that is except for Wackerman & Reimers who found that the present Water Master padlocked their  
2 irrigation gate in the middle of irrigation season threatening the loss of their pasture land and loss of  
3 renters (August 22, 1990 declaration of Hollis E. Reimers in the Angle Archives), even though their rights  
4 pre-dated the Project rights and were protected by contract with Reclamation, which led to an  
5 8-year course of litigation in this Court, the 9th Circuit Court of Appeals, the Court of Claims, and  
6 Superior Court, all ultimately settled by putting each party back in their original position, less the hefty  
7 legal fees paid by Wackerman & Reimers. How is it that gates of Reclamation or the OUWUA have  
8 not been locked off for their diversions of use of decreed water? It's long been understood the "chilling  
9 effect" selective repression can have on otherwise legitimate commerce. The effect on upstream Stony  
10 Creek farms and communities is such an example. A drive through the towns of Elk Creek and Stonyford  
11 reveal the effects: they look like third-world communities, sun-blasted, dusty and hopeless.

12 And Newville is just gone.

13         The last major group protest, against proposed appropriations by Reclamation of Black Butte  
14 surpluses, drew an angry letter to the Court from Reclamation (copy in the Angle Archives) that the  
15 presence of upstream stock ponds meant riparians were stealing Reclamation's water, and demanded  
16 actions including arrest. Understanding what the loss of stock ponds would do to such agriculture as  
17 remained, the protest group disappeared rather than risk such a loss. It again emphasized Reclamation's  
18 position that downstream uses of any kind were more important than upstream farms and ranches.  
19 Reclamation's position is all the more outrageous since many multiples of alternate sources have been  
20 located since the decree:

- 21 1) Tehama-Colusa Canal can yield to Orland many times the water taken from upstream users, a supply  
22 recognized in a November 12, 1906 Reclamation Service report on file in the Angle Archives (and  
23 reproduced at "Bureau of Reclamation Project Feasibilities and Authorizations, 1957 Edition", p. 682):.
- 24 2) Water awarded Reclamation from Black Butte Dam was more than enough to satisfy the  
25 area-of-origin/beneficial use needs of the upstream users,
- 26 3) Discovery of the 6,700,000 acre-foot Stony Creek Fan underflow under Orland meant that Orland  
27 already had many times more water than it needed at the time Reclamation took the water from

1 Defendant, and approval of 42 wells to tap the Fan in 1977 meant they could tap the supply any time they  
2 wished. ( San Francisco Chronicle, "Wringing Water Aid From Bureaucrats," by Jerry Carroll, Chronicle  
3 Correspondent, dateline Orland, Glenn County, Mon., Mar. 21, 1977, p. 4:

4 "...the federal Bureau of Reclamation sent word it was going to lend the tiny Orland Unit  
5 Water Users' Association and its 700 farmers money for enough wells to avert a 'dust bowl'  
6 fate and economic ruin. . . .

7 "Eugene Ringle, a civil engineer who lives 20 miles away in Chico, read about this  
8 in The Chronicle. Appalled, Ringle swiftly resolved to do something about the situation  
9 and offered his services to the district.

10 "For one thing, Ringle knew that beneath Orland there lay a vast underground pool  
11 of water totaling 162.9 billion gallons. The pool, part of the 2.2 trillion gallon Stony Creek  
12 Alluvial Fan that formed over thousands of years was enough to provide five years worth  
13 of irrigation. [2.2 trillion, divided by 7.48 gallons per cubic foot, divided by 43,560 cubic  
14 feet in an acre-foot, yields 6.752 million acre-feet of water which is larger than any surface  
15 reservoir in California except for Lake Tahoe]. . . .

16 ". . . a former mayor of Chico, Ringle. . . .

17 "When the district banks the federal loan, it will hire a drilling company to dig 42  
18 wells 600 feet deep to tap the water below. Each well will produce 2000 gallons a minute,  
19 enough to supply 56,000 acre feet over the growing season. . . .")

20 Faced with the responsibility of informing the Court of these alternative and fully available  
21 supplies, instead of doing the right thing, instead of doing "equity" in this Federal Equity litigation,  
22 Reclamation has avoided its legal and moral duties and persevered in its continuous punitive efforts to  
23 starve out the upstream Stony Creek riparians. Sanctions against Reclamation are certainly in order, as is  
24 setting aside the Decree and requiring Reclamation to rework it in the fashion requested in Defendant's  
25 Counter-Motion.

26 Lord Chancellor Bacon's Ordinance #1 showed a clear path forward for changed circumstances  
27 ("some new matter which hath risen in time after the decree"), still usable but diminished somewhat in the  
28 Bill of Review in Federal Equity Practice (Federal Equity Practice, Vol II, By Thomas Atkins Street,  
Edward Thompson Company, Northport, Long Island, N.Y. 1909, pp. 1253-1293, sections 2117 - 2195,  
viewed at  
<http://books.google.com/books?id=NPo9AAAAIAAJ&pg=PA613&dq=%22federal+equity+practice%22+street+Volume+II#PPA1254,M1> ) until abolished by Federal Rule 60(e). Did F.R. 60(d)(1) or (3)  
provide the replacement way forward? or is there sufficient jurisdiction remaining within the Angle  
Decree to accomplish it by modifying the method of enforcement? If there is sufficient jurisdiction

1 remaining within the Angle Decree to accommodate Plaintiff's Motion, there should also be sufficient to  
2 accommodate Defendant's Counter-Motion.

3 III. PLAINTIFF'S MOTION IS AN EFFORT TO AVERT THE INEVITABLE EXTINCTION  
4 OF THE RATIONALE FOR THE ORLAND PROJECT, IN A MANNER UNFAIR TO UPSTREAM  
5 FARMERS

6 The Orland Project is on its way to becoming irrelevant.

7 There is a slow decline of the Orland Unit Water Users Association towards an uneconomical  
8 collection of small-parcel "hobby farms" (April 1992, Glenn County General Plan, Volume 2,  
9 "Community Development Issue Paper", Section 2.1.5, p. 11):

10 "The apparent trend toward conversion of of water users from large-scale farming  
11 operations to five-acre 'hobby farms' marks a change in the Association's original mission,  
12 and may raise dilemmas within the Association should issues arise which divide their  
13 diverse clientele. Although the Association does not provide drinking water to its users, by  
14 providing irrigation water to small parcels (5 acres or less), it can be argued that the  
15 Association encourages, or at least does not discourage, the creation of parcels of a size not  
16 viable for commercial agriculture, and may thwart County land use policies. It can also be  
17 argued that water delivery to non-viable agricultural parcels represents a waste of a public  
18 investment intended to support agricultural operations."

15 Waste of the investment, waste of the water?

16 In its "Sacramento Valley Integrated Regional Water Management Plan section 5.1.9 p. 5-12, The  
17 Northern California Water Association (NCWA,  
18 <http://www.norcalwater.org/pdf/IRWMP%20Section%205.pdf> ) mentions "Opportunities exist to  
19 reoperate Orland Project reservoirs in conjunction with that of other downstream supplies that can result  
20 in increased yield of the presently underused Orland Project reservoir system." Underused?

21 In a slide show presentation by Rick Massa, Manager, OUWUA apparently prepared October 2003  
22 ( <http://waterlab.colostate.edu/logan/Rick%20Massa.pdf> ) he outlines growing problems for OUWUA:  
23 "Subdivided Lands: 747 Shareholders in 1960; 1122 Shareholders in 2003 on 1,514 Parcels (13.24 acres  
24 per landowner); Subdivided Lands That Don't or Can't Take Water." and "OUWUA's '79 Resolution:  
25 Affects Subdivisions of Land Resulting in Parcels of 5 or Less Acres; Imposes Severance of Water Rights  
26 from the Land; Charge of \$300 per Acre or Any Portion Thereof; Loss of 413 Acres Since  
27 1987; Financial Burden to Remaining Landowner's (sic)" Reading between the lines of this presentation,

1 the OUWUA has been severing Project water from lands as they subdivide to 5 acres or less? Held at bay  
2 by severance charges?

3 This has provoked at least one complaint on the internet at  
4 <http://local.yahoo.com/info-21806926-orland-unit-water-users-association-orland>

5 "by paying for nothing!! 06/21/2008 EXTORTION PAYMENTS!! This is one of the  
6 highest forms of EXTORTION I have come accross in my lifetime. To be forced to pay  
7 annually for water one does NOT use and can NOT even get is ridiculus [sic]. If you want  
8 "out" of the Orland Water Users, and IF they will let you out, you must pay in excess of  
9 \$7000.00 ...but most folks just suck up and pay the annual fee that starts out at about  
\$250.00 and up based on lot/land size. It doesn't matter that there are no ag canals on your  
property or even near your prpoerty [sic]. This is a class action law suit waiting to happen.  
Maybe if we all put our annual fees into the pot instaed of their pockets, we could afford to  
begin the fight in court. This is an outdated system."

10 Defendant has attempted to make contact with this person without success. Is it an isolated complaint?  
11 Or is it widespread? A census of OUWUA members asking "If you could withdraw from the OUWUA  
12 without cost, would you do so?" might reveal that the Association is being propped up with fines and  
13 penalties, rather than the need to furnish irrigation water, perhaps "an issue which divides their diverse  
14 clientele". Granted there are people who complain everywhere, but this seems rather specific.

15 The Orland area is urbanizing. The population of Orland in 1910 was 836 (  
16 [http://www.dof.ca.gov/HTML/DEMOGRAP/ReportsPapers/CensusSurveys/Township\\_and\\_Place/docum](http://www.dof.ca.gov/HTML/DEMOGRAP/ReportsPapers/CensusSurveys/Township_and_Place/docum)  
17 [ents/Pop-Twnshp-Glenn\\_County.xls](http://www.dof.ca.gov/HTML/DEMOGRAP/ReportsPapers/CensusSurveys/Township_and_Place/docum) ) and in 2008 it is 7050 (  
18 <http://neighborhoods.rdesk.com/city/Orland-California.aspx> ). While growth has not been consistently  
19 steady it has trended up over time. It is not unreasonable to suspect that it will continue, and with Orland  
20 being 8.4 times what it was a hundred years ago, in another hundred years it might be 8.4 times what it is  
21 now, a population of 59,220. Such a population could easily leave the entire Project area absent of any  
22 irrigable acreage.

23 Surplus water has been building. The August 22, 1990 Declaration of Hollis E. Reimers in the  
24 Angle Archive mentions sales to her of "excess" water at pages 2, 3, 4 and 5. The March 1, 2002,  
25 "Development of Conveyance Alternatives for TCCA Emergency Water Supplies" paper (  
26 [http://www.owue.water.ca.gov/docs/finpdf/PSP\\_558.PDF](http://www.owue.water.ca.gov/docs/finpdf/PSP_558.PDF) ) mentions a current practice of diverting  
27 water from Stony Creek into Plaintiff's (Reclamation's) Tehama-Colusa Canal (pp. 5 & 7) and discusses

1 a proposal to connect OUWUA canals directly to the Tehama-Colusa Canal to improve the ease of the  
2 diversions out of the awarded Angle project water.

3 The pattern is clear. Demand for irrigation water for the Project lands is waning and without  
4 diversion it will disappear. Plaintiff is making other plans for the water, and plaintiff and plaintiff's  
5 client are executing some of those plans in advance of the Court's permission. Neither Plaintiff nor  
6 OUWUA are making any effort to give back the water to those of us from whom they took it. Their  
7 actions cry out for correction.

8 IV. THE ANGLE DECREE UNFAIRLY INTERFERES WITH THE ORDERLY ADMINISTRATION  
9 OF AREA OF ORIGIN WATER RIGHTS UNDER CALIFORNIA LAW, AND PLAINTIFFS MOTION  
10 PERPETUATES THAT INTERFERENCE

11 On the NCWA web site are two legal memoranda, "A SUMMARY OF THE CALIFORNIA LAW  
12 OF SURFACE WATER AND GROUNDWATER RIGHTS", apparently by Paul M. Bartkiewicz  
13 (<http://www.norcalwater.org/pdf/D121205pmbWaterRightsSummary.pdf>) of Bartkiewicz, Kronick &  
14 Shanahan, Sacramento, and "AREA OF ORIGIN PROTECTIONS", apparently by Kevin M. O'Brien (  
15 <http://www.norcalwater.org/pdf/AreaOfOrigin.pdf>) of Downey Brand, Sacramento. It is not clear if  
16 OUWUA is a member of NCWA but if it is, these memoranda might be considered admissions or  
17 stipulations of the law by OUWUA. In any event, one might presume that the memoranda discuss the law  
18 in a light most favorable to OUWUA and their members. Of particular interest to Defendant is California  
19 Water Code Section 11460:

20 "In the construction and operation by the department of any project under the provisions of  
21 this part a watershed or area wherein water originates, or an area immediately adjacent  
22 thereto which can conveniently be supplied with water therefrom, shall not be deprived by  
23 the department directly or indirectly of the prior right to all of the water reasonably  
24 required to adequately supply the beneficial needs of the watershed, area, or any of the  
25 inhabitants or property owners therein."

26 What is a watershed? Well, both memoranda refer back to a pair of California Attorney General  
27 Opinions, 25 Ops.Atty.Gen 8 (1955) and 25 Opp.Atty.Gen 136 (1957), as stating that under the California  
28 Water Code clearly the entire Sacramento Valley is one watershed because to him a watershed  
includes everything from source to ultimate destination and thus cannot be just a portion of such a



1 watershed, logic that supports his purpose of supporting the Central Valley Project. Meanwhile, by  
2 specifically naming watersheds, two other portions of the Water Code contradict his reasoning, the Arroyo  
3 Pasajero Watershed Program at Sections 79069-79069.12, and the Clear Lake Watershed Program at  
4 79085.5 subdivision (d) . Using these two examples the Upper Stony Creek Watershed, that is, the  
5 watershed upstream from Black Butte, is easily identifiable as a separate watershed: the stream collects  
6 from a broad bowl and flows out through an identifiable narrow gap in the mountains at Black Butte (like  
7 Clear Lake, or more specifically, Cache Creek), and it flows into a fan and disappears from the surface  
8 (like Arroyo Pasajero, even though it sometimes flows into Fresno Slough and thence to the San Joquin  
9 River). In the case of Stony Creek disappearing, see for instance, "Reclaiming the Arid West, the Story of  
10 the United States Reclamation Service", by George Wharton James, New York, Dodd, Mead and  
11 Company, 1917, p. 107 (  
12 [http://books.google.com/books?id=ePMNAAAAYAAJ&dq=inauthor%3AGeorge+inauthor%3AWharton](http://books.google.com/books?id=ePMNAAAAYAAJ&dq=inauthor%3AGeorge+inauthor%3AWharton+inauthor%3AJames&pg=PR1&lpg=PR1&q=stony+creek#PPA107,M1)  
13 [+inauthor%3AJames&pg=PR1&lpg=PR1&q=stony+creek#PPA107,M1](http://books.google.com/books?id=ePMNAAAAYAAJ&dq=inauthor%3AGeorge+inauthor%3AWharton+inauthor%3AJames&pg=PR1&lpg=PR1&q=stony+creek#PPA107,M1) ) : "[Stony Creek] discharges a  
14 large volume of water during the season of its greatest flow and at times is a raging torrent, but it dwindles  
15 rapidly as soon as the rains ease and by July 1st is usually entirely dry at Orland." Yes it disappears now  
16 because of diversion by OUWUA and Reclamation, but as this quote shows, it always disappeared in the  
17 summer. Yet, like Arroyo Pasajero, it continues flowing underground during those non-flood months.

18 While Water Code Section 11460 requires that the Department of Water Resources not deprive the  
19 watershed of its beneficial needs, one might not consider the activities of Reclamation to be covered by  
20 that Section. Countering that, in the case of Stony Creek, and more specifically diversions into  
21 the Tehama-Colusa Canal with the emergence of the CalFed program partnering Reclamation and DWR  
22 to link the Tehama-Colusa Canal with the Sites Reservoir, it would seem that Reclamation has brought  
23 itself into the embrace of that Code Section and thus Plaintiff must cease ignoring the needs of the Upper  
24 Stony Creek Watershed area, its inhabitants, and property owners therein. To that end, Defendant asks  
25 that Plaintiff be required to cease ignoring this important watershed protection, and prays for such relief  
26 as he sets forth in his opposition and counter-motion.

1 V. SUMMARY

2 To summarize, the Angle Decree is both obsolete and in error from the beginning and it should be  
3 replaced:

4 A. CHANGED CIRCUMSTANCES,

5 1) the discovery of a 6,700,000 acre-foot rechargeable underflow in the Stony Creek Fan under  
6 Orland, a quantity far in excess of the reasonable use by either Orland Unit Water Users Association  
7 (OUWUA) or Glenn-Colusa Irrigation District (GCID) despite Decree terms deeding it to GCID.,  
8 2) approval of funding for Reclamation for 42 wells into the Fan in 1977,  
9 3) storage capacity granted Reclamation from Black Butte Dam,  
10 4) construction of the Tehama-Colusa Canal, with access to three times the amount of water  
11 needed to irrigate the entire Sacramento Valley, all change the circumstances under which the Decree was  
12 issued.

13 B. ERRORS IN THE ORIGINAL DECREE include that

14 --it allowed appropriators to interfere unduly with riparians' reasonable and beneficial use of their water  
15 --it treated riparians as appropriators and appropriators as riparians, while ensuring the riparians were  
16 permanently cut off from further riparian or appropriative rights.  
17 --it supplanted correlative rights in an unfair and inequitable manner  
18 --it allowed appropriators to attain appropriations and prescriptions by law that they had not attained in  
19 fact,  
20 --it allowed Reclamation to claim prescription, but did not allow prescription against Reclamation  
21 --it allowed a wholesale prescription against property of every riparian in the basin except Plaintiff's  
22 clients, rather than proper condemnation and compensation,  
23 --it allowed Reclamation to destroy riparian rights far in excess of what would have been necessary to  
24 accommodate the Reclamation project,  
25 --it allowed Reclamation to divest riparian ownership in a way inconsistent with state law and practice  
26 --it allowed Reclamation to impose a Federal regulatory scheme on a watershed that should have been  
27 left for State regulation



1 --it levied a draconian seizure upon Stony Creek riparians in a way that has been levied upon no other  
2 class of Californians,

3 --it granted the Orland Project a longer irrigation season than any defendant except Hall & Scarce,

4 --it interfered with application of a more appropriate and fairer state regulatory scheme that would have  
5 included considerations of area of origin and equitable/reasonable/beneficial use

6 --it did an injustice to "Equity", ignoring such equitable maxims as:

7 "He who seeks equity must do equity."

8 "He who comes into equity must come with clean hands."

9 "Equity delights to do justice and not by halves."

10 "Equity will not suffer a wrong to be without a remedy."

11 "Equity regards that as done which ought to be done."

12 "Equality is equity."

13 "Equity abhors a forfeiture."

14 (Equity and Equitable Remedies, Cases and Materials, Edward D. Re, Foundation Press, Mineola, N.Y.,  
15 1975 pp. 12-14) and the "Doctrine of balance of hardships" (Re, pp. 1118 et seq.)

16 --Reclamation brought the action to cover up its own mistakes in developing the Orland Project rather  
17 than to halt wrongful diversions by riparians,

18 --a fairer result would have been to order Reclamation/OUWUA to place its flow in canals between East  
19 Park, Stony Gorge, and Black Butte, or even in short canals past the few diversions, rather than allow it to  
20 commingle its water with that of riparians and use that as an excuse to strip riparians of their rights

21 --the District Court has proven ill-equipped to administer this Decree

22 --subsequent orders and opinions from the District Court and Court of Appeals have been numerous,  
23 inconsistent, and largely unpublished, leaving all Stony Creek interests unable to define their rights and  
24 duties under the Decree.

25 --the June 24, 1922 settlement with the State of California has been lost, leaving the State unable to define  
26 its rights and duties under the settlement, and leaving the state with a history of its own actions  
27 and opinions violative of the Decree.

1 --the Decree has unfairly allowed the very same people who overdrew the watershed flow, that is,  
2 OUWUA, Reclamation, The District Court, The Water Master, Glenn Colusa Irrigation District, and other  
3 appropriators, to assert to upstream riparians that no water is available to them because the stream has  
4 been over-allocated,

5 --the Decree has allowed OUWUA, Reclamation, Glenn-Colusa ID, and other downstream appropriators a  
6 hidden profit by allowing them to take all waters not actually used by upstream riparians, in amounts far in  
7 excess of the awards to such downstream appropriators under the Decree and in amounts that certainly  
8 show the deception in their claims of over-allocation

9 --enforcement has been levied only against upstream farmers while leaving violations by downstream  
10 appropriators unpunished.

11 --it allowed the California State Water Rights/Resources Control Board and its predecessors to grant  
12 further appropriations for which the SWRCB does not seem to have jurisdiction,

13 Defendant prays that this honorable Court will grant his Counter-Motion and deny Plaintiff's  
14 Motion.

15  
16 Respectfully submitted,

17  
18 /s/ Michael J. Barkley

19 Michael J. Barkley, Defendant, in propria persona  
20 California SBN 122433  
21 161 N. Sheridan Ave. #1  
22 Manteca, CA 95336  
(209)823-4817 (no fax) mjbarkl@inreach.com

23 Dated: November 10, 2008  
24  
25  
26  
27

1 VERIFICATION

2 I am a defendant in this proceeding and I researched, compiled and wrote this Memorandum. I  
3 declare under penalty of perjury that the allegations and factual contentions in this Memorandum and in  
4 the accompanying Defendant's First Amended Notice of Opposition to Plaintiff's Motion, and  
5 Defendant's Counter-Motion are true and correct, except for those submitted on information and belief  
6 and as for those I believe them to be true and correct.

7 /s/ Michael J. Barkley

8 Michael J. Barkley

9 Dated: November 10, 2008

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27