



1 Plaintiff's motion should be rejected because it would lend further credibility to a Decree  
2 that was and is fatally flawed, and for which the underlying justifications have changed and subsequent  
3 conditions have changed, making the Decree both irrelevant and more harmful:

4 The Decree was based on errors and transgressions, yielding an inequitable result:

5 1) Plaintiff found no need to negotiate with upstream farmers ("There are small amounts of lands  
6 irrigated along Stony Creek in the narrow valley on the upper reaches of the stream. It is not expected  
7 that serious misunderstanding or litigation can result from conflict in regard to the use of water."

8 November 12, 1906 letter to Reclamation Service Chief Engineer, from D.C. Henny, E.G. Hopson, S.G.  
9 Bennett in the Court's Angle Archives)

10 2) Plaintiff used wrong rainfall records, used mountain records rather than relevant foothill  
11 rainfall records to plan East Park reservoir; Rainbow Diversion Dam was an inadequate fix to that error

12 3) Plaintiff failed to understand the wide swing in annual flow between drought and flood years,  
13 30,000 acre-feet minimum vs. 1,000,000 acre-feet maximum

14 4) With the Orland project in jeopardy, Plaintiff went looking for someone weak to take the  
15 shortfall from, using force and fear, threats, intimidation, and the government's infinite deep pocket to  
16 bludgeon them into submission - rather than just protecting the project's storage, Plaintiff went after  
17 every parcel in the watershed

18 5) Plaintiff, and the Court's Water Masters on Plaintiff's behalf, engaged in decades of oppression  
19 of upstream farmers in a manner and to a degree that no one downstream suffered, leaving other  
20 downstream appropriators to take runoff denied upstream farmers, and leaving upstream communities  
21 devastated.

22 Changed circumstances require rejection of and reconfiguration of the Angle Decree:

23 1) Discovery of and growth in understanding the Stony Creek Aquifer - 6,700,000 acre-feet of  
24 water in 1,000 feet of gravel under Orland, rapidly replenished, with a value at Los Angeles rates of up  
25 to \$2,900,000,000. (Billion. Annually.)

26 2) Slow decline of the Orland Unit Water Users Association towards an uneconomical collection

1 of small-parcel hobby farms (per April 1992 Glenn County General Plan, "Community Development  
2 Issue Paper" Section 2.1.5) tending to waste the water they've taken from the upstream farmers, which  
3 helps explain why Plaintiff is attempting to expand the project to other lands rather than return the water  
4 to the farmers Plaintiff took it from

5 3) approval of Reclamation funding for 42 wells into the Stony Creek Fan in 1977 (Mar. 21,  
6 1977, p. 4 San Francisco Chronicle) giving Plaintiff two sources for their water)

7 4) storage capacity granted Reclamation from Black Butte Dam,

8 5) completion of the Tehama-Colusa Canal, with access to three times the amount of water  
9 needed to irrigate the entire Sacramento Valley, giving Plaintiff three sources.

10 For these reasons and those laid out in the accompanying memorandum, Defendant prays that  
11 this honorable Court will and hereby moves the Court to:

12 1) Reject Plaintiff's motion

13 2) Rejoin the State of California as a defendant inasmuch as their settlement has been lost and  
14 their obligations are unclear

15 3) Set aside the Angle Decree in its entirety, or at least the enforcement of it

16 4) Set aside all appropriations downstream from Black Butte pending review

17 5) Direct Reclamation to:

18 a) assess which lands upstream from Black Butte might benefit from irrigation, including  
19 by sprinkler or drip irrigation, and how much water per year would be required for such irrigation and set  
20 that aside as an annual reserve

21 b) draft a plan that will ensure no downstream users or appropriators will encroach on  
22 such portions of that upstream annual reserve as are actually used in any given year, and then reallocate  
23 the downstream appropriations, and coordinate the plan with and advocate the plan with the various  
24 interested State of California agencies

25 c) develop the Stony Creek Aquifer to offset any deficiency in supply that the upstream  
26 annual reserve might cause, as well as to fund all that which is ordered here, and sell the excess

1 d) present the plan to this court, and implement the plan following approval

2 e) develop or improve physical works to deliver the water to those upstream lands at  
3 Plaintiff's cost

4 f) evaluate the impairment in value caused irrigable upstream acreages over the decades  
5 since the decree, including annual crop impairments, and including lands taken by the Black Butte Dam  
6 project, compute the accumulated total per parcel including compound interest, and pay those sums to  
7 such heirs as can be found.

8 g) encourage the establishment of and fund the creation of an Upper Stony Creek  
9 Watershed Authority encompassing all lands and irrigation districts and water users within the Upper  
10 Stony Creek Watershed (that is, the watershed above Black Butte) to perform all the appropriate duties  
11 of such an authority

12 h) establish a \$50,000,000 redevelopment fund for Elk Creek, Stonyford, and Grindstone  
13 Rancheria, ignoring Newville which has disappeared as a community, such fund to be administered  
14 cooperatively by the Boards of Supervisors of Glenn and Colusa Counties as they see fit.

15 5) Suspend state impediments to the development and maintenance of water storage facilities  
16 such as stock ponds within the Stony Creek watershed upstream from Black Butte.

17 A proposed Order is attached for the Court's consideration.

18 Respectfully submitted,

19  
20 /s/ Michael J. Barkley

21  
22 Michael J. Barkley, Defendant, in propria persona  
23 California SBN 122433  
24 161 N. Sheridan Ave. #1  
Manteca, CA 95336  
(209)823-4817 (no fax) mjbarl@inreach.com

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