

1 MICHAEL J. BARKLEY, CA SBN 122433  
161 N. Sheridan Ave. #1  
2 Manteca, CA 95336  
209/823-4817 mjbarkl@inreach.com

3 Defendant, in propria persona  
4

5  
6  
7  
8 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF CALIFORNIA**  
9 **SACRAMENTO DIVISION**

<p>10 THE UNITED STATES OF AMERICA, ) 11 Plaintiff, ) 12 v. ) 13 H. C. ANGLE, et al., ) 14 Defendants. )</p>	<p>Civil No. S-80-583-LKK [In Equity No. 30]</p> <p><b>DEFENDANT’S NOTICE OF APPLICATION/MOTION AND APPLICATION/MOTION TO RECONSIDER ORDER</b></p> <p><b>DATE: April 20, 2009</b> <b>TIME: 10:00 a.m.</b> <b>COURT: Courtroom 4, 15<sup>th</sup> Floor</b></p>
--	--

16  
17 **TO PLAINTIFFS, THEIR ATTORNEYS OF RECORD, AND ALL OTHER INTERESTED**  
18 **PARTIES:**

19 **YOU ARE HEREBY GIVEN NOTICE THAT on April 20, 2009 at 10:00 a.m., or as soon**  
20 **thereafter as the court’s schedule permits, before the Honorable Lawrence K. Karlton, in**  
21 **Courtroom 4, 15<sup>th</sup> Floor of the United States District Court for the Eastern District of California,**  
22 **Sacramento Division, located at 501 “I” Street, Sacramento, California 95814 defendant MICHAEL**  
23 **J. BARKLEY hereby moves for reconsideration of the Court’s Order of February 11, 2009, and**  
24 **asks the Court to order as follows:**

25 **1. Deny plaintiff’s motion until such time as the "appurtenant to the land" concepts in**  
26 **Nevada v. United States, 463 U.S. 110. (1983) are satisfied and the diversions already made or the**  
27

1 contemplated diversions are shown to be within the same appurtenant lands as they were awarded  
2 to under the Reclamation Act of 1902 and in the Decree.

3 2. For fraud on the court, set aside and dismiss the Angle Decree, or if that is excessive,  
4 strike any reference within the decree to riparian rights, or, if doubt remains as to whether or not  
5 there was fraud on the court open an investigation on the Court's own motion to examine all  
6 aspects of the circumstances defendant describes and after the investigation make an appropriate  
7 decision at that time.

8 3. Order plaintiff to give up its appropriations on Stony Creek in excess of the 85,050  
9 acre-feet awarded plaintiff in the Decree, or if that is excessive, restore riparian rights upstream to  
10 the extent that plaintiff's appropriations exceed 85,050 acre-feet per year and that the restored  
11 rights be correlative to plaintiff's excess, share and share alike.

12 4. If the court still finds no merit in defendant's pleas, rewrite the Order to include the  
13 following language:

14 "Defendant Michael J. Barkley seeks to have the Decree set aside so that he may use  
15 his riparian rights to irrigate his lands from the underflow of North Fork Stony  
16 Creek and a number of its smaller tributaries. Since, upon examination of the  
17 Decree and such of the underlying record as is appropriate, the court finds that the  
18 Decree scrupulously avoided adjudicating any underflows within the Stony Creek  
19 Watershed except for those at the exact spot of diversion for the Orland Project, the  
20 court also finds that the action defendant requests is unnecessary and defendant  
21 retains whatever riparian right to the underflow he had before the Decree was  
22 issued. Therefore, defendant's counter motion is denied."

23 This motion is made pursuant to local rule 78-230(k) and Federal Rule of Civil Procedure  
24 60(d)(3) on the grounds specified in this notice and in the brief & affidavit accompanying this  
25 notice, the exhibits and declaration attached thereto, and the relevant portions of the body of the  
26 Angle case record itself, plus such other and further evidence and argument as may be presented  
27 to the court at the time of the hearing.

28 Defendant has not attached a suggested order because several of the provisions he requests  
are in the alternative.

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Respectfully submitted,**

**/s/ Michael J. Barkley**

---

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

**Dated: February 17, 2009**

1 MICHAEL J. BARKLEY, CA SBN 122433  
161 N. Sheridan Ave. #1  
2 Manteca, CA 95336  
209/823-4817 [mjbarkl@inreach.com](mailto:mjbarkl@inreach.com)

3 Defendant, in propria persona  
4  
5  
6  
7

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

10 \_\_\_\_\_ )  
THE UNITED STATES OF AMERICA, )  
11 Plaintiff, )  
12 v. )  
13 H. C. ANGLE, et al., )  
14 Defendants. )  
15 \_\_\_\_\_ )  
16

Civil No. S-80-583-LKK [In Equity No. 30]

BRIEF & AFFIDAVIT IN SUPPORT OF  
DEFENDANT’S APPLICATION/MOTION  
TO RECONSIDER ORDER

DATE: April 20, 2009  
TIME: 10:00 a.m.  
COURT: Courtroom 4, 15<sup>th</sup> Floor

1 CONTENTS

2 Elements of Local Rule 78-230(k) . . . . . 1

3 The issues . . . . . 2

4 1. Nevada v. United States, 463 U.S. 110. (1983) is more than just a res judicata case; it prohibits  
5 what plaintiff seeks in its motion . . . . . 2

6 2. Fraud on the Court compels further review . . . . . 4

7 3. Plaintiff should be required to relinquish appropriations in excess of those allowed by the  
8 Angle Decree . . . . . 5

9 4. With underflows scrupulously omitted from the Decree, defendant needs the court's statement  
10 of that so that defendant may start widescale planting of elderberry bushes . . . . . 7

11 DECLARATION OF SERVICE . . . . . 11

12 EXHIBITS A, B, AND C . . . . . Following

13 DEFENDANT MICHAEL J. BARKLEY’S DECLARATION IN SUPPORT OF

14 APPLICATION/MOTION TO RECONSIDER ORDER, Federal Rule of Civil Procedure  
15 60(d)(3). . . . . Following

16

17

18

19

20

21

22

23

24

25

26

27

1 **AUTHORITIES**

2 **Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944) . . . . . 4**

3 **Nevada v. United States, 463 U.S. 110. (1983) . . . . . 2, 9**

4 **July 28, 2005 Order in NRDC v. Rodgers, et al. (this district) NO. CIV. S-88-1658 LKK . . . 8**

5

6 **United States Code Title 18 Section 245 . . . . . 1, 5**

7 **Reclamation Act of 1902, 32 Stat. 388, Section 8 . . . . . 2, 9**

8 **PL 101-618, Title II . . . . . 3**

9

10 **Federal Rules of Civil Procedure Rule 60(d)(3) . . . . . 4**

11 **Local Rule 78-230(k) . . . . . 1**

12

13 **California Constitution Article 10 Section 2. . . . . . 4, 6**

14

15 **Moore's Federal Practice . . . . . 4**

16 **Wright, Federal Practice and Procedure, Civil 2d, v. II, 2005 . . . . . 4**

17

18

19

20

21

22

23

24

25

26

27

1 Comes now defendant MICHAEL J. BARKLEY bringing application/motion for reconsideration  
2 of the court's Order of February 11, 2009 (the Order) by way of brief and affidavit per Local Rule  
3 78-230(k) setting forth the material facts and circumstances. Defendant is apprehensive about  
4 bring this application: in court on February 9, 2009 it seemed that plaintiff was quite welcome,  
5 but defendant and the three generations of his family who attended with him were not. Yet, in  
6 further proceedings, the California State Water Resources Control Board (SWRCB), and the  
7 United States Department of Justice making inquiries under Title 18 Section 245 for instance, will  
8 probably be less inclined to hear what defendant has to say if this application is not presented. As  
9 with defendant's previous filings, this one is verified: defendant intends it as a truthful statement  
10 of what defendant knows, believes, has seen, has heard, and has read.

11 **Elements of Local Rule 78-230(k):**

12 Defendant submits 4 sets of issues. For each of those, the 4 elements within sub-rule (k) are:

13 (1) when and to what Judge or Magistrate Judge the prior motion was made - On February  
14 9, 2009 the prior motion was made to Judge Lawrence K. Karlton.

15 (2) what ruling, decision or order was made thereon - For the issues presented below, issue  
16 number:

17 1. On p. 7 line 16 through p. 8 line 4 of the ensuing Order of February 11, 2009, the case  
18 discussed in issue #1 below is distinguished from the present case on the grounds stated in those  
19 lines, but another, controlling aspect of that case is not addressed.

20 2. P. 6, lines 16-17, that defendant has not made out a case under Rule 60(d)(3)

21 3. That defendant has done an inadequate job of pointing out discriminatory treatment in  
22 the enforcement of the decree, Order p. 12 lines 1-7

23 4. The Order is unknown as to this, in that the Order does not seem to address riparian  
24 rights to underflow.

25 (3) what new or different facts or circumstances are claimed to exist which did not exist or  
26 were not shown upon such prior motion, or what other grounds exist for the motion - per issue  
27 number: For issues 1, 2, and 4, the different facts or circumstances as described for each of those

1 issues below were not shown at the hearing. For issue #3, they were shown inadequately in  
2 defendant's filings. For all of these issues, especially #2, defendant's understanding of them is  
3 rapidly evolving to the point that by the hearing of February 9 and since then, defendant has had  
4 more to say about them.

5 (4) why the facts or circumstances were not shown at the time of the prior motion. - For  
6 issues 1, 2, and 4 below defendant was not allowed to speak. For issue 3, the Order reads in such a  
7 way as to suggest that defendant did not get his point across.

8 The issues:

9 1. Nevada v. United States, 463 U.S. 110. (1983) is more than just a res judicata case; it  
10 prohibits what plaintiff seeks in its motion - At p. 12 of plaintiff's December 22, 2008 Reply brief,  
11 plaintiff raises Nevada as barring defendant's claim in this case. In response the Order seems  
12 correct at p. 9 lines 1-4. But there is more to Nevada. The last phrase of Section 8 of the  
13 Reclamation Act of 1902, 32 Stat. 388 states: "Provided, That the right of the use of water  
14 acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial  
15 use shall be the basis, the measure, and the limit of the right."

16 Nevada, citing Nevada cases, echoes this at p. 126:

17 ...we conclude that the Government is completely mistaken if it believes that the  
18 water rights confirmed to it by the Orr Ditch decree in 1944 for use in irrigating  
19 lands within the Newlands Reclamation Project were like so many bushels of wheat,  
20 to be bartered, sold, or shifted about as the Government might see fit. Once these  
21 lands were acquired by settlers in the Project, the Government's "ownership" of the  
22 water rights was at most nominal; the beneficial interest in the rights confirmed to  
the Government resided in the owners of the land within the Project to which these  
water rights became appurtenant upon the application of Project water to the land.  
As in *Ickes v. Fox* and *Nebraska v. Wyoming*, the law of the relevant State and the  
contracts entered into by the landowners and the United States make this point very  
clear....

23 Is plaintiff asserting that both its contracts and California law sever the "appurtenant"  
24 clause of Section 8? Defendant has not found that in plaintiff's filings. All that defendant has  
25 found is the assertion of one Orland Unit Water Users Association (OUWUA) member, with full  
26 rights to the water of the project but severed from delivery by the project of his share, yet still  
27 required to pay for it and complaining bitterly about it, whose name and case is known or



1 knowable to plaintiff but is denied by plaintiff, one of perhaps many known or knowable to  
2 plaintiff but denied by plaintiff (defendant's November 10, 2008 Opposition p. 10, plaintiff's  
3 December 22, 2008 Reply p. 4). As defendant understands it, plaintiff (but not necessarily  
4 OUWUA) is free to acquire these appurtenant rights by eminent domain, which presumably  
5 would include purchasing them rather than charging for their relinquishment, but defendant  
6 finds no showing in any of plaintiff's filings that this has either been done or is even contemplated.  
7 Absent such showing, plaintiff's motion should be denied until plaintiff makes that showing  
8 because without it plaintiff does not have the right to do what plaintiff proposes.

9       These are not idle requirement: plaintiff's taking of water rights in this watershed without  
10 paying for them is legend, and these abuses should be stopped.

11       Nevada had one other effect. Since plaintiff here was plaintiff there, when denied in  
12 Nevada plaintiff walked across the street to the U.S. Capitol and got PL 101-618, Title II passed  
13 which delivered to plaintiff everything plaintiff sought in the litigation (or so it seems). Defendant  
14 does not have that remedy in anything but the most wild politically-unrealistic understanding of  
15 how the U.S. Government works. Plaintiff is a great and powerful giant, defendant is an  
16 insignificant gnat, as plaintiff has shown repeatedly.

17       Even if plaintiff makes the missing showing plaintiff would still violate Section XVII of the  
18 Decree as explained by the Order on p. 10 in that, unlike taking water from within one parcel  
19 awarded water by the Decree and using it to serve another part of the same parcel awarded by the  
20 Decree as laid out by the Order at the bottom of p. 5, plaintiff's stated intention is to divest water  
21 from lands to which it was appurtenant under Section 8 and apply it to lands to which it is not  
22 appurtenant, all this to avoid the waning of the Orland Project as a beneficial use. In its answer to  
23 interrogatory #45 filed OCT 02 1984 in the Angle Archives, OUWUA admitted that OUWUA  
24 "... (as opposed to its shareholders) does not either own or lease any land to which an Angle Decree  
25 water right is appurtenant." And of course Reclamation (that is, plaintiff) does not own those  
26 lands either. Lines 9-12 of p. 13 of the Order finds that defendant has not established any  
27 reversionary water right for upstream users; but that reversionary right is inherent in the

1 "beneficial" provision of Section 8 plus "reasonable and beneficial" and waste prevention  
2 provisions in Article X section 2 of the California Constitution - unlike riparian rights which  
3 never die (although defendant cannot use his because of the Angle Decree), appropriations die as  
4 their beneficial use wanes and as they wane the State of California is free to challenge the Decree  
5 and resume its rightful role of apportioning the watershed, as well as leaving the Decree open to  
6 challenge on the basis of new information: the waning of its reasonable and beneficial use. The  
7 injury to defendant is that this Order would delay this corrective action by the State, perhaps  
8 indefinitely as plaintiff (on behalf of OUWUA) brings it back again and again, taking by nibbles  
9 what it cannot take in bites.

10 2. Fraud on the Court compels further review - defendant has attached an affidavit  
11 outlining sufficient specifics on how plaintiff has committed Fraud on the Court of the sort  
12 condemned by the United States Supreme Court in Hazel-Atlas Glass Co. v. Hartford-Empire Co.,  
13 322 U.S. 238 (1944) and provided for in Federal Rules of Civil Procedure Rule 60(d)(3). As  
14 Moore's Federal Practice points out at pp. 60-57 Hazel is the leading fraud on the court case, yet  
15 what occurred in Angle is even more blatant a deception than that, especially considering the  
16 Hazel dissent - it was right under Judge Kerrigan's nose and he didn't spot it or comment on it.  
17 Unlike perjury or other intrinsic fraud, it was a lie reduced to printing outside the court and then  
18 brought into court; still, the analysis in footnote 18 of the Hazel dissent leaves some question as to  
19 extrinsic or intrinsic fraud. No doubt plaintiff will vote for intrinsic shortly after they admit to it.

20 For proven fraud on the court, the usual remedy is to set aside the Angle Decree and  
21 dismiss the case forever (Wright, Federal Practice and Procedure, Civil 2d, v. II, 2005, Section  
22 2870 p. 413). Yet, defendant does not need all that. Defendant would be quite satisfied with his  
23 riparian rights restored to what they were just before the Angle Decree was signed, and thereafter  
24 defendant could irrigate his expanding crop of elderberry bushes using drip irrigation or  
25 microsprinklers from the underflow of North Fork Stony Creek and its tributaries, while plaintiff  
26 would find its share of the Stony Creek waters relatively undiminished, yet plaintiff would be  
27 left free to obtain by eminent domain the rights of any upstream users who infringe on plaintiff's

1 appropriations should it be necessary which is what plaintiff should have done in 1918 instead of  
2 bringing this Draconian confiscatory suit.

3 Upon exiting the hearing on February 9 defendant handed plaintiff's counsel an earlier  
4 version of his fraud on the court Declaration attached hereto, and several hours later emailed him  
5 the demand in Exhibit A attached, since it appears the Department of Justice has some obligations  
6 where actions may fall subject to Title 18, Section 245, for instance. Counsel's response has been  
7 silence, which is not a surprise.

8 **3. Plaintiff should be required to relinquish appropriations in excess of those allowed by**  
9 **the Angle Decree - The Order at p. 11 line 17 through p. 12 line 6 finds that defendant has not**  
10 **adequately supported his claims of oppressive and selective enforcement of the Decree. This is**  
11 **puzzling. Each of the incidents mentioned on those pages and in footnote 9 relates to papers**  
12 **within the court's record in the Angle Archives, which papers during those years defendant found**  
13 **to be in date order with the cited names adequately displayed when defendant last visited them in**  
14 **2001. Yes, defendant has photocopies of those papers. Does the court prefer duplicate filings of**  
15 **those? If that is the rule then defendant apologizes for misunderstanding it. Yet duplicate filings**  
16 **can yield errors such as in the Decree copy plaintiff submitted on CD-ROM which has appended**  
17 **to it as if a part of the Decree a schedule of water rights actually generated 50 years after the**  
18 **Decree was signed. Perhaps the better rule would be for defendant to point in person to the actual**  
19 **papers in the Archives, but that is temporarily a problem since as of February 9, 2009 per the**  
20 **Clerk's Office the Archives seem to have been misplaced. Defendant hopes they will turn up. But**  
21 **as the Order points out in footnote 12, plaintiff concedes violating the decree. Where is the water**  
22 **master's enforcement against these diversions. Further, as the Decree itself states and defendant**  
23 **quotes at p. 6 of his January 19, 2009 Reply:**

24 "From the Decree, p. 177:

25 XVII. That each and all of the parties to whom rights to water are decreed herein  
26 (and the persons, estates interests and ownerships represented by such thereof as  
27 are sued in a representative capacity herein), their assigns and successors in interest,  
servants, agents, attorneys and all persons claiming by, through or under them and  
their successors, are hereby forever enjoined and restrained from asserting or  
claiming-- [p.]178 as against any of the parties herein, their assigns or successors, or

1           **their rights as decreed herein--any right, title or interest in or to the waters of the**  
2           **Stony Creek or its tributaries, or any thereof, except the rights specified, determined**  
3           **and allowed by this decree, and each and all thereof are hereby perpetually**  
4           **restrained and enjoined from diverting, taking or interfering in any way with the**  
5           **waters of the Stony Creek or its tributaries or any part thereof, so as in any manner**  
6           **to prevent or interfere with the diversion, use or enjoyment of said waters by the**  
7           **owners of prior or superior rights therein as defined and established by this**  
8           **decree;....**

9           As defendant points out at pp. 5-6 of his January 19 Reply, plaintiff's limit under the  
10          Decree is 85,050 acre-feet per year (that would be 21,000 acres times 4.05 acre-feet per acre). As  
11          defendant pointed out on pages 6 and 7 of his January 19 Reply, referencing on-line SWRCB cites  
12          of which the Court is certainly entitled to take judicial notice (and defendant asks the Court to  
13          take such judicial notice), since the Decree, plaintiff has obtained 160,000 acre-feet of water from  
14          the Black Butte Project on Stony Creek, and even while the case was proceeding in the 1920s  
15          plaintiff attained the right to 50,200 acre-feet at Stony Gorge which alone put it well above the  
16          85,050 acre-feet limit. If the Decree were enforced against plaintiff the way it has been against  
17          various of the defendants in this case, plaintiff would be in irons for these violations and ordered  
18          to relinquish them.

19          The Order mentions in footnote 10 "the just response". That is what all this is about. It is  
20          not in defendant's nature to seek the sort of draconian remedies plaintiff has sought consistently  
21          in this watershed. It is in defendant's nature to share a surplus, which there usually is in the  
22          Stony Creek watershed. If footnote 10 is an invitation to seek or negotiate a "just response",  
23          defendant would be quite happy with an order allowing him to pump from the underflow of North  
24          Fork Stony Creek and its tributaries in accordance with riparian rights that were extant at the  
25          moment preceding the signing of the Decree, a reasonable and beneficial flow delivered by drip  
26          irrigation to foster the first growing years of his projected elderberry plantation, all while  
27          respecting the correlative right inherent in the California Constitution Article X Section 2 between  
28          riparians and appropriators. Defendant's use would be a lot less water than plaintiff wastes every  
29          year with its conveyance losses, for instance.

30          **4. With underflows scrupulously omitted from the Decree, defendant needs the court's**

1 statement of that so that defendant may start widescale planting of elderberry bushes - At p. line  
2 21 through p. 11 line 14 of his January 19 reply, defendant outlined how the Decree and the  
3 proceedings leading up to it scrupulously avoided adjudicating underflow. Yet, years later  
4 underflow became an issue when Colusa County tried to furnish domestic water to the community  
5 of Stonyford, as is their duty. The SWRCB showed a lack of understanding of the Angle Decree  
6 and instead assumed that the Angle Decree was like all other such adjudications and included  
7 underflows, and thereafter enquired as to whether the Stonyford supply would be underflow and  
8 finding it so, decided that it was within the purview of the Decree and allowed the use from the  
9 wells only if a contract were obtained from Reclamation pursuant to the Decree, see the resulting  
10 permit at <http://swrcb2.waterboards.ca.gov/ewrims/wrims-permits/p020308.pdf> (of which  
11 defendant requests the court take judicial notice), and note that the "source" is "Stony Creek  
12 Underflow" and note the provision requiring the contract with Reclamation. Within the Angle  
13 Archives is several inches of paper on the Colusa County efforts, including depositions of the  
14 engineers with June 11, 1984 cover letters mentioning how the SWRCB decided that underflow  
15 was part of the Decree. Reclamation, never missing an opportunity to take someone else's water,  
16 inserted its requirement for a contract to the underflow into the SWRCB application process  
17 (Exhibits B and C attached are from SWRCB's file on application 27382; this sequence of events is  
18 well-described in the 7 declarations attached to plaintiff's JUN 15 1984 "JOINT RESPONSE"  
19 filing and in the Declaration of George Wilson filed JAN 07 1985 all in the Angle Archives;  
20 see also the recitals in the latest Colusa contract which seems to be on-line at the URL defendant  
21 cited at line 5, p. 18 of his January 19 Reply, for which contract defendant requests the Court to  
22 take judicial notice - note that recital 2.4 and subsequent paragraph 5(a) suggests the contract  
23 attempts an impossibility, the supplying of an underflow withdrawal by delivering water to the  
24 stream 4 miles or so below the extraction point, and for this plaintiff has been well-paid) thereby  
25 laying claim to Stony Creek waters in excess of those awarded in the Decree, and casting a cloud  
26 over the unclouded remnants of all riparian rights remaining in the Upstream Stony Creek  
27 Watershed, that is, the right to pump in a reasonable and beneficial manner from the underflows

1 of Stony Creek and its Tributaries. The Angle vise tightened.

2 For some 50 years defendant has sought a crop for his lands that would handle adequately  
3 the combination of poor soils, steep terrain, extensive gully system (which makes every  
4 quarter-quarter section and every parcel riparian to some tributary), flood, drought, searing  
5 summer heat, and winter cold well below freezing. Upon reading the Court's July 28, 2005 Order  
6 in NRDC v. Rodgers, et al. (this district) NO. CIV. S-88-1658 LKK, defendant realized that for all  
7 these decades the perfect crop was right under his nose. On defendant's lands, elderberry bushes  
8 grow untended in dozens of locations, left alone, out of the way of grazing, producing crops year  
9 after year, never complaining, always happy. Now that defendant has focused on what seems to  
10 be the perfect crop, the only problem is that the Water Master may show up at any day and  
11 require defendant to halt drip irrigation of them for reasons as arbitrary and capricious as those  
12 exhibited in the padlocking of Holly Reimers' ditch 20 years ago that led to the two reported cases  
13 in the Angle saga, and he can do this even if the water nourishes habitat for threatened species.

14 All defendant really wants is the court's help in preventing that outcome.

15 Pessimistic in the face of the Reclamation juggernaut, defendant attended the hearing on  
16 February 9 with the intention of asking for the following language in the Order if the Court were  
17 leaning towards denial of defendant's counter-motion:

18 "Defendant Michael J. Barkley seeks to have the Decree set aside so that he  
19 may use his riparian rights to irrigate his lands from the underflow of North Fork  
20 Stony Creek and a number of its smaller tributaries. Since, upon examination of the  
21 Decree and such of the underlying record as is appropriate, the court finds that the  
22 Decree scrupulously avoided adjudicating any underflows within the Stony Creek  
23 Watershed except for those at the exact spot of diversion for the Orland Project, the  
24 court also finds that the action defendant requests is unnecessary and defendant  
25 retains whatever riparian right to the underflow he had before the Decree was  
26 issued. Therefore, defendant's counter motion is denied."

27 In the spirit of footnote 10 of the Order, this would be a "just response".

28 WHEREFORE, defendant prays that this honorable Court modify its Order to:

1. Deny plaintiff's motion until such time as the "appurtenant to the land" concepts in  
Nevada are satisfied and the diversions already made or the contemplated diversions are shown to  
be within the same appurtenant lands as they were awarded to under the Reclamation Act of 1902



**VERIFICATION**

**I am a defendant in this proceeding and I researched, compiled and wrote this Brief & Affidavit. I declare under penalty of perjury under the laws of the United States of America that the allegations and factual contentions in this brief and affidavit are true and correct, except for those submitted on information and belief and as for those I believe them to be true and correct.**

**Executed on February 17, 2009,**

**/s/ Michael J. Barkley**

**Michael J. Barkley**

---

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 MICHAEL J. BARKLEY, CA SBN 122433  
161 N. Sheridan Ave. #1  
2 Manteca, CA 95336  
209/823-4817 [mjbarkl@inreach.com](mailto:mjbarkl@inreach.com)

3 Defendant, in propria persona  
4  
5

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

9 THE UNITED STATES OF AMERICA,	)	Civil No. S-80-583-LKK [In Equity No. 30]
10 Plaintiff,	)	DEFENDANT'S DECLARATION
	)	OF SERVICE
11 v.	)	
12 H. C. ANGLE, et al.,	)	
13 Defendants.	)	DATE: December 8, 2008
	)	TIME: 10:00 a.m.
	)	COURT: Courtroom 4, 15 <sup>th</sup> Floor

15 I Declare that: I am a defendant in the action entitled above. Upon filing the following using the Court's  
16 CM/ECF electronic filing system,

17 DEFENDANT'S NOTICE OF APPLICATION/MOTION AND APPLICATION/MOTION TO  
RECONSIDER ORDER  
18 BRIEF & AFFIDAVIT IN SUPPORT OF DEFENDANT'S APPLICATION/MOTION TO  
RECONSIDER ORDER  
19 EXHIBITS A, B, AND C  
20 DEFENDANT MICHAEL J. BARKLEY'S DECLARATION IN SUPPORT OF  
APPLICATION/MOTION TO RECONSIDER ORDER, Federal Rule of Civil Procedure 60(d)(3)

21 I will look for the usual email from the court informing me that the Court's CM/ECF system will serve  
22 this filing electronically upon all interested counsel in this case, and follow up on it if I do not receive it.

23 In anticipation of the instructions from CM/ECF I have today served these filings conventionally on the  
24 Court's water master by placing a true copy in the United States Mail with appropriate postage affixed  
25 on the envelope addressed to:

26 George Wilson  
27 Water Master

1 Orland Water Users Association  
828 Eighth Street  
2 Orland, CA 95963

3 **I declare under penalty of perjury under the laws of the United States of America that this is true**  
4 **and correct. Executed on February 17, 2009,**

5  
6 /s/ Michael J. Barkley

7  
8 Michael J. Barkley, Defendant, in propria persona  
California SBN 122433  
161 N. Sheridan Ave. #1  
9 Manteca, CA 95336  
10 (209)823-4817 (no fax) mjbarkl@inreach.com

From: "Mike Barkley" <mjbarkl@comcast.net>  
To: "Shockey, Charles \ (ENRD\)" <Charles.Shockey@usdoj.gov>  
Cc: "Andrew Hitchings" <ahitchings@somachlaw.com>,  
"D Barkley" <dbarkley@astound.net>,  
"Jodi Barkley" <jodibarkley@hotmail.com>  
Subject: Angle  
Date: Mon, 9 Feb 2009 13:08:43 -0800

Dear Mr. Shockey,

As we left the courtroom today I handed you two copies of my Declaration outlining misconduct by DOJ attorneys in the Angle case, one copy for you, one for Mr. Hitchings. As an officer of the court you are obligated to investigate my comments and determine whether or not they are valid, and if they are you must take appropriate action to restore our riparian rights - our lands are heavily gullied so every quarter-quartet [sic] section has at least one stream tributary to North Fork so riparian rights were lost to the Angle Decree on every parcel we own.

If you find that my comments are not valid I would appreciate hearing why they are not.

Thank you in advance,

--Mike Barkley, 161 N. Sheridan Ave. #1, Manteca, CA 95336  
209/823-4817 mjbarkl@inreach.com

Exhibit A

1000 J Street  
Sacramento, CA 95825



(916) 920-6211

In Reply Refer  
to: 320:LCS

JUN 5 1978

Thomas E. Landon  
Landon Engineering and  
Surveying, Inc.  
103 South Plumas Street  
P. O. Box 1325  
Willows, CA 95988

#### BOARD'S JURISDICTION OVER WATER SUPPLY

This refers to your request of April 19, 1978, and our response thereto dated April 26, 1978, regarding our Board's jurisdiction over water proposed to be extracted for wells near Stony Creek.

Your request was referred to Mr. Alvin L. Franks, Chief of the Board's Geotechnical Section, who assigned the task to Mr. James M. Parsons, Associate Engineering Geologist. Mr. Parsons completed his report on May 26, 1978. A copy is enclosed for your information.

You will note Mr. Parsons's conclusion that unless the wells are drilled to a substantially greater depth, he believes they will be pumping supporting underflow from Stony Creek. He recommends we accept an application to appropriate water from the wells.

L. C. Spencer  
Supervising Engineer

cc: Martin McDonough, Attorney at Law  
McDonough, Holland, Schwartz & Allen  
555 Capitol Mall, Suite 950  
Sacramento, CA 95814

#### Enclosures

IBMc: Mrs. Jessie G. Westcamp  
Mr. Leslie L. Westcamp, 6/7/78

INTERNAL MEMO

TO: Mr. Larry Spencer  
Division of Water Rights

FROM: James M. Parsons  
Associate Engineering Geologist  
DIVISION OF PLANNING AND RESEARCH

DATE: \_\_\_\_\_ SIGNATURE: *J. M. Parsons*

SUBJECT: Proposed Stonyford Water Supply Wells, Colusa County

I have reviewed Mr. Landon's letter with attachments and available geologic data on the area. On May 15, 1978, I inspected the Stonyford area.

Findings:

1. The proposed well locations are in the NW 1/4 Section 32, T18N, R6W, MDB&M, about 1 mile northwest of the Stonyford Post Office (see attached map). Well sites are proposed 650, 950, and 1250 feet north of the Stony Creek Channel.
2. Stony Creek flows out of a bedrock gorge about two miles to the west of the well sites, crosses the alluviated Indian Valley and enters another bedrock gorge about two miles to the northeast. Indian Valley has been filled with an unknown thickness of gravel and other sediments by the main stem of Stony Creek as well as two of its tributaries, Salt Creek and Dry Creek. Through the west half of the valley, Stony Creek's inner valley is bounded by terraces. These terraces are 40 feet high two miles west of the site, less than 10 feet high in the vicinity of the proposed wells, and become imperceptible to the northeast. The terraces are about 3,000 feet apart in the vicinity of the proposed wells.
3. Most wells in Indian Valley appear to be used for domestic water supply only. It is reported that last summer all flow down Stony Creek ceased by early summer and that many of these wells went dry.

Conclusions:

1. The Stonyford area is little more than a wide portion of the Stony Creek valley. The Stonyford area probably has a small storage capacity, filling up during the winter and spring months. During summer and fall, groundwater pumpage and groundwater outflow to the lower Stony Creek canyon drains most of the stored water.

Exhibit B p. 2

Mr. Larry Spencer

-2-

75 26 1983

2. The area between the terraces contains an unknown thickness of sediments that have been reworked by flood flows down the present and earlier channels of Stony Creek. These reworked gravels would include the gravels shown to a depth of 38 feet in the test well log and perhaps the deeper gravels also.
3. Unless the Stonyford community water supply wells are drilled to a substantially greater depth, they will be pumping supporting underflow from Stony Creek.

I recommend that you accept the water rights application for the proposed Stonyford community water supply wells and institute appropriate permitting procedures.

Attachment



United States Department of the Interior

BUREAU OF RECLAMATION  
MID-PACIFIC REGIONAL OFFICE  
2800 COTTAGE WAY  
SACRAMENTO, CALIFORNIA 95825

STATE WATER RESOURCES  
CONTROL BOARD

MAR 22 7 36 AM '83

DIV. OF WATER RIGHTS  
SACRAMENTO

✓ WP  
27382

IN REPLY  
REFER TO: MP-710  
871.

MAR 17 1983

Mr. Raymond Walsh, Chief  
Division of Water Rights  
State Water Resources Control Board  
77 Cadillac Drive  
Sacramento, CA 95825

Dear Mr. Walsh:

We have reviewed Application 27382, filed by the County of Colusa, for the appropriation of unappropriated water from Stony Creek tributary to the Sacramento River, in Colusa County.

The diversion requested in the above application could, in most years, impair the water supply of the Orland Project and other holders of prior rights in the Stony Creek watershed. Lands within the Orland Project have been under irrigation since 1910. The project works provide a full supply for the irrigation of about 19,500 acres of irrigable land. Use of water is based upon prior rights under Application 2212 and judicial decree (Angle decree) dated January 13, 1930, in the Northern Division of the United States District Court. Our point of diversion is within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 29, T.23N, R.4W, MDB&M.

This letter will serve as our notice of protest against Application 27382. Our protest against Application 27382 may be dismissed, provided:


1. It is demonstrated to our satisfaction and the State Water Resources Control Board's satisfaction that the Applicant has obtained an agreement or agreements for a supplemental water supply which are in effect and cover the full amount of water diverted during the period March 15 to October 31.
2. Permittee shall submit to and pay its proportionate share of the cost of the water master service provided for under the Angle Decree, Equity No. 30, U.S. District Court for the Eastern District of California and shall abide by and conform to all orders of that water master in the exercise of its rights under this permit unless otherwise directed by the State Water Resources Control Board or its authorized representative.

Exhibit C p. 1

accept 4-28-83  
NDK

Mr. Robert Reiter, of our staff, may be contacted regarding this matter at (916) 484-4474.

Sincerely yours,



NEIL W. SCHILD  
ACTING REGIONAL DIRECTOR

Copy to: CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
County of Colusa  
c/o D. E. Kienlen  
2012 H Street, Suite 201  
Sacramento, CA 95814

Exhibit C p. 2





1 plaintiff to take without compensation our riparian rights on North Fork Stony Creek and its  
 2 tributaries, and of course not just ours but the riparian rights of thousands of people (most of the  
 3 defendants had a family) and 732 square miles of watershed out of the 772 total and give them to  
 4 one little private irrigation company of 20,000 acres. As of January 30, 2009 the answer has become  
 5 obvious to me: I have come to believe plaintiff's attorneys suckered Judge Kerrigan, or rather more  
 6 specifically, committed a fraud on the court as would fall under Federal Rules of Civil Procedure  
 7 60(d)(3) and the centuries of Equity practice that led to that rule. The bulk of what I present here  
 8 comes from the Angle record on its face - there may be other explanations for what happened, but  
 9 they would have to come from presumptions, from guessing, or from evidence I've not yet found.

10 At pp. 14-15 in my January 19, 2009 reply memorandum that I filed with this court in this  
 11 case I included the following from Hutchins:

12 During the pendency of the Angle action, riparian rights were in a state of flux, as  
 13 described in Hutchins ( Water Rights Laws in the Nineteen Western States, By Wells A. Hutchins, The Lawbook  
 14 Exchange, Ltd., 2004, see for instance at [http://books.google.com/books?id=WoKa8Zffe1gC&pg=PR5&lpg=PR5&dq=hutchins+water+law&source=web&ots=BVI8X3wkME&sig=t14oYcdeDOejanUvgp8xnkGiCME&hl=en&sa=X&oi=book\\_result&resnum=1&ct=result#PRA1-PA289,M1](http://books.google.com/books?id=WoKa8Zffe1gC&pg=PR5&lpg=PR5&dq=hutchins+water+law&source=web&ots=BVI8X3wkME&sig=t14oYcdeDOejanUvgp8xnkGiCME&hl=en&sa=X&oi=book_result&resnum=1&ct=result#PRA1-PA289,M1) )

15 “[p. 289] (5) California. The California courts frowned upon the legislature's one  
 16 attempt to subject the riparian right to forfeiture for failure to exercise the right, and  
 17 expressed it in several decisions. Eventually the legislature discarded the judicially  
 objectionable provision.

18 “The California Water Commission Act of 1913 [fn 191 - Cal.Stat. 1913, ch. 586,  
 19 [Section] 11][this on-line copy is difficult to read and transcribe; hopefully this  
 20 transcription is precise]--with amendments and deletions, reenacted in 1943 as a part of the  
 21 present Water Code--contained a provision to the effect that nonapplication of water to  
 22 riparian land for any continuous period of 10 years after passage of the act should be  
 23 conclusive presumption that the water was not needed thereon for any useful or beneficial  
 24 purpose, such water thereupon being subject to appropriation. After twice deciding that the  
 25 provision had no application to the riparian rights in litigation, which had been exercised  
 for many years, [fn 192 - Herminghaus v. Southern Cal. Edison Co., 200 Cal 81, 115-116,  
 252 Pac. 607 (1926); Scott v. Fruit Growers' Supply Co., 202 Cal. 47, 54, 258 Pac. 1095  
 (1927),] the California Supreme court stated that the legislature was not justified in taking  
 any portion of a vested property right from one person and investing it in another; and that  
 while not saying that riparian rights might not under proper circumstances yield to the  
 police power, this legislation did not purport to be an exercise of such power for any  
 purpose. [fn 193 - Fall River Valley Irr. Dist. v. Mt. Shasta Power Corp., 202 Cal. 56,  
 67-69, 259 Pac. 444 (1927).]

26 “Shortly thereafter, in 1928, the voters added a section to the California constitution  
 27 declaring, among other things, that "Riparian rights in a stream or water course attach to,  
 but to no more than so much of the flow thereof as may be required or used consistently  
 with this section, for the purposes for which such lands are, or may be made adaptable, in

1 view of such reasonable and beneficial uses \* \* \*,"[fn 194 - Cal. Const. art. XIV, [Section  
 2 3.] In one of the early major decisions construing and applying the constitutional  
 3 amendment, the California Supreme Court held the legislative provision contrary to the  
 4 letter and spirit of the constitutional amendment, which "expressly protects the riparian not  
 5 only as to his present needs, but also as to future or prospective reasonable beneficial  
 6 needs." [fn 195 - Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist., 3 Cal. (2d) 489,  
 7 530-531, 45 Pac. (2d) 972 (1935). The California Supreme Court discussed the history of  
 8 the cases under the amendment in Joslin v. Marin Mun. Water Dist., 67 Cal. (2d) 132, 429  
 9 Pac. (2d) 889, 60 Cal. Rptr. 377 (1967).] Thus after having, on three occasions, expressed  
 10 at least by *dicta* its belief that the provision was invalid, the supreme court now expressly  
 11 held the provision unconstitutional. This portion of the section was omitted from the  
 12 Water Code when enacted in 1943."

13 **As he states, California riparian law was in a state of flux during the 1920s. Examining the cases he**  
 14 **cites it appears he understates it. He mentions (and plaintiff's case relied upon it to destroy the**  
 15 **bulk of upstream water rights) that the California Water Commission Act of 1913 added a sunset**  
 16 **clause for unused riparian rights in its Section 11, but that the California Supreme Court**  
 17 **repeatedly rejected it, asserting that if the state wanted to take those rights it had to pay for them;**  
 18 **ultimately the California Supreme Court declared Section 11 unconstitutional, although the**  
 19 **language in the court's previous case, Fall River (September 1, 1927) seemed to do the same despite**  
 20 **plaintiff's assertions to the contrary in its 1928 brief at pages 60 & 65 (see transcription of the brief**  
 21 **at <http://www.mjbarkl.com/brief2.htm> or the original in the Angle Archives). In addition to the**  
 22 **cases Hutchins quotes is San Bernardino v. Riverside, 186 Cal. 7, June 3, 1921, p, 30 referring to a**  
 23 **similar confiscatory 1911 provision in state law: "The water that pertained to or was contained in**  
 24 **the lands of the state was already the property of the people when this amendment was adopted.**  
 25 **The statute was without effect on any other property." Fall River was most emphatic at p. 67,**

26 **"We need here only say that the legislative department of the state may not take any**  
 27 **portion of a vested property right from one person and invest another with it and be**  
 28 **justified in so doing in view of the provisions of sections 13 and 14 of article I of the**  
 29 **state constitution and the fourteenth amendment to the constitution of the United**  
 30 **States."**

31 **On p. 66 the court made it clear that if the state wanted to take these rights, it had to do so "by the**  
 32 **use of the power of eminent domain" (quoting its opinion in Miller & Lux v. Madera etc. Co., 155**  
 33 **Cal. 59, 65 (1909)). Justice Shenk dissented from Herminghaus (December 24, 1926), and criticized**  
 34 **in a concurrence in Fall River: "The opinion . . . invalidates section 11 and 42 of the Water**

1 **commission Act . . ."** (Herminghaus, p. 123). **His understanding of the consequences of the**  
2 **majority decision seems quite clear. As Hutchins suggests, there was some public consternation**  
3 **over all this at the time because the voters removed the primary objection to riparian rights on**  
4 **November 6, 1928 when they amended the California Constitution to add that riparian uses must be**  
5 **reasonable and beneficial, which also seemed to remove plaintiff's primary objection in their 1928**  
6 **brief. Plaintiff was well aware of the Herminghaus case and the Section 11 issues - according to the**  
7 **listing at the head of the reported case they filed an amicus brief with Richard J. Coffey appearing**  
8 **for the United States Bureau of Reclamation, and his actual signature, "Of Counsel: . . ., Richard J.**  
9 **Coffey, District Counsel, U.S. Bureau of Reclamation, is on p. 70 of plaintiff's 1928 brief. I have**  
10 **purchased a copy of Mr. Coffey's Herminghaus brief and it is being prepared for me by the**  
11 **California State Archives about 8 blocks southeast of this U.S. District Court.**

12 **Would Judge Kerrigan have been aware of this controversy? I have not yet found any**  
13 **indication that he was or was not. Later, as Hutchins pointed out, in Tulare Irr. Dist. in 1935 the**  
14 **California Supreme Court repeated what it said in Fall River and declared Section 11 of the Water**  
15 **Commission Act unconstitutional, a bit like saying "this time we really mean it". Thus, under**  
16 **California case law, there was no sunset clause for riparian rights at least from San Bernardino**  
17 **(1921) onward which includes the time plaintiff drafted the decree, and under Section 8 of the**  
18 **Reclamation Act of 1902 plaintiff was bound by that case law. Plaintiff's reliance on Section 11**  
19 **allowed it to shift the burden: instead of plaintiff having to identify rights parcel-by-parcel and**  
20 **condemning them, defendants had to assert their rights and withstand plaintiff's harsh replications**  
21 **(see numerous replications in the Angle Archives), etc., in order to have them acknowledged in an**  
22 **expensive and purpose-less exercise in view of the asserted sunset clause.**

23 **When the Angle case was first filed it was assigned to Judge Van Fleet. Over the first few**  
24 **years there were several amendments, motions, and stipulations, and a flurry of filings. On June**  
25 **24, 1922 hearings and proceedings were assigned to a Special Master in Willows, George E.**  
26 **McCutchen who was 28 at the time. On September 3, 1923 Judge Van Fleet died. In January**  
27 **1924 Judge Kerrigan was appointed by President Coolidge and confirmed 7 days later. I am as**

1 yet unaware of any involvement in the case by Judge Kerrigan before the Special Master  
2 forwarded the results of the proceedings in Willows to the Court with the “Report of Master Pro  
3 Hac Vice” (see transcription at <http://www.mjbarkl.com/report.htm> or the filed copy in the Angle  
4 Archives) filed Nov 7 1929 along with Plaintiff's Brief (the only brief I've seen from the pendency  
5 of the litigation, see transcription at <http://www.mjbarkl.com/brief2.htm> - one I have not seen,  
6 that of “Brief for Defendant J. E. Ayer” is mentioned dismissively on p. 6 of that Report), Findings  
7 of Fact and Conclusions of Law ( transcription at <http://www.mjbarkl.com/find.htm> ) and  
8 proposed Decree ( transcription of final at <http://www.mjbarkl.com/decreed.htm> , or the filed  
9 versions of all these in the Angle Archives), all drafted by plaintiff as plaintiff states at p. 6 of its  
10 Brief. Of concern is the comment on p. 7 of the Special Master's Report: “A discussion of  
11 outstanding points of legal consequence will be found in plaintiff's opening brief. No other  
12 presentation of points and authorities has been made by the parties.” As noted in the Special  
13 Master's Report, a group of Stonyford neighbors plus L. Huffmaster a few miles downstream filed  
14 last minute efforts to protect their riparian rights which were accepted by plaintiff (see  
15 transcription of “The Settlement of The Findings - Amendments Made In Printed Findings of Fact  
16 and Conclusions of Law and Suggested Decree”, 09/18/29 , at  
17 <http://www.mjbarkl.com/settlem.htm> or in the Angle Archives). The Report is addressed “To the  
18 Honorable Judges of the United States District Court for the Northern District of California:” - I  
19 do not know whether that indicates no judge was assigned to the case at the time the Report was  
20 filed, or that was just the style of filings at that time.” At some time after Nov 7 1929 the final  
21 Decree appears to have been typeset with Judge Kerrigan's name at the bottom (although it could  
22 be a high-quality rubber stamp) which would make his affiliation with the case obvious at that  
23 point. A few weeks later Judge Kerrigan signed the Decree on January 13, 1930 without any other  
24 changes from the Decree proposed by plaintiff in 1928; the 1930 printed version in the Archive  
25 bears inked corrections, "corrected in accord with the order of April 14th, 1930", signed by Judge  
26 Frank N. [sic] Kerrigan [his H looked like an N ?]. The only changes to plaintiff's draft decree  
27 and the final decree are filling in the empty blanks indicated in his April 14th order, and adding

1 those few claims in that "Settlement of The Findings". That he had signed a decree with empty  
2 blanks in it suggests that he didn't read the Decree or any of the rest of it, and with that  
3 inattention set the Decree between us and our Riparian rights. Further, I can only ponder the  
4 effect the Crash of October 1929 and the opening days of the Great Depression may have had on  
5 the business of the Court at that time.

6 I feel an obligation to attempt to refute any possibility of fraud on the court before raising  
7 it as an issue, and in pursuit of that I used Westlaw to attempt to gauge Judge Kerrigan's  
8 familiarity with riparian rights. During the years he served on California state courts (First  
9 Appellate District 1906 - 1922; Supreme Court 1923-1924, per  
10 <http://www.fjc.gov/public/home.nsf/hisj> ) Westlaw shows 25 reported cases of Kerrigan AND  
11 "water rights" and 9 of Kerrigan AND riparian, of which 3 are duplicates and one is somebody  
12 else. No instances of Kerrigan AND "Water Commission Act" come up. For United States Courts  
13 within the 9th Circuit from 1924 - 1930 three instances of Kerrigan AND "water rights" and none  
14 of Kerrigan and riparian come up; no instances of just "Water Commission Act" come up. None  
15 of these cases involve the specific loss of riparian rights to any authority with the power of eminent  
16 domain within California with the possible exception of Holmes (below); his service with the First  
17 appellate District may not have exposed him to any instances wherein such issues would have  
18 come up considering the geographic area District One covers, and his service with the California  
19 Supreme Court (January 1923, [http://cschs.org/02\\_history/02\\_c.html](http://cschs.org/02_history/02_c.html) ) followed the San  
20 Bernardino case by 18 months. He may have been similarly unfamiliar with the California  
21 Supreme Court's opinions on Section 11. Plaintiff did bring up both Herminghaus and Fall River  
22 in its 1928 brief but belittled any constitutional implications One of the cases mentioned to  
23 explain away the riparian issues was Holmes v. Snow Mountain Water & Power Co., 36 Cal. App.  
24 394 (1918) (Brief, p. 60 & p. 65) in which Justice Kerrigan concurred, but that case does not even  
25 contain the word "riparian" - it seemed to be more a disposition of a vexatious litigant. I have no  
26 way of knowing whether or not Judge Kerrigan even read plaintiff's 1928 brief, considering that  
27 the package brought to him by the special master seemed quite tidy and he missed the blanks in

1 the Decree.

2 Unless the court interferes, I intend to review once again, but more thoroughly this time,  
3 the entirety of the Angle archives including reading all the testimony and indexing all the filings  
4 and other papers, to ascertain whether or not there is anything therein that might refute my belief  
5 that this fraud on the court occurred. The Wackerman controversy (7 F.3d 891, 1992) shows that  
6 Stuart Somach was Holly Reimer's counsel and quotes within the opinion such as in footnote 4  
7 suggest Mr. Somach has examined the transcripts more closely than I have and might be able to  
8 point to anything that would refute my beliefs. Judge Karlton's phrase at p. 1372 of the court's  
9 1991 Angle Order, 360 F.Supp. 1366, "hearing on the arguments of counsel" suggests that he  
10 might also know of arguments in the record that would show this was merely a mistake in law  
11 applied rather than deception by plaintiff's counsel. And if perchance Judge Kerrigan kept notes  
12 that are still available, they might also shed light.

13 Having said all this, still, Reclamation was obligated under Section 8 of the Reclamation  
14 Act of 1902 to respect California law throughout the years of the litigation and all years since. As  
15 such, it was an affirmative duty of Reclamation and their counsel in court to present California  
16 law fairly. Does the Angle Decree shield Reclamation from these obligations? If not, then the  
17 obligations remain, and while under the Decree defendants may not use their riparian rights those  
18 rights remain and Reclamation cannot take advantage of the court's impairment of them.  
19 Further, if Reclamation's obligations continued, then what Reclamation has done since San  
20 Bernardino (1921) is to take under color of law riparian rights from all the upstream Stony Creek  
21 defendants, in violation (with their client agencies) of Title 42 Section 1983 and 1985, and Title 18,  
22 Sections 241, 242, 371, 1341, 1343, and 1961 through 1968. Reclamation should not be rewarded  
23 for this behavior.

24 I declare under penalty of perjury under the laws of the United States of America that the  
25 allegations and factual contentions in this declaration are true and correct, except for those  
26 submitted on information and belief and as for those I believe them to be true and correct.

27 Executed on February 9, 2009 and February 17, 2009,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**/s/ Michael J. Barkley**

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