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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

THE UNITED STATES OF AMERICA, Plaintiff, v. H.C. ANGLE, *et al.*, Defendants.	Civil No. S-80-583-LKK [In Equity No. 30] PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO AMEND ANGLE DECREE RE: PLACE OF USE AND RESPONSE IN OPPOSITION TO DEFENDANT BARKLEY'S COUNTER-MOTION TO SET ASIDE ANGLE DECREE DATE: February 9, 2009 TIME: 10:00 a.m. COURT: Courtroom 4, 15th Floor

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I. INTRODUCTION

The plaintiff United States of America files this memorandum to reply in support of its motion to amend the Angle Decree (Angle Decree or Decree) (Doc. 277), filed on behalf of the Department of the Interior Bureau of Reclamation (Reclamation), the federal agency with statutory responsibility for constructing operates the Orland Project in northern California, a federal reclamation project currently operated by the Orland Unit Water Users Association (OUWUA). This memorandum also opposes the counter-motion to vacate the Decree (Doc. 280), filed by defendant Michael J. Barkley (Barkley) on September 29, 2008, and amended on November 10, 2008 (Doc. 284). For the reasons explained below, the United States requests that the court grant the United States' motion and deny Mr. Barkley's counter-motion with prejudice.

As the United States explained in its opening memorandum, Reclamation's proposed amendment to the Angle Decree is quite limited in scope. The motion seeks to update the designated "place of use" of water rights on certain lands described in the Decree to conform to current irrigation practices. This type of modification of the Decree is expressly authorized by the Decree itself, and the court has approved similar relief in several prior orders in this litigation. Reclamation's proposed amendment also would establish a process for court approval of future changes in the place of use to protect the adjudicated water rights of parties to the Decree while avoiding the need to burden the court with similar requests at regular intervals.

Mr. Barkley's counter-motion, in contrast, is exceptionally wide-ranging and asks the court to vacate the 1930 Angle Decree in its entirely, thereby completely eviscerating nearly 80 years of long-settled water rights in the Orland Project. Mr. Barkley provides no justification for seeking to reopen the water rights established in a final judgment and decree entered by Judge Kerrigan in 1930, nor does he explain why so-called changed circumstances, all of which relate to activities and events that transpired in most cases many decades ago, suddenly warrant the extraordinary relief of vacating the entire Decree in the context of responding to the United States' limited motion.

The Barkley motion also requests that the court order an unprecedented range of measures that far exceed the court's jurisdiction. These include, among other items: (1) a

request to order the involuntary joinder of the State of California as a named defendant, even though the State has not been served with the counter-motion or given notice and an opportunity to respond; (2) an injunction against alleged but undefined "State impediments to the development and maintenance of water storage facilities such as stock ponds within the Stony Creek watershed upstream" from the Black Butte Reservoir; (3) an order vacating all water appropriations in the Stony Creek watershed downstream from Black Butte reservoir; (4) a mandatory injunction directing Reclamation to oversee and manage farming operations on privately owned Orland Project lands and to draft a plan to protect "upstream" interests from appropriation by "downstream" water right users; (5) an injunction requiring Reclamation to develop and improve physical facilities to deliver water to upstream lands at no cost; and (6) an order compelling Reclamation to establish a $50 million "redevelopment fund" to benefit three communities located upstream Black Butte Reservoir to be administered by Glenn County and Colusa County supervisors. Mr. Barkley, however, provides absolutely no credible evidence in support of his novel and wholly untenable legal theory that the original court-approved Decree should be declared invalid *ab initio*, nor does he provide any justification for his time-barred attempt to relitigate water rights that the court adjudicated in 1930, based on alleged changed circumstances. As a result, the court should summarily deny the Barkley counter-motion with prejudice.

II. ARGUMENT

A. Reply in Support of United States' Motion to Amend Decree

The United States' motion requested that the court approve an amendment to the Angle Decree by including certain specified lands within the authorized place of use, but expressly retaining the existing limits on both the total acreage eligible for irrigation during any one year and the total volume of water that could be delivered from the Orland Project to the eligible lands. See Plaintiff's Memorandum in Support of Motion to Amend Angle Decree (Doc. 277-2) at 9; Proposed Order Granting Plaintiff's Motion to Amend Angle Decree (Doc. 277-5) at 2. The United States provided supporting evidence for the amendment, including a letter from Mr. George Wilson, the court-appointed Water Master, attesting to the fact that adding these lands

while retaining the limits on annual acreage and water deliveries would not adversely impact any party's water rights.

In the Defendants' Opposition and Counter-Motion, Mr. Barkley does not challenge the court's authority to approve the requested amendment, nor does he provide any evidence to rebut or refute the United States' showing that such relief is warranted. Instead, he confines his response to what perhaps can be described as a vigorous – and, at time, a virulent, vindictive, and vituperative – exegesis of what appear to be long-standing, but heretofore never pleaded objections both to the court's original 1930 Decree and to the manner in which the Decree has been administered under the court's authority for the past 78 years.

The United States will address those objections below in response to the Counter-Motion, but the undisputed fact remains that Mr. Barkley has not provided the court with any credible evidence or rationale why the government's motion to amend should not be granted. Instead, he refers to a collection of general statements in an effort to assert that the "Orland Project is on its way to becoming irrelevant" and, in his view, should no longer be permitted to divert and deliver water to persons and organizations, notwithstanding the fact that they hold court-approved, decreed water rights. The "evidence" he supplies, however, cannot support that conclusion and consists of little more than rhetorical questions that he poses. Moreover, he has not attached any of the documents that he cited, and most are available, if at all, on rather obscure and often difficult-to-locate websites. Where possible and relevant, the United States has procured copies of the cited "authorities" and attached them as exhibits to the Declaration of Charles R. Shockey. Suffice it to say, neither the exaggerated rhetoric nor the excerpted quotations provide any grounds for why the United States' motion should be denied. The United States briefly addresses each of the defendant's points.

Mr. Barkley first refers to a 1992 "Community Development Issue Paper" for a Glenn County General Plan which mentions an "apparent trend toward conversion" of large-scale farming operations to smaller "hobby farms." Doc. 284-2 at 9:7-14. The quoted language from that issue paper, however, does nothing more than surmise that the OUWUA "does not discourage" smaller parcels that may not support commercial agriculture. The United States is

not aware of any requirement in the Angle Decree that specifies a minimum parcel size, nor any provision that mandates the use of Orland Project water only for commercial agriculture. The fact that parcels may very in size and irrigation purpose does not present any basis for the court to deny the United States' motion to conform project boundaries to the current place of use.

Mr. Barkley next refers to an undated Sacramento Valley Integrated Regional Water Management Plan prepared by the Northern California Water Association (NCWA), which simply states that "opportunities exist to reoperate Orland Project reservoirs" to increase yield because the system is "underused." Doc. 284-2 at 9:16-20. The United States attaches excerpts from that document as Exhibit 1 to the Shockey Declaration. While Mr. Barkley is free to question the NCWA's statement, that plan and NCWA's views regarding potential water supplies (Shockey Declaration, Exhibit 1 at pp. 5-12, 5-13) have no bearing on whether the designated place of use in the Angle Decree should be amended to reflect current cropping patterns and land use. The Bureau of Reclamation, Orland Unit Water Users Association, and the court-appointed Water Master George Wilson all have explained and confirmed why the modest adjustment of project boundaries after eight decades is warranted to conform to current irrigation patterns and ensure that project water is put to beneficial use.

Mr. Barkley refers to a 2003 "slide show presentation," apparently prepared for a talk at Colorado State University by Mr. Rick Massa, the Manager of the OUWUA, which provides several bullet-point statements with information about the OUWUA's shareholders and land use. Doc 284-2 at 9:21-27. The United States attaches a copy of the document that Mr. Barkley cites, taken from the website cited in his brief and located through an internet search. Shockey Declaration, Exhibit 2. Mr. Barkley's speculative effort at "reading between the lines" of Mr. Massa's slides and asking rhetorical questions based on the defendant's misinformed assumptions are not relevant or admissible evidence under Fed. R. Evid. (FRE) 401 and 402. The slides used in Mr. Massa's presentation speak for themselves and are the best evidence of their content, and there is no evidentiary basis for Mr. Barkley's effort to divine meaning from reading "between the lines" of the text. The slides in that presentation merely refer to a 1979

OUWUA resolution regarding the size of parcels of land within the district and have no relevance to the question of whether the Orland Project boundaries should be modified in 2008.

Mr. Barkley's next evidence is a "complaint on the internet" from a Yahoo website for the OUWUA, dated June 21, 2008, which consists of nothing more than the remarks of an apparently disgruntled but otherwise unidentified individual (a/k/a/ "paying for nothing"), who apparently objected to making annual payments to the Association. Doc. 284-2 at 10:3-14. The United States attaches a copy as Shockey Declaration, Exhibit 3. This anonymous internet posting is entirely lacking in the requisite authenticity and documentation under FRE 901 and 902 and cannot be admitted or considered as relevant evidence under FRE 401 or 402 or under any exception to the hearsay rule under FRE 801-803.

Mr. Barkley notes that the "Orland area is urbanizing" and the city's population growing. Doc. 284-2 at 10:15-21. Those statements, while unremarkable and likely true in themselves, do not provide any grounds to deny the United States' motion to adjust the Orland Project boundaries. Likewise, there is no basis for the idle speculation that a continuing population increase for the next 100 years "could easily leave the entire Project area absent of any irrigable acreage." Id. at 10:21-22. If that should occur, however, and all irrigable acreage should disappear, then Reclamation, the OUWUA, or Mr. Barkley, through his heirs and assigns, may petition the court for appropriate relief at that time.

Mr. Barkley asserts that "surplus water has been building," based apparently on a 1990 Declaration filed in this case that refers to one individual's sales of "excess" water. Doc. 284-2 at 10:23-24. Mr. Barkley did not attach a copy of the 1990 Declaration that he cited, and the United States does not have a copy, as the Clerk of the Court reported that its file records from 1990 have been archived. In any event, the fact that one individual referred to a sale of excess water back in 1990, even if true, is not probative of the current status of water supplies and deliveries in the Orland Project in 2008, and that statement has no bearing or relevance to the pending motion to update the boundary descriptions for the project.

Mr. Barkley also discusses, but did not attach as an exhibit, a March 1, 2002, proposal to connect OUWUA canals to another federal Reclamation facility in the Central Valley Project,

the Tehama-Colusa Canal. Id. at 10:25-11:2. The United States has attached the cited pages of that document as Exhibit 4 to the Shockey Declaration. That 2002 proposal appears to be an unsigned draft document prepared by the State of California Department of Water Resources (DWR) for the CALFED Bay-Delta Program and pertains to alternatives for "Emergency Water Supplies" for the Tehama-Colusa Canal Authority. The proposal was developed to consider options for improving fish passage requirements on the Sacramento River, including diversions at the Red Bluff Diversion Dam, which is the subject of a number of other pending lawsuits in this judicial district. Reclamation is unable to discern any possible relevance of that draft 2002 proposal by the State DWR to the pending motion to update the place of use for the Orland Project. Regardless of whether TCCA were to follow through on that proposal, the United States has demonstrated a valid basis to amend the Angle Decree at this time.

In sum, Mr. Barkley has not presented any evidence, much less any credible, competent, or relevant evidence, to counter the United States' showing that the Angle Decree should be amended, in accordance with its terms and the practice of this court. The United States again emphasizes that its motion will do nothing more than conform the Orland Project boundaries to the current cropping patterns, while retaining the existing limits on the total acreage to be irrigated in any year and the total quantity of water that may be supplied pursuant to the court-decreed water rights. Absent any such contrary evidence from Mr. Barkley, the court should grant the United States' request, supported by the OUWUA and the Water Master, and enter the proposed Order provided with that motion.[1]/

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[1]/ The United States' motion to amend the Angle Decree addressed the place of use element of the water rights and proposed a future process to facilitate similar changes without the need to burden the court. One landowner has contacted plaintiff's counsel and requested whether a similar process could be employed to review future request for changes in the point of diversion from Stony Creek, another element of the decreed water rights. The United States has no objection in principal to that request and agreed to include that landowner's request in this reply. A copy of the email from that landowner, Mr. George Kokkinakis, to plaintiff's counsel is attached as Exhibit 5 to the Shockey Declaration.

B. Response in Opposition to Barkley Counter-Motion to Vacate Decree

The somewhat unorthodox nature of the defendant's arguments and citations presents a challenge in terms of responding to the Counter-Motion (Doc. 284). The United States first will address Mr. Barkley's standing, respond to his challenges to the court's original 1930 Angle Decree, and finally rebut the alleged changed circumstances during the past eight decades that, in the defendant's view, warrant modifications to the Decree.

1. Mr. Barkley Lacks Standing to Contest the Decree

As an initial matter, the United States notes that Mr. Barkley's brief raises questions regarding the precise nature of the rights that he purports to hold and how those rights relate to the adjudicated water rights that are the subject of the Angle Decree. Mr. Barkley asserts that he is "one of several heirs to D.H. Masterson, Mrs. D.H. Masterson, James Masterson, Frank (F. P.) Masterson, George Clark, Nora Clark, and possibly heir or successor in interest to various other Mastersons, Clarks, Cleeks, Bedfords, and Cushmans, fourth generation Defendant in this case and part owner of the land being operated as Masterson Properties partnerships, with ancestry on the North Fork Stony Creek dating back to before the Gold Rush, . . ." Doc. 284-2 at 1:2-6. Mr. Barkley, however, does not identify the specific land in which he claims a partial ownership, and the United States is unable to determine from the remainder of his brief whether that land and any water rights associated with that land are located within or without the jurisdiction of the Angle Decree. One might presume that, based on the nature of his objections, the land in question is not supplied with water from the Orland Project, but there does not appear to be any such evidence before the court.

Under the "case or controversy" requirements of Article III of the Constitution, a person invoking federal court jurisdiction bears the burden of demonstrating that he has standing to do so, as the Supreme Court has made clear. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (listing the requisite elements of injury-in-fact, causation, and redressability). Even taking at face value the assertion that Mr. Barkley is "one of several heirs" to the individual Masterson and Clark defendants listed in the Decree, that assertion by itself does not establish that he has a legal right or interest sufficient to prove the existence of an injury-in-fact for

purposes of standing under Article III. Assuming that he is an heir to these individuals, that fact does not prove that he has a legal interest in land or water rights under the Decree, nor that his partial ownership of undefined land operated by the "Masterson properties" is affected by the Decree or the proposed amendments to the Decree. Without proof of clear evidence of his property interest and some causal connection between that interest and the Decree, there simply is no basis in the record to find the requisite injury, causation, or redressability elements needed for Mr. Barkley's standing to contest the Angle Decree.

The United States, nevertheless, has attempted to review the Decree to determine the possible basis for Mr. Barkley's claim. The Decree lists five individuals surnamed Masterson as defendants (D.H., Mrs. D.H., Frank, James, and Kendrick), four of which (all but Kendrick) Mr. Barkley identifies as ancestors from whom he may have acquired property interests. See Doc. 278, Angle Decree at 4, filed as Declaration of Robert Colella, Exhibit 1. The Decree also lists five individuals surnamed Clark as defendants (Geo., Irene, J.R., Nora, and Willard), two of which (George and Nora) Mr. Barkley identifies as his ancestors from whom he may have acquired property interests. Id. at 2.

Mr. Barkley also states that he is "possibly heir or successor in interest to various other Mastersons, Clarks, Cleeks, Bedfords, and Cushmans." Defendant's Opposition at 1:3-4. The Decree lists four individual defendants surnamed Bedford, two individuals surnamed Cleek, and six individual defendants surnamed Cushman. Doc. 278, Exhibit 1 at 1-2. The United States submits that the mere possibility that Mr. Barkley is an heir or successor to these individuals is not a legally sufficient basis for him to assert any rights obtained through these persons.

Article II of the Decree ruled that L. Bedford is "estopped from claiming any right, title or interest in or to any of the waters of use of any of the waters of Stony Creek or its tributaries as against any of the parties plaintiff or defendant herein, their assigns or successors in interest, or their rights as same as decreed herein." Doc. 278, Exhibit 1 at 7.

Article III of the Decree ruled that certain individuals have "waived and surrendered any and all right, title and interest in and to the waters of Stony Creek and its tributaries which they

had or might or could have or represent therein." Doc. 278, Exhibit 1 at 8-10. Three Bedfords (John, M.G., and R.T.) fall within this list of individuals who waived any rights.

Article IV of the Decree ruled that a number of defendants had been served with the United States' complaint in 1918, initiating the adjudication of water rights to Stony Creek, but had "failed and neglected to make or file answer or other defense or pleas to said amended complaint as required by Rule 16 of Rules of Practice of Courts of Equity of the United States." Doc. 278, Exhibit 1 at 26. As a result, the court ruled that these individual defendants "do not have or own and they and their assigns and successors in interest are debarred and estopped form claiming or asserting any right, title or interest in or to any of the waters of use of any of the waters of the stream or streams which touch or traverse their lands. . . ." Doc. 278, Exhibit 1 at 28. These individuals who are thus barred from asserting claims include: George Clark, id., at 36, ¶ 33; Nora Clark, id., ¶ 34; William Clark, id. at 37, ¶ 35; A.W. Cleek, id., ¶ 36; J.S. Cleek, id., ¶ 37; five individual Cushman defendants (C., F.N., J.C., H.S., and L.V.), id. at 40-41, ¶¶ 48-52; D.H. Masterson, id., at 65, ¶ 150 (noting, however, that his "successors in interest, Mrs D.H. Masterson, et al., answered and submitted proof;" and James Masterson, id., ¶ 151.[2]/

Indeed, so far as the United States can discern, pursuant to the 1930 Decree, of all of the individuals listed by Mr. Barkley, only Mrs. D.H. Masterson, F.P. Masterson, and J.K. (Kendrick) Masterson apparently did answer and submit proof to the court for water rights to irrigate land pursuant to the Decree. The water right appears to consist of the right to irrigate 12 acres located in the SW1/4 SE1/4 of Sec. 33, T.23N., R.5.W., with five (5.0) acre-feet per acre, for a total water right of 60 acre-feet per year, and priority dates of April 15, 1917, and April 15, 1920. Id. at 133, 135 (Appropriation Schedule).

Even as to this water right, however, there is no proof that Mr. Barkley in fact is the current, lawful owner of that right. Placing these considerations in the context of Article III

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[2]/ One other defendant, I.E. Mecum, similarly was barred from asserting a claim for part of the estate of D.H. Masterson, id., at 66, ¶ 157, although the Decree notes that the Mecum land had been conveyed to D.H. Masterson, "whose successors in interest, Mrs. D.H. Masterson, et al., answered and submitted proof." Id., at 67.

standing, if Mr. Barkley in fact does own that right, then he clearly is not injured in any way from the United States' motion to amend the decree, which will not adversely affect his water right, but simply modify the place of use of other rights while keeping strict limits on the overall acreage available for irrigation and the total quantity of water to be supplied annually. If he does not own that right, then that fact is the direct result of the failure of his ancestors or predecessors in interest to assert and perfect a claim in accordance with the court's procedures that governed the adjudication from its inception in 1918 until its conclusion in 1930. In either event, he has not demonstrated a valid interest that is affected by the present proceeding, and he lacks standing to challenge the United States' motion or to assert a counter-motion based on claims that have been waived and barred as a matter of law for at least 78 years.

2. Mr. Barkley's Challenge to Original Court Decree is Time-Barred

Mr. Barkley requests relief from the court so that the "Angle Decree is set aside in its entirety." Doc. 284-3 at 2, ¶ 2 (Proposed Order for Defendant's Counter-Motion). In support of this rather astounding request, he lists a series of 21 alleged "Errors in the Original Decree." Doc. 284-2 at 13-15. The common element among these assorted grievances is the contention that the original adjudication of water rights for the Orland Project from 1918 to 1930 was unfair and inequitable and that this inequity has been perpetuated by the court, the Water Master, Reclamation, and the OUWUA for the past 78 years ever since Judge Kerrigan entered the original Decree in 1930.

As the factual predicate for these charges, Mr. Barkley offers "a different version of Stony Creek History." Doc. 284-2 at 2-9. The United States has four fundamental objections to this revisionist version of history.

First, the charges characterized on pages 3-4 of the Defendant's Opposition and Counter-Motion are untrue and entirely unverified. There is no basis for asserting that the Bureau of Reclamation "used erroneous rainfall statistics," nor that it "oversold the Orland Project in good years." The contentions that the Bureau sought to "cover up their mistakes, protect their jobs, and keep Reclamation from being disbanded for having fumbled the Orland Project" are frivolous at best, wholly unsupported and unsupportable. Mr. Barkley's claim that federal

officials used the litigation to "strip water rights from all persons possibly having a claim to upstream Stony Creek water" and employed "aggressive litigation tactics" toward that end preposterous, incredible, and false. To assert that the "Decree is the end result of an incredibly slick and ruthless bit of Federal lawyerly mischief" demeans, denigrates, and undermines respect for the role of this court in conducting the adjudication and entering the Decree in 1930. If, in fact, any person or party had grounds to contest the Decree, they could and should have done so in a timely manner through the available appellate process. They did not do so, and Mr. Barkley cannot now mount a collateral charge to the Decree based on his revisionist assertion of inequity.

Second, the charges are not supported or documented by any evidence and consist entirely of Mr. Barkley's unsubstantiated allegations. There is a complete lack of documentary or testimonial evidence to support any of the charges in the Opposition and Counter-Motion, many of which border on alleging fraud, incompetence, and improper conduct by the United States and its attorneys in the original adjudication. Doc. 284-2 at 3. The nature of those charges and the inflamed rhetoric without factual support raise a serious question in the view of the United States as to whether Mr. Barkley's "factual contentions have evidentiary support," as required for a filing in federal court by a member of the bar under Fed. R. Civ. P. 11(b)(3).

Third, the United States is compelled to protest the unbridled and accusatory level of rhetoric and invective conveyed in those charges, which is unwarranted, unseemly, and out-of-place in this judicial proceeding. This is especially true insofar as the alleged "errors in the original Decree" constitute allegations not only against the United States and the Bureau of Reclamation, *but against the court itself,* which, according to Mr. Barkley, has been engaged in ongoing conduct since the adjudication began in 1918 that "did an injustice to 'Equity,'" along with his assertion that "the District Court has proven ill-equipped to administer the Decree." Doc. 284-2 at 14:6, 14:21.

Finally, even if all of the unsupported claims, charges, and contentions in the Opposition and Counter-Motion were plausible, substantiated, and true, which the United States adamantly denies, those claims would remain foreclosed and barred as a matter of law by the doctrines of res judicata and the law-of-the-case. This court held exhaustive proceedings culminating in the

1930 Angle Decree, which provided the appropriate and fair opportunity for all persons to present their claims and perfect their water rights under California law. The Decree has remain intact, undisturbed, and functional and operational ever since, pursuant to the court's retained jurisdiction and oversight, including the efforts of the court-appointed Water Master. Neither Mr. Barkley nor, to the United States' knowledge, any other defendant or person has seen fit to object to or protest the basic provisions and workings of the Decree in an appropriate judicial forum for over 78 years. Indeed, not until the United States filed its limited motion to amend the Decree with respect to the place of use did Mr. Barkley even come forward and move for relief.

Twenty-five years ago, in a case involving another water rights decree for the federal Newlands Reclamation Project in Nevada, a unanimous Supreme Court made quite clear that the courts and the parties "contemplated a comprehensive adjudication of water rights intended to settle once and for all the question of how much of the Truckee River each of the litigants was entitled to." Nevada v. United States, 463 U.S. 110, 143 (1983). As a result, the Supreme Court held that the doctrine of *res judicata* applied to bar the United States from attempting to reopen or relitigate claims, as the "*Orr Ditch* decree also ended the dispute raised between these parties and the plaintiffs below." Id. at 145. The Supreme Court upheld the finality of the water rights decree in the following, clear terms:

> Simply put, the doctrine of *res judicata* provides that when a final judgment has been entered on the merits of a case, '[i]t is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matters which might have been offered for that purpose.' Cromwell v. County of Sac, 94 U.S. 351, 352, 24 L.Ed. 193 (1876). The final 'judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever.

463 U.S. at 129-30 (citation omitted). That principle and that holding in Nevada v. United States applies with equal force and effect to the Angle Decree and to the resolution, determination, and adjudication of water rights for Stony Creek. Mr. Barkley is barred as a matter of law from seeking to reopen or relitigate claims that this court definitively resolved in 1930.

3. Mr. Barkley's "Changed Circumstances" Do Not Warrant Modifications

In addition to attacking the original Angle Decree, Mr. Barkley contends that "changed circumstances" justify sweeping relief that should lead the court to vacate the Decree, set aside the water rights to appropriate water thereunder, and compel a series of extraordinary affirmative injunctions. These forms of relief requested include an order for Reclamation to undertake a renewed evaluation of all water rights in the watershed, an order to prepare a new plan to protect the alleged riparian water rights of "upstream" landowners, and establishment of a $50 million fund to redevelop the communities of Glenn and Colusa Counties. See Doc. 284-3 at 2-3 (Proposed Order). Mr. Barkley discusses these "changed circumstances" in his Opposition and Counter-Motion, Doc. 284-2 at 5-8, and offers the general observation that "Plaintiffs Motion Perpetuates That Interference" with his perceived rights under California law. Doc. 284-2 at 11:9-10. In essence, this claim alleges that the manner in which the court has administered the Decree since 1930 is no longer equitable, based on several changed circumstances that he cites. There is no factual or legal basis, however, for the court to modify the Decree to address these purported changed conditions, and the court should deny the Counter-Motion in its entirety.

Without providing any evidence or documentation in support, Mr. Barkley lists "examples of the oppressive activity over the past 80 years" since the Decree was entered. These include judicial enforcement of the Decree from 1932 through 1992 for matters such as non-payment of Water Master assessments, a bench warrant for individuals who barred the Water Master from their property, temporary incarceration, sanctions imposed for the unauthorized pumping, a show cause order for "flushing his toilet with a meter," and sanctions for irrigation outside the authorized season of use under the Decree. Doc. 284-2 at 5-6. The United States simply is unable to respond to these charges, absent any proof or documentation provided as support, but the common thread appears to be an objection by this small number of persons over a 60-year period from 1932-1992 that they should not be required to comply with the court's Decree.

That type of objection, however, cannot be sanctioned under the law. This court entered the Angle Decree with the following specific language:

> That each and all of the defendants (and persons, estates, interests and ownerships represented by certain thereof) named above in Articles II, III, IV and V of this decree, and their assigns, successors in interest, servants, agents and attorneys, and all persons claiming by, through or under them, are hereby perpetually restrained and enjoined from claiming or asserting – as against any of the parties plaintiff or defendant in this cause, their assigns and successors in interest, or their rights as decreed herein – any right, title or interest in or to any of the waters or use of any of the waters of Stony Creek or its tributaries, for or on account of lands owned by them or by certain of them or otherwise, and are perpetually restrained and enjoined from taking, diverting, using or in any way interfering with said waters so as in any manner to prevent or in any wise interfere with the diversion, use or enjoyment of same by any of the parties herein under the rights adjudicated to them in this decree.

Doc. 278 at 117-18, Angle Decree, Article VI, filed as Colella Declaration, Exhibit 1 (emphasis added). The court issued that injunctive language for the express purpose of ensuring compliance with the adjudicated and decreed water rights and to provide a ready means of enforcing those rights. This language is virtually identical to the language from the Orr Ditch Decree that the Supreme Court cited with approval in Nevada v. United States, 463 U.S. at 132. The court-appointed Waster Master in this case, Mr. George Wilson, previously filed a declaration to demonstrate the need for oversight, monitoring, and judicial enforcement of the water rights, attached as Shockey Declaration, Exhibit 6 (Declaration of George G. Wilson, filed May 19, 1992). To the extent that the court has any questions or concerns regarding the manner in which the Decree is being administered, the United States would encourage the court to confer with Mr. Wilson, who has served as Water Master for the past 25 years.

Despite the express judicial authorization for injunctive relief to compel compliance with and enforce the terms of the Decree, Mr. Barkley has listed four "changed circumstances" that he believes warrant a wholesale replacement of the Angle Decree. Doc. 284-2 at 13. These are (1) the discovery of a "rechargeable underflow in the Stony Creek Fan under Orland," (2) the 1977 approval by Reclamation for funding to drill 42 wells into the Fan, (3) the storage capacity from Black Butte Dam, which the U.S. Army Corps of Engineers completed in 1963, and (4) construction of the Tehama Colusa Canal, completed in 1980. Once again, there is a complete absence of any relevant or admissible evidence to document these developments, much less any

explanation as to why they constitute the type of changed circumstances that would render continued application of the Decree inequitable.

With respect to the "Fan," for example, Mr. Barkley quotes from a March 1977 San Francisco Chronicle newspaper article. Doc. 284-2 at 8. That article, written during the midst of the most severe drought in recent California history, notes that the OUWUA and its farmers were considering drilling wells "to avert a 'dust bowl' fate and economic ruin. . . ." Id. The article cites undocumented hearsay of an engineer who apparently believed that "a vast underground pool of water" lay in an alluvial fan beneath Orland. Id. The United States provides a copy of a contemporaneous that article published in a local newspaper, the Enterprise-Record, as Exhibit 7 to the Shockey Declaration. Regardless of whether or not groundwater wells might have been or might still be available as an alternative source of supply, that would have no bearing on the allocation of water rights to surface water of Stony Creek, which is the subject matter of the adjudication and the Angle Decree. If Mr. Barkley or others believe that the Orland Project should be modified or that these potential groundwater supplies should be made available, he and they are free to pursue such relief through the federal or state legislative branches, but this court's jurisdiction is confined to enforcement and administration of the decree surface water rights.

Similarly, with regard to Mr. Barkley's claims regarding water in Black Butte reservoir, Congress authorized the construction of the Black Butte Dam and reservoir by the Army Corps as part of the Central Valley Project, but this court has no authority to require Reclamation to operate that reservoir in a different manner to address the perceived inequities of Mr. Barkley or other upstream landowners. Finally, Mr. Barkley's apparent desire to tap into the Tehama-Colusa Canal or to compel the Bureau of Reclamation to do so has no bearing on the operation and enforcement of the Decree with regard to adjudicated surface water rights of Stony Brook.

While a court may amend a water rights decree under appropriate circumstances, the basis for seeking such relief must arise either from the terms of the decree itself, as it the case for the United States' motion to amend the place of use, or else based on the criteria and standards under Fed. R. Civ. P. 60. This court has continuing supervision over the Angle Decree and thus

retains the authority to modify or amend the Decree. System Fed'n No. 91, Ry. Employees' Dep't, AFL-CIO v. Wright, 364 U.S. 642, 647 (1961). Rule 60(b)(5) allows the court to grant relief "if it is no longer equitable that the judgment should have prospective application." The Supreme Court has made clear that district courts have broad and flexible authority to apply this rule to ensure that their continuing injunctions are consistent with existing circumstances and the public interest. See Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 378-80 (1990); accord, Pyramid Lake Tribe of Indians v. Hodel, 878 F.2d 1215, 1216 (9th Cir. 1989).

While the court possesses the requisite equity jurisdiction to oversee, enforce, monitor, and modify the Decree under Rule 60(b)(5), the "moving party must satisfy the initial burden of showing a significant change either in factual conditions or in the law warranting modification of the decree." United States v. Asarco, Inc., 430 F.3d 972, 979 (9th Cir. 2005)(citing Rufo, 502 U.S. at 391.). Although he appears to concede that Rule 60 governs, rather than the "equity maxims" of Lord Chancellor Bacon to which he refers, see Doc. 284-2 at 8, Mr. Barkley has not made the showing required under Rule 60, and the alleged changed circumstances based on other water supplies in the Central Valley could not justify a wholesale restructuring of the Angle Decree. Accordingly, the court should deny with prejudice his Counter-Motion to vacate or amend the Angle Decree.

III. CONCLUSION

For the reasons set forth in this combined reply and response memorandum, along with the complete record before the court and such additional reasons and evidence as may be presented at the hearing, the United States requests that the court enter an order that provides the following relief: (1) grant the United States' motion to amend the Angle Decree by confirming the change in the place of use for the decreed water rights at issue; (2) approve the United States' proposed process for reviewing and approving future annexations; and (3) deny with prejudice the counter-motion filed by defendant Barkley, including all relief sought in that counter-motion.

Respectfully Submitted,

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