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3 Defendant, in propria persona
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8 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
9 SACRAMENTO DIVISION

| | | |
|-------------------------------|---|--|
| | | Civil No. S-80-583-LKK [In Equity No. 30] |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | DEFENDANT MICHAEL J. BARKLEY'S |
| |) | REPLY TO PLAINTIFF'S RESPONSE TO |
| v. |) | DEFENDANT'S MOTION |
| |) | TO RECONSIDER ORDER, |
| H. C. ANGLE, et al., |) | Federal Rule of Civil Procedure 60(d)(3) |
| |) | |
| Defendants. |) | DATE: April 20, 2009, Vacated |
| |) | TIME: 10:00 a.m. |
| |) | COURT: Courtroom 4, 15 th Floor |

17 **My name is Michael J. Barkley. I am a defendant in this proceeding and I researched,**
18 **compiled and wrote this Reply. Defendant Michael J. Barkley replies to Plaintiff's Response to**
19 **Defendant's Motion to Reconsider. As with defendant's other filings, this one is verified.**
20 **Defendant intends it as a truthful statement of what defendant knows, believes, has seen, has heard,**
21 **and has read.**

22 **I. Angle Archives**

23 **Since filing his February 17, 2009 notice of motion and supporting papers, defendant has spent**
24 **much time in the court clerk's office reading and indexing the court's Archived and current record**
25 **in the case. Both the court and plaintiff have complained about defendant's citation of the archives,**
26 **and defendant now remedies that with Declaration #1 attached which refers to the precise file in the**
27 **precise box, or the precise document number in the precise folder, whichever is relevant, for every**

1 reference to the archives in the court's Order or in plaintiff's or defendants filings.

2 **II. Fraud on the Court**

3 As part of indexing the Archives defendant looked for any writings of any sort that would
4 refute his belief that a great and terrible fraud on the court had been perpetrated by plaintiff's
5 counsel on January 13, 1930. He found none. Instead, he found much more corroboration that
6 fraud on the court is exactly what occurred.

7 There are probably some basic assumptions which any reader of this material would have.

8 They may be:

9 Judges read what they sign

10 Judges know the law

11 An order following a hearing means both sides were heard

12 Special Masters are competent

13 Special Masters are properly supervised

14 Lawyers do not lie, especially in court

15 Defendant asks that the court suspend application of this list for a few minutes. Defendant has
16 carefully culled from his index a time line of the fraud and attached it here as Declaration #2, which
17 supplements defendant's declaration attached to his 02/17/2009 filing. This timeline shows that,
18 when faced with scrapping years of work, instead Mr. Morton and Mr. Coffey, with the possible
19 awareness of Mr. McCutchen and Mr. Hankins, crafted this great Potempkin Village with false
20 fronts and fat and happy peasants, with everything typeset and neat, and only nominal but easily
21 dismissable dissent, and then stuck 3 pieces of paper under the nose of a Judge who was only
22 marginally familiar with both the case and the requirements of Section 8 of the Reclamation Act of
23 1902: the first paper provided water for the Catholic Church, the second fixed errors for the Sutliff
24 family in a way similar to previous stipulations submitted to that judge, and the third paper,
25 untitled, turned out to adopt the whole shebang. Defendant has been unable to find a signed copy
26 of the Decree and at this point does not believe their ever was one. Everything in the Angle

27 Archives says that Morton and Coffey suckered Judge Kerrigan into stripping upstream riparians

1 without due compensation, contrary to Federal and State Constitutional requirements, and
 2 NOTHING in the Angle Archives, not even that single untitled filing prepared in advance of the
 3 hearing, says otherwise. Defendant asks this court to examine his Declaration #2 attached, and then
 4 to order further investigation as defendant sets forth in his prayer below.

5 **III. Excess Taking by Plaintiffs and Limits in the Decree: In its Order, the Court is rewarding**
 6 **plaintiff for misbehavior instead of reprimanding it.**

7 Defendant presented an earlier version of the following table of allowable diversions under the
 8 Decree in his Doc. 293 filing, p. 8. Upon further review of the Archives, many of those numbers are
 9 REDUCED to the following:

| | |
|----------------|---|
| | 85,020 acre-feet, United States of America (Reclamation), |
| | p. 137 of Decree, Para. VIII(1) and p. 141 |
| | explaining (1) (3) (5) (6) and (7) |
| Up to 51,000 | " - p. 137, Para VIII(2) and p. 142 para. (b) |
| Up to 133,650 | " - p. 138, Para VIII(4) and p. 142 para. (b) |
| | - 250 cfs * 1.98 * 270 days maximum season |
| | (10/15 - 7/15) |
| Less (184,620) | in excess of 4.05 per acre for 21,000 acres |
| | (p. 137), although more may be allowed per |
| | p. 142 para. (b) if beneficial use during |
| | reclamation, on the stated acreage, etc. |

| | |
|-------------|--|
| ----- | |
| 85,050 | acre-feet Project maximum |
| (7,185.02) | less to get down to acreage for which |
| | subscriptions were actually sold per USA filing |
| | of 09/05/2008 Doc. #277-2 p. 13, 20,859 acres, |
| | less non-project per plaintiff's Doc. #278 Exhibit |
| | 10 (CD-ROM, Angle Archive box 6, loose in the |
| | back of the box) , 1,633.08 acres, net of |
| | 19,225.92 acres, times 4.05 a-f per acre yields |
| | their current authorized allocation. |

| | |
|-----------|---|
| ----- | |
| 77,864.98 | a-f Current Project allocation (including |
| | conveyance, waste, & spillage) |
| 1,099 | Hall maximum |
| (734.5) | Less reduction by settlement, Doc #211 attachment, |
| | limited to 4.05 acre-feet for 90 acres, 364.5 a-f; |
| | balance of land to be taken into Project |
| (?) | Hall stock watering per 10/29/1924 stipulation, |
| | Angle Archives box @6 Large Brown Envelope #2 |
| 24 | Stock watering by settlement, Doc #211 attachment, |
| | 24 or 48 |
| 1,099 | Scarce maximum |
| (.08) | Less reduction by settlement, Doc #245 p. 4 (adding |
| | machine tape) |

| | | |
|----|------------|---|
| 1 | -0- | Transfer Water and Excess Water, Doc #245, pp. 6-7, are not authorized by the Decree |
| 2 | (?) | Scarce stock watering per 04/02/1926 stipulation, Angle Archives box #6 Large Brown Envelope #3 |
| 3 | 24 | Stock watering by settlement, Doc #211 attachment, 24 or 48 |
| 4 | 52.5 | Grindstone Indian Reservation |
| 5 | 79,428.90 | a-f, Total authorized Government allocation 04/12/2009 |
| 6 | ----- | |
| 7 | 13,208 | Tape of Appropriation Schedule, pp. 121-134, excluding GCID, Scarce, Hall, & USA (adding 8 machine tape) |
| 9 | | Less rights taken by USA for Stony Gorge, for which assessments were never paid, apparently abandoned (Report of Water Master for 1931, box 6 large Brown 10 Envelope #2 |
| 11 | (143) | Bayley (143) |
| 12 | (205) | Gatliff (205) |
| 13 | (99) | Gollnick (99) |
| 14 | (313) | Johansen (all or part of 313, less 27 a-f per 27 Johansen part not under Stony Gorge, per 1944 Water Master report, Archive box 6, Large Brown Envelope #2 - |
| 15 | (434) | True (434) |
| 16 | (165) | Less 30 acres of Kesselring 61.4 Salt Creek entitlement given up on 01/14/1933 box 5 file 23 of 39 |
| 17 | ----- | |
| 18 | 11,876 | Net appropriation schedule |
| 19 | 14,501 | Tape of Riparian Schedule, pp. 161-165, and decreasing per pp. 166 - 168 (acres * per acre, extended, totalled) |
| 20 | 20,315 | Glenn-Colusa Irrigation District (GCID), p. 170 |
| 21 | ----- | |
| 22 | 126,120.90 | Total current authorized allocations in acre-feet under the Decree, all parties |
| 23 | ===== | |

22 Compare with Reclamation Storage permits, plaintiff Doc #277-2, pp. 4-5:

| | | |
|----|-----------|---|
| 23 | 50,900 | a-f East Park Reservoir |
| 24 | 50,200 | Stony Gorge |
| 25 | 160,000 | Black Butte |
| 26 | ----- | |
| 27 | 261,100 | Total storage (excluding Rainbow Diversion Dam, etc.) |
| 28 | 79,428.90 | a-f, Total authorized Government allocation 04/12/2009 (above), annual allowable |
| | ----- | |

1 181,671.10 amount which must be released each year reservoirs
2 ===== whatsoever, not Project, not CVP, not Cal-Fed,
3 not sale, not transfer, not carryover, not
4 anything

4 **Remember that pp. 177-178 of the Decree, the first sentence of Paragraph XVII, limits all parties**
5 **(including plaintiff) to "the rights specified, determined and allowed by this decree," etc. This may**
6 **not directly apply to the OUWUA which does not seem to be an actual party to the Angle Case; the**
7 **closest defendant can find to bringing them in is Document #19 in the record, an Order, dated**
8 **11/04/1980 allowing OUWUA to intervene in the controversy around the appointment of a water**
9 **master; although they were sued within the case in the Reimers matter, Still, as an agent of**
10 **Reclamation they would seem to be bound in any use of project water or facilities.**

11 **Contrast these numbers with such reports as the Water Masters did make over the years**
12 **showing combined diversions, waste, and spillage by the Government, remembering that these**
13 **numbers were supplied by the Project to the Water Master rather than the Water Master doing his**
14 **job keeping an eye on project diversions and use:**

15 79,891.6 a-f 12/29/1930 Report of Water Master (E.T. Eriksen)
16 1930 Angle Archives box #6 large Brown Envelope #2
17 65,152 a-f 12/01/1931 Report of Water Master...Season of 1931;
18 Angle Archives box #6 large Brown Envelope #2
19 81,204.2 a-f 12/21/1932 Report of Water Master Season of 1932
20 Angle Archives box #6 large Brown Envelope #2
21 86,378.2 a-f 01/20/1934 Report of Water Master, Season of 1933
22 Angle Archives box #6 large Brown Envelope #2
23 89,894.48 a-f 01/22/1935 Report of Water Master, Season of 1934
24 Angle Archives box #6 large Brown Envelope #2
25 80,375.1 a-f 01/29/1936 Report of Water Master, Season of 1935
26 Angle Archives box #6 large Brown Envelope #2
27 107,384.2 a-f 03/23/1937 Report of Water Master, Season of 1936

1 Angle Archives box #6 large Brown Envelope #2
2 89,071.21 a-f 02/23/1938 Report of Water Master, Season of 1937
3 Angle Archives box #6 large Brown Envelope #2
4 98,030.59 a-f 04/04/1939 Report of Water Master, Season of 1938
5 Angle Archives box #6 large Brown Envelope #2
6 96,046.26 a-f 12/06/1939 Report of Water Master, Season of 1939
7 Angle Archives box #6 large Brown Envelope #2
8 100,799.5 a-f 02/07/1941 Report of Water Master, Season of 1940
9 Angle Archives box #6 large Brown Envelope #2
10 97,423 a-f 01/28/1942 Report of Water Master, Season of 1941
11 Angle Archives box #6 large Brown Envelope #2
12 94,795 a-f 01/07/1943 Report of Water Master, Season of 1942
13 Angle Archives box #6 large Brown Envelope #2
14 107,263 a-f 02/09/1944 Report of Water Master, Season of 1943
15 Angle Archives box #6 large Brown Envelope #2
16 108,619 a-f 02/06/1945 Report of Water Master, Season of 1944
17 Angle Archives box #6 large Brown Envelope #2
18 113,620.68 a-f 03/05/1946 Report of Water Master, Season of 1945
19 Angle Archives box #6 large Brown Envelope #2
20 124,094 a-f 03/13/47 Report of Water Master, Season of 1946
21 Angle Archives box #6 large Brown Envelope #2

22 **Here, the reports stop. It would not be unreasonable to suspect that these numbers have not**
23 **shrunk once they were out of the eye of the court and the public, although the reports may have**
24 **continued in more recent years to SWRCB, defendant's next stop.**

25 **Presumably Reclamation would be allowed to carry over water from one year to the next, but**
26 **since every year above but one exceeds the total government allocation allowable that excuse**
27 **doesn't hold water. There was some sort of disagreement between the Water Master and**

1 Reclamation in 1947 or 1948, after which the Water Master (coincidentally?) stopped making
2 reports altogether. A hearing was held and a transcript made, see signed 12/04/1948 Order to pay
3 \$45 + \$15 for transcription of 09/03/1948 Glenn County Court House hearing with Reclamation et
4 al., Angle Archive box 4 File #29 of 39 . Defendant does not know if that hearing had any thing to
5 do with the cessation of reports. In March and April 2009, defendant's brother went to see the
6 Water Master several times in Orland to learn if a copy of the transcript was still around but the
7 Water Master was not there visited and has not returned his messages; staff at the Water Users'
8 Association where the Water Master's Offices are told him the Water Master took all the records
9 home. This does not seem to be a proper way to handle court records, and with the Water Master
10 an agent of the Court, those would seem to be court records.

11 Further, contrast the numbers above with the numbers of annual flow of Stony Creek, Exhibit
12 A-1 attached, which is from the Army Corps of Engineers' Black Butte Project Hydrology Manual,
13 May, 1957, Chart 11. Defendant has re-sorted those numbers in Exhibit A-2 and left a break
14 in the sort that equals the total authorized diversion basin-wide of 126,285.9 acre-feet tallied above.
15 Note that in 8 of the 52 years on that tally, the total upstream watershed runoff fell short of the
16 126,285.9 acre-feet allocation above. Certainly those years would be years for which it would be
17 prudent for Reclamation to maintain substantial carry-over in storage, but the Decree does not
18 allow that. The Water Master has allowed it, the Court has allowed it, but the Decree does not
19 allow it, and remember, the Decree was written by Reclamation so construction of it is most strictly
20 applied against them. Selective enforcement is obvious (Opinion, Doc 295, p. 12), Reclamation gets
21 as much water as it wishes, all others upstream are held to limits, usually strict limits.

22 In its order at Doc. #295 p. 11 the court rebuked defendant for believing Northern "California
23 enjoys a surplus of water." It actually does. Any shortage comes from specific decisions not to use
24 the surplus. Lake Taboe contains 125,000,000 acre-feet of water. Certainly the decision not to
25 use it is a wise one, but that's quite a surplus. In December 1964 the Eel River recorded the highest
26 flow of any California River ever, enough to fill Lake Oroville in 2 days or Lake Shasta in 3, an
27 amount equivalent to 1.6 times the normal flow at the mouth of the Mississippi. Plans to harness

1 the Eel disappeared with adoption of wild & scenic status for that river, but that was a specific
2 decision by specific humans, not a natural shortage of water. That 1964 flood which destroyed the
3 railroad, most communities, and every bridge but one on the Eel gives a new meaning to "wild and
4 scenic". The Orland Project sits on up to 6,000,000 acre feet of usable fresh water in the underlying
5 aquifers or Stony Creek Fan; the court says defendant has not proven it, yet there's sufficient
6 information on the internet at the web sites defendant listed to show that whatever the amount is,
7 it's quite a bit more than the annual needs of the Project. The decision not to use that water but
8 instead to strip 700 square miles upstream of all but a tiny part of its water rights in favor of
9 a 40 square mile private irrigation company downstream was not a natural shortage, it was a
10 human decision. The Stony Creek watershed shares the ridgeline with the Eel. Sometimes the
11 ridge blocks storms, other times it allows huge amounts of precipitation to fall on the lee. Thus the
12 flows in Exhibit A range between 37,600 acre-feet (1923-24) and (1,424,700) 1940-41 - defendant
13 believes but does not know for certain that the flows in 1955-56 (the year of the Yuba City Flood)
14 and 1964-65 were much higher. As time permits he will locate the numbers, but Exhibit A-1 makes
15 the argument. As the Angle Decree is written, no party to the suit may use the excess that occurs in
16 44 of every 52 years. The court criticizes defendant for criticizing plaintiff's waste of water by not
17 developing those aquifers under Orland. Fine. Then let the court and its water master enforce the
18 decree across the board, including against the Government, something that has not been happening.

19 IV. Underflow

20 As defendant points out in Declaration #1 attached, the events leading up to Document #94
21 and the adoption by the court of that document vastly expanded the coverage of the Decree over
22 underflow, from just the two precise points described on pp. 171 and 172 of the Decree. The
23 drafters of the Decree (that would be the Government) had scrupulously avoided including
24 underflow except at those two points. Their exclusion started very early:

- 25 ● By motion of 06/10/1922 [typewritten], Petition for Dismissal as to Certain Defendants, for
26 setting down of the cause for trial, and as to related matters box 4 file 14 of 39 , and motion of
27 06/20/1922 [typeset: Notice of Motion to Set]; Petition for Dismissal as to Certain Defendants,

1 for Setting Down of the Cause for Trial, and as to Related Matters box 3 file 9 of 39 , which
2 motions may be identical , plaintiff sought to dismiss everyone downstream from the project
3 from the case.

- 4 ● GCID objected, filing of 06/20/1922 Answer to Petition for Dismissal by Glenn-Colusa Irrigation
5 District (objects to dismissing all the lower Stony Creek users, underflow or otherwise, would
6 lead to further litigation, etc.) box 3 file 9 of 39,
- 7 ● so Judge Van Fleet rejected that part of the motion, 06/24/1922 Order, (adding some appearing
8 voluntarily; correcting names of others, accepting filings of the Water Commissioner, dismissing
9 State of California without prejudice, overruling motion to dismiss GCID and other lower Stony
10 (Underflow) users) box 3 file 9 of 39.

11 Lawyer Frank Freeman's 7 downstream users answered, all 09/25/1922, Answer of Defendant
12 Joseph M. Billiou, Leona S. Billiou and Richard J. Billiou box 3 file 12 of 39 , Answer of Defendant
13 Esperanza Land Corporation box 3 file 12 of 39 , Answer of Defendant Annie Hoever box 3 file 12
14 of 39 , Answer of Defendant James Mills Orchard Corporation box 3 file 12 of 39 , Answer of
15 Defendant R.T. Jones box 3 file 12 of 39 , Answer of Defendant Andrew Kaiser box 3 file 12 of 39 ,
16 Answer of Defendant Sacramento Valley Sugar Company box 3 file 12 of 39 , all of them alleging
17 riparian rights in the underground channels in the cone that spreads out from Miller Buttes
18 eastward over the top of which Stony Creek meanders and in which Stony Creek has lain down
19 various channels which have become covered over and underground, and several of them, James
20 Mills Orchards, Esperanza Lands, R.T. Jones, and Sacramento Valley Sugar alleged that they
21 presently or had in the past pumped from those underflows. As defendant has stated (with
22 transcript citations) in Declaration #2 attached, John P. Ryan's testimony adamantly stuck to the
23 statement in that professional engineer's opinion and experience that James Mills and neighboring
24 properties were pumping from underflow. The wells he describes, see James Mills Exhibit A Map
25 for Illustrative purposes only with the wells marked box 4 file 37 of 39, see transcript pp. 3066-3069
26 vol. 16, Box 2, second unmarked folder, and the manner in which they track water levels in
27 Stony Creek in Defendant James Mills Orchard Co Exhibit B - Blueprint map and graph of wells

1 showing effect of Stony Creek [Underflow], 1920 box 4 file 34 of 39, tr. p. 3072 et seq., same box &
2 folder, and the well core reports are quite clear. What is not clear is why Mr. Morton would spend
3 so much time arguing with Mr. Ryan that there was no underflow.

4 Warren Gregory of Chickering and Gregory, San Francisco, showed up for James Mills
5 Orchards et al 09/11/1923 tr p. 3091 and shut down testimony; box 2 second unmarked file, and on
6 October 2, 1923 Mr. Freeman asked to amend the answers James Mills Orchards (and apparently
7 all 7 downstream underflow users) apparently on the belief that no further diversions would be
8 undertaken by the government, transcript vol 20 p. 3535, box 2 file 14T; was Mr. Freeman's
9 comment wishful thinking? see 09/30/1925 James Mills Orchard & Esperanza Land (prepared and
10 signed by Chickering and Gregory) underflow protests with SWRCB predecessor for application
11 2212 for Stony Gorge mentioned in Declaration #2 attached.

12 There are numerous other locations in the few transcript pages this defendant has read where
13 underflow is described: p. 3 Downstream riparians and underflow pumpers; p. 26 Diversion works
14 & underflow; vol. 1, File 1T Box 1; p. 289 Soeth domestic well depends on water running in the
15 ditch; p. 290 Underlain with bedrock, goes right back to the creek; vol. 2, file 2T, box 1; p. 382
16 Seepage back into the creek, sometimes big, sometimes small 48 hours to 3 days after applying
17 water; p. 408 Seepage out of the ground from Brown irrigation, into the slough; vol. 3, File 3T, Box
18 1; p. 3093-3096 A.F. Moore, says for Mallon & Blevins, but speaking for Brownells, shifting
19 channels, disappearing & reappearing flows, Miller Buttes it came up because of a "clay formation
20 there from one butte to the other and the water had to come to the surface there to get by.", vol. 16,
21 second unmarked folder, Box 2; and so on. Some of these underflows are cast in terms of seepage
22 but there are enough that are not. What would surprise defendant is to not find further underflow
23 discussions in the remaining 3500 pages of transcripts he has not yet read.

24 Four of the Freeman underflow defendants ultimately disclaimed (plus Andrew Kaiser, his
25 disclaimer is missing, but there is record of it in the transcript at p. 4716 vol. 26 Box 6 in front);
26 their lands are shown on that James Mills Orchard Co. Exhibit A cited above), all dated 06/05/1924
27 Disclaimer of Defendant Jos. M. Billiou box 5 file 26/39; Disclaimer of Defendant Annie Hoever box

1 **4 file 27/39; Disclaimer of Defendant R.T. Jones box 5 file 26/39; Disclaimer of Sacramento Valley**
2 **Sugar Company box 4 file 27/41**

3 **And dated 02/25/1924 is the Amended Answer of Defendants James Mills Orchards**
4 **Corporation and Esperanza Land Corporation to the Amended Complaint, box 5 file 26 of 39 , in**
5 **which the pertinent language is**

6 **"Said defendants and each of them hereby consent that a decree may be made herein**
7 **decreeing to the plaintiff the water rights set forth and claimed by said plaintiff in its**
8 **said complaint herein, and quieting its title therein and thereto, and enjoining said**
9 **defendants and each of them from interfering therewith."**

10 **By 09/30/1925 and based on their protests with the SWRCB predecessor for the Stony Gorge**
11 **application #2212 it seems likely they had second thoughts. One might suspect that ever since**
12 **they've been waiting for the Water Master to show up. They will not be pleased.**

13 **In any event, Pumping from Stony Creek underflow has been made out in their answers and**
14 **in the testimony, sufficient to require the water master to cut off their wells unless it is the court's**
15 **position that one set of defendants is subject to prohibitions on using underflow and another set is**
16 **not. And that seems to be the case now. The court should choose, cover underflow? or don't cover**
17 **it. The present situation is discriminatory against upstream defendants.**

18 **Plaintiff asserts defendant is trying to change the Decree with the underflow arguments. The**
19 **court already has changed it with Doc #94 and its water master's behavior. Defendant just wants it**
20 **put back, or else be administered equally.**

21 **V. This court shares the blame:**

22 **This court stood by while plaintiff, plaintiff's agent OUWUA, and the court's agent water**
23 **master used their positions of power to wage an incredible campaign of bad faith against Holly**
24 **Reimers (see declaration #1 attached, paragraph on Reimers. During that time OUWUA was**
25 **violating the decree by applying project waters to non-project lands (as the Order points out in**
26 **footnote 12) , and diverting waters far in excess of what they were allowed (see tabulation above,**
27 **unless someone is going to take the position that the instant Mr. Garland stopped reporting**
28 **diversion quantities in 1947 the Government suddenly started behaving. Who would believe that?**

1 **This court has stood by while the water master has enforced the Decree against upstream users**
2 **while allowing the Government to divert whatever it wanted.**

3 **Where are the water master reports for years 1991-1996, 1998, 1999? Were they never filed?**

4 **Who is supervising the water master?**

5 **Water Master reports since 2001 have mentioned that there has been a complaint that**
6 **Reclamation was selling project water to non-project lands. The most recent Water Master report,**
7 **Doc #276, states that complaint made to the Inspector General (which Inspector General?) is the**
8 **reason for plaintiff's instant motion. Didn't plaintiff forget to mention that in its pleadings? So**
9 **instead of a reprimand from the Court plaintiff gets a reward?**

10 **Where did the water master bank account go after Mr. Garland left in 1964?**

11 **Did the water master take the records home with him as OUWUA told defendant's brother**
12 **over the past few weeks? He should bring them back and make them available.**

13 **Why is the water master not reporting quantities diverted? In "Report of Water Master...**
14 **years 1983 & 1984" the water master proposed to the Committee to take measurements on an**
15 **exception basis (Doc #86) but the next year (Doc. #96) he informed the committee that was what he**
16 **was going to do. Isn't the regular annual overdraft by the Government an exception?**

17 **The Water Master's Declaration of Water Master re Water Rights and Associated Problems**
18 **within Stony Creek Watershed, Doc #75, 01/07/1985 seems to state that under his duties, "all**
19 **holdings upstream [are] included". Where did he get the authority to exclude downstream holdings**
20 **from his duties? There were many downstream defendants, including those pumping from**
21 **underflow like James Mills Orchards.**

22 **Mr. Somach's firm has represented 3 different opposing parties in this case, which is about**
23 **two too many. And where did Orland Unit Water Users' Association become a party to the Angle**
24 **case? Doc. #19? That did not seem to be an open-ended authorization.**

25 **The court has treated this defendant and his family in a demonstrably egregious and hostile**
26 **manner. That's not right.**

27 **None of this seems to approach the level warranting recusal, but the court might consider**

1 repairing some of this.

2 **VI. End of the Decree:**

3 **What would happen if the Decree were set aside and the underlying case dismissed with**
4 **prejudice? Almost everyone would benefit: the court would be relieved of a headache, Plaintiff**
5 **could do whatever it wants and protect itself against encroachments with eminent domain in state**
6 **courts, OUWUA could do whatever it liked such as annex or whatever, downstream users of**
7 **underflow would escape the sword that's been hanging over them since 1930, Colusa County could**
8 **develop that 10,000 acre-foot annually-replenished aquifer under Stonyford (Declaration D.E.**
9 **Kienlen, Civil Engineer w/Colusa County, attached to 06/15/1984 Doc. #58); this defendant**
10 **could grow his elderberries and North Fork could become the garden spot it once was, U.S. Forest**
11 **Service, Century Ranch, and the others could renegotiate those contracts at a fair price (although**
12 **they might wish to continue them); SWRCB could go about its business of dividing up fairly the**
13 **regular surplus waters on Stony Creek; about the only people who would suffer would be the**
14 **Water Master and Mr. Somach's law firm. Defendant understands this is contrary to plaintiff's**
15 **"Mine! Mine! Mine!" nature, but it's time this decree was scrapped, it's outlived its usefulness**
16 **Wherefore defendant prays that this honorable court:**

- 17 **1) Decides whether or not OUWUA is a party in this case and if so, declare how it is that it became**
18 **one and tell it to get a lawyer without a conflict of interest.**
- 19 **2) order retrieval of water master records and make them available for defendant's review, at the**
20 **water master's office in Orland or in the District Court Clerk's office at 501 "I" Street, Sacramento**
- 21 **3) dispatch U.S. Marshals to Mr. Shockey's office to take control of all Department of Justice (or**
22 **any other) Angle case files and bring them back to the judge's chambers to be kept there until the**
23 **court finds some independent third party to look through them all for evidence supporting or**
24 **refuting the fraud on the court defendant has described.**
- 25 **4) if fraud on the court is corroborated by the DOJ files or not refuted by the DOJ files, set aside**
26 **the Decree and dismiss with prejudice the underlying case, but if refuted and/or not dismissed,**
- 27 **5) either instruct the water master to disregard underflow issues (including for the County of**

1 Colusa, Century Ranch, and anyone else at Stonyford) or else go after James Mills Orchards Co.
2 and the rest of the downstream defendants and compel them to stop pumping from underflow, and
3 6) enforce the diversion limits of the decree against the United States.

4 Respectfully submitted this 13th Day of April, 2009,

5
6 /s/ Michael J. Barkley

7
8 Michael J. Barkley, Defendant, in propria persona
9 California SBN 122433
10 161 N. Sheridan Ave. #1
11 Manteca, CA 95336
12 (209)823-4817 (no fax) mjbarkl@inreach.com

13 VERIFICATION

14 I declare under penalty of perjury under the laws of the United States of America that the
15 allegations and factual contentions and recitations in this memorandum are true and correct, except
16 for those submitted on information and belief and as for those I believe them to be true and correct.

17 Executed on April 13, 2009,

18 /s/ Michael J. Barkley

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

1 in the United States Mail with appropriate postage affixed to the envelope addressed to:

2 George Wilson
3 Water Master
4 Orland Water Users Association
5 828 Eighth Street
6 Orland, CA 95963

7 I declare under penalty of perjury that this is true and correct.

8 /s/ Michael J. Barkley

9
10 Michael J. Barkley, Defendant, in propria persona
11 California SBN 122433
12 161 N. Sheridan Ave. #1
Manteca, CA 95336
(209)823-4817 (no fax) mjbarkl@inreach.com

13 Dated: April 13, 2009

BLACK BUTTE PROJECT
Stony Creek, California

MONTHLY NATURAL FLOW AT BLACK BUTTE DAM SITE

(Thousand acre-feet)

| Water year | April 1957 | | | | | | | | | | | | Total |
|------------|------------|------|-------|-------|-------|-------|-------|-------|------|------|------|------|--------|
| | Oct. | Nov. | Dec. | Jan. | Feb. | Mar. | Apr. | May | June | July | Aug. | Sep. | |
| 1903-04 | 3.4 | 46.6 | 35.2 | 22.7 | 253.0 | 301.4 | 104.7 | 50.3 | 13.1 | 5.8 | 5.0 | 3.9 | 846.1 |
| 1904-05 | 13.6 | 5.7 | 30.7 | 163.9 | 89.8 | 138.6 | 57.0 | 4.7 | 15.8 | 5.9 | 4.9 | 3.5 | 534.1 |
| 1905-06 | 3.4 | 2.9 | 4.6 | 148.5 | 94.0 | 169.4 | 83.8 | 43.1 | 34.8 | 12.1 | 6.3 | 3.8 | 606.7 |
| 1906-07 | 4.3 | 5.1 | 42.7 | 135.4 | 202.4 | 299.2 | 107.4 | 32.3 | 17.7 | 6.7 | 5.0 | 3.9 | 863.1 |
| 1907-08 | 4.3 | 4.0 | 40.4 | 77.1 | 106.3 | 67.2 | 34.3 | 26.5 | 14.5 | 6.7 | 5.1 | 3.1 | 389.5 |
| 1908-09 | 4.6 | 6.9 | 13.0 | 430.1 | 334.4 | 87.9 | 63.3 | 34.9 | 11.8 | 6.3 | 5.2 | 3.5 | 1001.9 |
| 1909-10 | 5.5 | 25.3 | 44.0 | 56.8 | 58.9 | 128.7 | 48.0 | 18.2 | 7.1 | 4.3 | 4.1 | 2.7 | 403.6 |
| 1910-11 | 2.9 | 4.1 | 23.4 | 76.3 | 55.9 | 281.6 | 95.0 | 43.0 | 31.9 | 6.1 | 6.3 | 3.5 | 630.0 |
| 1911-12 | 3.3 | 2.5 | 1.7 | 13.8 | 11.7 | 21.2 | 18.9 | 37.0 | 13.3 | 0 | 0 | 0 | 130.9 |
| 1912-13 | 1.1 | 16.5 | 55.0 | 121.0 | 11.0 | 15.4 | 66.0 | 28.6 | 11.0 | 1.1 | 0 | 0 | 326.7 |
| 1913-14 | 1.1 | 1.1 | 59.4 | 520.0 | 176.0 | 61.6 | 82.5 | 68.0 | 13.2 | 1.1 | 1.1 | 1.0 | 1014.1 |
| 1914-15 | 3.3 | 4.4 | 27.5 | 187.0 | 462.0 | 176.0 | 92.4 | 264.0 | 91.3 | 8.8 | 2.2 | 2.2 | 1321.1 |
| 1915-16 | 2.2 | 2.2 | 46.2 | 440.0 | 154.0 | 96.8 | 50.6 | 21.7 | 14.3 | 4.4 | 2.2 | 0 | 834.6 |
| 1916-17 | 1.1 | 2.2 | 22.0 | 26.4 | 38.5 | 30.8 | 37.4 | 39.6 | 22.0 | 1.1 | 0 | 0 | 221.1 |
| 1917-18 | 0 | 2.2 | 7.7 | 5.5 | 44.0 | 46.2 | 41.8 | 6.6 | 2.2 | 0 | 0 | 0 | 156.2 |
| 1918-19 | 0 | 5.5 | 5.5 | 68.2 | 91.3 | 93.5 | 19.8 | 17.2 | 3.5 | 0.5 | 0 | 0 | 305.0 |
| 1919-20 | 3.0 | 3.3 | 10.7 | 5.9 | 3.5 | 12.1 | 23.1 | 8.1 | 5.0 | 1.0 | 0 | 1.6 | 77.3 |
| 1920-21 | 1.3 | 61.3 | 119.4 | 208.4 | 102.6 | 58.3 | 27.0 | 26.3 | 12.1 | 0.6 | 0.6 | 1.7 | 619.6 |
| 1921-22 | 3.3 | 3.4 | 12.8 | 12.1 | 70.9 | 36.7 | 50.8 | 42.7 | 14.4 | 1.7 | 0.7 | 0.6 | 250.1 |
| 1922-23 | 4.3 | 13.9 | 49.7 | 44.6 | 22.1 | 15.2 | 35.0 | 14.0 | 5.8 | 1.2 | 0 | 0.5 | 206.3 |
| 1923-24 | 1.9 | 2.0 | 3.1 | 6.1 | 17.0 | 4.3 | 1.6 | 1.2 | 0.4 | 0 | 0 | 0 | 37.6 |
| 1924-25 | 0.9 | 7.3 | 26.8 | 26.0 | 208.2 | 42.8 | 69.2 | 85.1 | 18.9 | 2.1 | 0.9 | 1.0 | 489.2 |
| 1925-26 | 2.1 | 3.7 | 5.7 | 22.8 | 141.3 | 27.5 | 74.6 | 12.5 | 1.4 | 0 | 0 | 0 | 291.6 |
| 1926-27 | 1.5 | 39.8 | 85.5 | 56.7 | 262.4 | 78.7 | 55.6 | 29.7 | 9.6 | 1.2 | 0.9 | 0.7 | 622.3 |
| 1927-28 | 1.6 | 10.7 | 23.8 | 48.6 | 90.0 | 100.8 | 63.7 | 19.1 | 2.9 | 1.0 | 0 | 0 | 362.2 |
| 1928-29 | 3.0 | 3.5 | 13.4 | 8.6 | 28.5 | 11.8 | 10.8 | 9.2 | 4.2 | 1.0 | 1.7 | 1.4 | 97.1 |
| 1929-30 | 2.6 | 1.4 | 30.9 | 34.3 | 46.1 | 70.9 | 26.1 | 14.8 | 3.9 | 0 | 0 | 0.6 | 231.6 |
| 1930-31 | 1.9 | 3.1 | 2.2 | 22.5 | 2.3 | 19.0 | 6.6 | 4.8 | 0.7 | 1.5 | 2.5 | 1.7 | 78.8 |
| 1931-32 | 2.7 | 3.4 | 50.6 | 49.2 | 23.6 | 37.7 | 20.5 | 23.6 | 7.5 | 0.1 | 0 | 1.1 | 220.0 |
| 1932-33 | 1.9 | 0.8 | 3.9 | 12.6 | 9.4 | 34.1 | 24.2 | 20.6 | 12.0 | 1.8 | 0.0 | 0.5 | 121.8 |
| 1933-34 | 2.0 | 2.9 | 30.3 | 39.5 | 39.0 | 27.5 | 10.8 | 6.0 | 2.5 | 0 | 1.4 | 0 | 161.9 |
| 1934-35 | 2.2 | 15.6 | 10.8 | 65.3 | 44.7 | 64.3 | 80.5 | 28.0 | 6.0 | 1.7 | 0 | 2.1 | 321.2 |
| 1935-36 | 2.2 | 3.1 | 3.3 | 94.9 | 131.2 | 41.7 | 34.0 | 15.2 | 9.4 | 1.8 | 0 | 1.1 | 337.9 |
| 1936-37 | 1.7 | 3.4 | 2.7 | 3.3 | 61.2 | 72.5 | 39.3 | 21.9 | 7.0 | 0.8 | 0.2 | 0 | 214.0 |
| 1937-38 | 4.0 | 45.5 | 142.3 | 57.7 | 183.7 | 200.7 | 82.6 | 47.2 | 19.6 | 5.4 | 1.3 | 1.0 | 791.0 |
| 1938-39 | 3.3 | 4.8 | 10.0 | 6.6 | 9.7 | 19.2 | 9.2 | 5.9 | 0 | 0 | 2.7 | 6.0 | 77.4 |
| 1939-40 | 2.1 | 1.1 | 7.2 | 101.6 | 203.3 | 104.9 | 53.9 | 15.8 | 4.8 | 0.3 | 0 | 0 | 427.1 |
| 1940-41 | 6.4 | 10.8 | 186.6 | 279.8 | 321.4 | 290.8 | 228.5 | 65.5 | 24.3 | 7.6 | 2.6 | .9 | 1424.7 |
| 1941-42 | 3.9 | 4.9 | 102.2 | 172.7 | 238.5 | 55.3 | 107.9 | 48.2 | 22.6 | 4.6 | 0.6 | 1.2 | 782.0 |
| 1942-43 | 2.5 | 10.9 | 42.2 | 163.2 | 57.4 | 57.8 | 29.6 | 18.6 | 7.7 | 0.7 | 0.8 | 0.4 | 391.8 |
| 1943-44 | 2.8 | 2.5 | 2.5 | 10.3 | 30.7 | 42.9 | 25.4 | 22.1 | 7.9 | 0.6 | 0.5 | 0 | 148.2 |
| 1944-45 | 1.8 | 8.6 | 25.2 | 20.9 | 70.4 | 25.3 | 24.6 | 15.8 | 5.4 | 0 | 0.2 | 0 | 198.2 |
| 1945-46 | 3.9 | 16.2 | 180.6 | 73.9 | 21.0 | 25.1 | 25.3 | 12.6 | 1.8 | 0 | 0 | 0 | 360.4 |
| 1946-47 | 1.7 | 6.6 | 9.4 | 3.2 | 30.9 | 50.2 | 17.1 | 3.8 | 0.9 | 0 | 0.4 | 0 | 124.2 |
| 1947-48 | 5.3 | 3.5 | 2.3 | 20.7 | 0 | 2.1 | 35.0 | 36.3 | 16.1 | 2.2 | 0.8 | 0.3 | 125.6 |
| 1948-49 | 1.3 | 3.6 | 4.9 | 5.6 | 13.4 | 155.9 | 55.4 | 25.5 | 5.4 | 0 | 0.3 | 0.8 | 275.1 |
| 1949-50 | 1.1 | 3.0 | 2.1 | 29.4 | 57.6 | 46.6 | 34.4 | 17.1 | 3.8 | 0 | 0.4 | 0.6 | 196.1 |
| 1950-51 | 9.2 | 27.3 | 100.4 | 96.5 | 88.3 | 44.8 | 19.2 | 11.1 | 2.9 | 0 | 0.8 | 0.1 | 406.6 |
| 1951-52 | 1.7 | 9.5 | 100.3 | 151.6 | 153.1 | 112.4 | 82.3 | 43.8 | 19.2 | 4.1 | 1.4 | 0.5 | 679.4 |
| 1952-53 | 1.4 | 3.7 | 116.5 | 247.4 | 42.2 | 32.0 | 39.9 | 35.1 | 21.0 | 4.2 | 2.5 | 0.4 | 542.3 |
| 1953-54 | 2.5 | 10.3 | 4.0 | 74.4 | 99.5 | 70.0 | 70.7 | 20.2 | 7.2 | 0.6 | 2.8 | 0.2 | 366.4 |
| 1954-55 | 2.5 | 15.3 | 37.1 | 21.4 | 13.1 | 12.2 | 20.0 | 23.4 | 0.9 | 0.8 | 0.3 | 0 | 147.0 |
| Mean | 2.9 | 9.8 | 39.0 | 92.3 | 97.4 | 79.2 | 50.4 | 30.9 | 11.8 | 2.3 | 1.4 | 1.2 | 415.6 |

Engineers' Black Butte Project Hydrology Manual, May, 1957, Chart 11, re-sorted those numbers in Exhibit A-2 leaving a break in the sort that equals the total current authorized diversion basin-wide of 126,285.9 acre-feet

1923-24 37.6
1919-20 77.3
1938-39 77.4
1930-31 78.8
1928-29 97.1
1932-33 121.8
1946-46 124.2
1947-48 125.6

1911-12 130.9
1954-55 147.0
1943-44 148.2
1917-18 156.2
1933-34 161.9
1949-50 196.1
1944-45 198.2
1922-23 206.3
1936-37 214.0
1931-32 220.0
1916-17 221.1
1929-30 231.6
1921-22 250.1
1948-49 275.1
1925-26 291.6
1918-19 305.0
1934-35 321.2
1912-13 326.7
1935-36 337.9
1945-46 360.4
1927-28 362.2
1953-54 368.4
1907-08 389.5
1942-43 391.8
1909-10 403.6
1950-51 406.6
1939-40 427.1
1924-25 489.2
1904-05 534.1
1952-53 542.3
1905-06 606.7
1920-21 619.6

1926-27 622.3
1910-11 630.0
1951-52 679.4
1941-42 765.6
1937-38 791.0
1915-16 834.6
1903-04 846.1
1906-07 863.1
1908-09 1001.9
1913-14 1014.1
1914-15 1321.1
1940-41 1424.7

1 downloads very quickly and can be searched with various utilities or any internet browser, or
2 saved off to text, etc., by anyone wishing to use it. Google and Yahoo have not picked up the index
3 yet but since they have picked up most of my other journalism pages, it's just a matter of time
4 before the entire index will be searchable through those two engines.

5 Within the index are personal or editorial comments, enclosed in brackets "[]" such as
6 coordinating the chronology with that of the Herminghaus and Fall River cases, or the death or
7 appointment to judgeships of the significant attorneys. I have also included frequent condensed
8 recitations of the content of documents intended to assist me or anyone else in using various search
9 tools to find them; these recitations should be given no more or no less weight than those of a first
10 year law student briefing a case.

11 I ask the court to take notice of this index of its own record, to challenge errors where they
12 may be found, and to use it as a window into the historical record of this case. I ask that all persons
13 refrain from mixing the contents of the archives from box to box and file to file as long as the Angle
14 case is alive unless it is pursuant to a court order to straighten out that randomly organized jumble
15 and if that happens, I ask to be notified so that I might adjust my references to where documents
16 are located. I built this index with the intention that it be useful to my heirs.

17 I have gone back through the various filings where there were references to the archives and
18 made a list of those references adding specific archive locations for them:

19 **1. References mentioned within the court's Opinion, Doc, #295:**

20 **p. 11 line 19 - p. 12 line 6 - incidents of oppressive events;**

21 **1931 St.John Outing Club, D. E. Studybaker, Bruce H. Sutliff, M. G. Bedford, Geo. W. Lewis and**
22 **Frank W. Lewis, 1931, non-payment of Water Master assessments:**

23 **● 030931 In Re Geo. W. Lewis and Frank W. Lewis Charged with the Contempt of the above**
24 **Entitled Court, Order for issuance of Rule to Show Cause (nonpayment) Archives box 5 file 25**
25 **of 39**

26 **● 030931 Application and Affidavit, Proceedings for Contempt against Geo. W. Lewis and Frank**
27 **W. Lewis (nonpayment) box 5 file 23of 39**

- 1 ● **030931 In Re Geo. W. Lewis and Frank W. Lewis charged with the Contempt of the Above**
- 2 **Entitled Court, Order for Issuance of Rule to Show Cause, defendant has a copy but court's copy**
- 3 **seems to be missing**
- 4 ● **Mar 12 Hearing; order amount due be paid by April 1, 1931 and further hearing on order to**
- 5 **show cause con't to Apr 13 [entry on court's docket list, not matched]**
- 6 ● **031431 In Re Geo. W. Lewis and Frank W. Lewis charged with the Contempt of the Above**
- 7 **Entitled Court, Rule to Show Cause, (nonpayment) return of marshal attached box 5 file 23 of**
- 8 **39**
- 9 ● **Mar 31 Filed application for contempt Issued order to show cause [entry on court's docket list,**
- 10 **not matched]**
- 11 ● **May 11 Or.hrg,order show cause dropt. from cal [entry on court's docket list, not matched]**
- 12 ● **121631 Application of Plaintiff in the Matter of the Contempt Proceedings against Delinquents**
- 13 **under the Order of this Court of March 12, 1931 (St. John Outing Club, successor to defendant**
- 14 **J.O. Brittan, D.E. Studybaker, Bruce H. Sutliff, M.G. Bedford, Geo. W. Lewis, Frank W. Lewis,)**
- 15 **box 4 file 27 of 41**
- 16 ● **121631 Affidavit Upon Application for Order to Show Cause in Proceedings for Contempt,**
- 17 **nonpayment St. John Outing Club, C.E. Studybaker Bruce H. Sutliff, M.G. Bedford, G.W. &**
- 18 **F.W. Lewis box 5 file 25 of 39**
- 19 ● **121631 In the Matter of the Contempt Proceedings against Delinquents Under the order of this**
- 20 **Court of March 12, 1931. Order for Issuance of Rule to Show Cause (nonpayment, St. John, et**
- 21 **al.) box 5 file 25 of 39**
- 22 ● **Dec 21 Hrg. order show cause re;contempt- ????? dropt from Cal. [entry on court's docket list,**
- 23 **not matched]**
- 24 ● **122631 Rule to Show Cause, with returns attached b5 25/39 --**
- 25 **1932 Werth:**
- 26 ● **091232 Order for Warrant of Arrest, Henry Werth and Mrs. Mary E. Werth box 5 file 23 of 39**
- 27 ● **091232 Bench warrant, bond \$1,000 each, arrest Henry Werth and Mrs. Mary E. Werth,**

1 **Marshal's return 10/13/1932 box 5 file 23 of 39**

- 2 ● **091232 Information for contempt, Henry Werth and Mrs. May E. Werth diversion in excess of**
3 **quota, interfering with WM access, torn down & destroyed WM notices, (handwritten**
4 **10/13/1932 disposition of case: Oct 13 1932 Hearing - Contempt, Each found guilty by Court**
5 **Henry Werth Sen Imp 6 months in jail - Execution Judg (?) Imp suspended & deft placed on**
6 **probation for one year - {not to report? repeat?) matter Judg of Mary E. Werth cont to Oct 13**
7 **1933) [The Werths were represented by two associates of George E. McCutchen] box 4 27 of 39**
- 8 ● **100132 Bill from Water Master September \$300.00 box 4 25 of 39**
- 9 ● **Oct 3 Certain defts plead Not Guilty, con't Oct 10 be set for trial [court docket entry, not**
10 **matched]**
- 11 ● **101332 Affidavit of Service, E.A. Garland served a certified copy of the 03/14/1932 (Water**
12 **Master) Order on Mrs. May Werth box 5 23 of 39 --**
- 13 ● **101332 narrative of events of Werth trial box 5 23 of 39; hearing with attorneys, testimony,**
14 **argument, submitted, 6 months in a county jail for Henry suspended probation of 1 year,**
15 **continue May E. Werth until October 13 1933, notes that it was not called upon the calendar**
16 **10/13/1933 box 5 file 23 of 39 --**
- 17 ● **121333 Motion (and Order) to Terminate Probation and Discharge Defendant from Further**
18 **Supervision of Probation Officer, re Henry Werth box 4 file 23 of 39**

19 **1933 Provence:**

- 20 ● **080233 Information for Contempt, Ben F. Provence, et ux. (pumping from Bedford Ditch)**
21 **written on cover: 09/11/1933: defts. arr. & plead not guilty. After hearing had, Ord. Infm.**
22 **dismissed & defts discharged. box 5 file 23 of 39**
- 23 ● **Aug 2 Filed information for contempt and petn. for issuance of warrants of arrest. Issg bench**
24 **warrants [court docket, not matched]**
- 25 ● **080933 Order for Warrant of Arrest (Ben F. Provence, et ux.); I have copy, from 2001 or 1976,**
26 **not found in archives anymore?**
- 27 ● **091333 Bench Warrant, 08/09/1933, bail \$100, with return, to United States Marshal to arrest**

1 **Ben F. Provence and Jane Doe Provence, for contempt box 5 file 23 of 39**

- 2 ● **Sept 11 Defts plead Not Guilty. Hearing had. Or. information dismissed [court docket entry, not**
3 **matched]**

4 **1947 Wright:**

- 5 ● **112047 [S by stamp?] Order to Show (that E.A. Wright appear 12/01/1947 and show cause why**
6 **he hasn't installed certain equipment in his pumping plant, and that the marshal serve it Order**
7 **on Mr. Wright) box 4 file 29 of 39**
- 8 ● **092647 clerk to water master, lighten up [using his irrigation water for his toilet]. box 4 file 29 of**
9 **39**
- 10 ● **092947 letter from water master to court complaining the Court undercuts his authority, etc. box**
11 **4 file 29 of 39**
- 12 ● **100147 clerk to E.A. Wright telling him to follow the procedure on p. 176 if he feels water master**
13 **is unjust box 4 29 of 39**
- 14 ● **112547 letter from Edward A Wright box 4 file 29 of 39**
- 15 ● **112547 return box 4 file 29 of 39-**
- 16 ● **112847 letter from clerk telling him & his atty to appear box 4 file 29 of 39**
- 17 ● **112047 Affidavit (by water master re E.A. Wright case, prays for order to show cause, did on**
18 **08/28/1947 demand E.A. Wright install 1) gate valve, handle permanently affixed, in discharge**
19 **line of pump, and 2) a water meter in the discharge line ahead of the gate valve, that registers**
20 **cubic feet) box 4 file 29 of 39**
- 21 ● **112047 Order to Show (as described above) box 4 file 29 of 39**
- 22 ● **Dec 1 Hrg, order to show cause re contemp of deft Wright. Order deft, comply with request of**
23 **water master [court docket entry, not matched]**

24 **1985 Gregory**

- 25 ● **Letter between docs 76 & 77, Docs 77,78,79,80**
- 26 ● **Between Doc #82 &83, 041885 - MINUTES: Judge Wilkins, Order to Show Cause denied, USA**
27 **(Solomon Robinson) v. Angle (Gary Gregory, pro-per) [WHY? perhaps as explained at the**

1 bottom of p. 2 of 1985 Water Master Report, Doc #96 [Gregory? contempt denied by Court
2 04/18/1985] "Court determined that language in the contract between the water district
3 and...Reclamation was ambiguous and the defendant could have thought he was diverting under
4 the contract and was found not guilty of contempt of court." ; Was this Gregory?]

5 **1992 Castro**

6 ● Docs 195, 224, 225, although on re-reading this it appears the Water Master showed the patience
7 of Job in dealing with Mr. Castro, for which in no way may he be faulted.

8 **In my list at pp. 5 & 6 of my Doc 284-2 I missed the Buckleys in 1960:**

9 ● 091460 Letter Daniel A. Gilman to Judge Halbert, If OK, Buckleys have permission to use 200
10 a-f from his Alec Braun ranch allotment b6 B1-M/12m

11 ● 091460 Jane E. Buckley, L.F. Buckley, & U.M. Buckley, Petition to Review Order of Water
12 Master Cutting Off Further Diversion of Water From Stony Creek, service by mail to Water
13 Master, Water Master cut them off 09/09/1960 saying they'd used their entire allotment for the
14 year leaving livestock and old & new pasture without water b6 2M/12M -

15 ● 091660 (Order granting) Petition of Jane E. Buckley, L.F. Buckley, and U.M. Buckley to Use
16 Additional Water from Stony Creek, petition modified to cut to 150 acre-feet from 200, and to
17 charge to account of Daniel Gilman b6 2M/12M - --

18 ● 091660 Memorandum and Order Relative to Notice for Future Hearings in This Proceeding,
19 following approval Buckley diversion of Gilman allotment, requiring that no future hearings
20 occur unless all interested persons are first notified b6 2M/12M - --

21 **But the two worst were what happened to Colusa County and Holly Reimers.**

22 **Colusa, 2 decades, ending with :**

23 ● 011086 Doc #94 - here the county is limited to a pittance (30 acre-feet per season) while the basin
24 sits on an annually replenished aquifer of more than 10,000 acre-feet. see Declaration D.E.
25 Kienlen, Civil Engineer w/Colusa County, attached to 06/15/1984 Doc. #58; at p. 8 of my January
26 19, 2009 filing I pointed out how underflow in the Decree is limited to plaintiff's diversion points,
27 and that is at pp. 171 & 172 of the Decree. The resolution of the Colusa controversy changed

1 **that. Unless the court addresses that, it's a massive expansion of the scope of the Decree.**

2 **Holly Reimers and her predecessors "settled" with Reclamation and OUWUA and its successors**
3 **some 7 or 8 times, and because Reclamation and OUWUA kept welshing on the deal she ultimately**
4 **had to sue and spend an eighth of a million dollars on costs and legal fees just to keep a portion of**
5 **what they had furnished her all along and what they had promised in the beginning:**

- 6 ● **Scarce sale to Stony Creek Irrigation District, in the face of condemnation threats, tr. p. 3062**
7 **top 8 lines, vol. 16, Box 2, second unmarked folder, plus Exhibit F to Doc #245**
- 8 ● **01/13/1930, Angle Decree, p. 149 among other places**
- 9 ● **The pattern of selling her excess water that continued until the Water Master decided to single**
10 **her out while ignoring overdrafts by the Government**
- 11 ● **Stipulated Agreement Doc #108**
- 12 ● **Reimers stipulation attached to Doc #211**
- 13 ● **10/21/1993 Court of appeals Opinion, 7 F.3d 891 (1993)**
- 14 ● **04/14/1995 Doc #245**

15 **So, what are they going to try next?**

16 **Wackerman spent less, but got cheated out of a lot more, Wackerman**

- 17 ● **stipulation attached to Doc #211**

18 **In the Reply to which this declaration is attached is a chart showing, for what years the court**
19 **received water master reports on it, that the Government overdrew its allowance by tens of**
20 **thousands of acre feet, often per year, while all of these people listed here were harassed**
21 **unmercifully for relatively minute quantities of water, contempt for non-payment excepted of**
22 **course.**

23 **The Court's own records show these patterns of discriminatory enforcement. It seems**
24 **plaintiff always take more, but defendants usually take less. I should not even have to bring it up**
25 **because the court should have rectified the patterns long ago.**

26 **2. References mentioned within plaintiff's Response: Doc #298:**

1 None, but see manifest injustice, etc. in Reply to which this attaches, as well as those injustices
2 described in #1 above.

3 **3. References in defendant's Reconsideration Brief & Affidavit, Doc #297,**
4 **p. 5, see #1 above**

5 **4. References in defendant's Reply, Doc #293,**

6 **p. 1. Excess water - the document plaintiff says on p. 5 of his Doc 290 Reply that he cannot find**
7 **and the clerk cannot find is dated 01/12/1990 and is Doc #151 (folder #7), declaration of HOLLIS B.**
8 **REIMERS in Support of Plaintiffs' Motion for Summary Judgment, in which she describes routine**
9 **sales of excess water. That sales program, along with the program for sale of "Transfer Water" is**
10 **also concisely described at pp. 6 & 7 of Doc. #245, which is in folder #10.**

11 **p. 2. Decree Book, including Brief and Findings, Box 2, front**

12 **p. 3. 1930 corrected decree, box #2, expanding file**

13 **p. 3. Settlement of the findings, rear half of transcript Vol. 27 09/18/1929 box 6 file A1M of 12M**

14 **p. 3. Order correcting errors in Decree, box 4 file 27 of 39**

15 **pp. 3-4. Report of Master Pro Hac Vice, box 5 file 24 of 39**

16 **p. 4. Replication to Conklins, box 4 file 2 of 39**

17 **p. 7. Motion to dismiss GCID, et al., [typewritten] box 4 file 14 of 39 & [typeset] box 3 file 9 of 39**

18 **p. 7. Order orruling motion to dismiss GCID, et al., box 3 file 9 of 39.**

19 **p. 8. Answers of James Mills Orchard Co. & Esperanza Land, box 3 file 12 of 39**

20 **p. 8. Plaintiff's replication to Answers of James Mills Orchard Co. & Esperanza Land, box 5 file**
21 **26 of 39**

22 **p. 16. Answer of Mastersons, box 3 file 8 of 39**

23 **p. 18. E.A. Wright, see part #1 above**

24 **p. 27. Angle Transcripts, pp. 1499-1509, vol. 8, file 7T, box 1**

25 **p. 27. Angle Transcripts, pp. 4123-4127, vol. 22, file 15T, box 2**

26 **5. References mentioned within plaintiff's Reply, Doc #290:**

27 **pp. 3-5. 5-acre parcels, for instance limit in Reclamation Terms attached to Doc #108 with**

1 requirement #1b. Irrigation water: "tracts of land operated in units of more than 5 acres."

2 p. 5. Excess water & Reimers Declaration, see part #4 above.

3 p. 5. "1990, even if true, is not probative of the current status"; if not, that would be the 8th time
4 they weasled on an agreement with Holly Reimers, see part #1 above.

5 p. 13. oppressive activity, see part #1 above

6 6. References in defendant's First Amended Opposition, Doc #284:

7 p. 2. Garland letter, box 6 file 4M of 12M

8 pp. 5-6. oppressive activity, see part #1 above

9 pp. 7 and 10. Reimers Declaration, Doc #188, folder #9

10 p. 7. Reclamation stock pond letter box 6 file 4M of 12M

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

14 Executed on April 13, 2009,

15 /s/ Michael J. Barkley

16
17 Michael J. Barkley, Defendant, in propria persona
18 California SBN 122433
19 161 N. Sheridan Ave. #1
Manteca, CA 95336
(209)823-4817 (no fax) mjbarkl@inreach.com

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

| | | |
|----|---------------------------------|--|
| 10 | _____) | Civil No. S-80-583-LKK [In Equity No. 30] |
| 11 | THE UNITED STATES OF AMERICA,) | |
| 12 | Plaintiff,) | DEFENDANT MICHAEL J. BARKLEY'S |
| 13 | v.) | DECLARATION #2, FRAUD ON THE |
| 14 | H. C. ANGLE, et al.,) | COURT TIMELINE IN SUPPORT OF MOTION |
| 15 | Defendants.) | TO RECONSIDER ORDER, |
| 16 | _____) | Federal Rule of Civil Procedure 60(d)(3) |
| | | DATE: April 20, 2009, Vacated |
| | | TIME: 10:00 a.m. |
| | | COURT: Courtroom 4, 15 th Floor |

17 **My name is Michael J. Barkley. I am a defendant in this proceeding and I researched,**
18 **compiled and wrote this Declaration.**

19 **Following is a Fraud on the Court subset of the timeline in my comprehensive, chronological**
20 **Angle case index:**

21 **- 06/29/1922 Order, appointing Geo. A. MCCUTCHEN as master pro hac vice to hold hearings in**
22 **Willows, and return proofs and findings of fact and conclusions of law, Angle Archives box 3 file 10**
23 **of 39**

24 **- 09/29/1922 Order by Special Master Appointing Emmet Healy stenographic Reporter, signed**
25 **06/26/1922 box 3 file 12 of 39**

26 **- 09/29/1922 Order signed by Special Master Setting Date for Trial 10/12.1922, list of solicitors**
27 **attached. box 4 file 13 of 39**

1 - 10/12/1922 Hearings begin in Willows, Transcripts vol 1, box 1 file 1T; throughout the hearings,
2 Exhibits were poorly marked, and many of them are missing - the bulk of the Exhibits are in
3 Archives box 4 file 30 - 39

4 - 10/20/1922 Oath of Office of Special Master notarized by the clerk & filed 8 days after he started
5 hearings, 118 days after he started issuing orders, and 6 days after plaintiffs presented the
6 groundwork of their case box 4 file 13 of 39

7 - 11/13/1922 I might have missed it but I didn't notice where E.T. Eriksen, who presented the bulk
8 of the government's case over this 3-1/2 years, was ever sworn

9 - 01/01/1923 Claude F. Purkitt took office of Superior Court Judge, Glenn County Superior Court,
10 presumably this First Monday in January. 01/1930 Willows Journal articles (California State
11 Museum History Room Microfilm, 9th & N Streets, Sacramento) say he defeated Judge Bell for it in
12 1922. Judge Purkitt (formerly, State Senator) and Frank Freeman represented the bulk of
13 defendants in those early years.

14 - 01/05/1923 first mention of George E. MCCUTCHEN in Westlaw, defending a red-light
15 abatement case - what were his qualifications to handle the job of Special Master? In the Orr Ditch
16 cases in Reno, the Special Master was a retired judge who left hundreds of pages of notes. There
17 are no notes from Mr. MCCUTCHEN anywhere in the record; of course, he didn't need any
18 because he prepared only a report, if that.

19 - 07/20/1923 John P. Ryan began testimony for James Mills Orchard Co. et al., without counsel
20 present, counsel ill; considerable testimony about wells and downstream underflows, Transcripts
21 volume 16 pp. 2900 off and on to 3092, 6 days in July and September; Warren Gregory of
22 Chickering and Gregory, San Francisco, showed up for James Mills Orchards et al 09/11/1923
23 tr p. 3091 and shut down testimony; box 2 second unmarked file, and on October 2, 1923 Mr.
24 Freeman asked to amend the answers James Mills Orchards (and apparently all 7 downstream
25 underflow users) apparently on the belief that no further diversions would be undertaken by the
26 government, transcript vol 20 p. 3535, box 2 file 14T; was Mr. Freeman's comment wishful
27 thinking? see 09/30/1925 James Mills Orchard & Esperanza Land (prepared and signed by

1 Chickering and Gregory) underflow protests with SWRCB predecessor for application 2212 for
2 Stony Gorge mentioned below;
3 - 09/03/1923 Judge Van Fleet Died; no record appears in the archives of any communication of any
4 sort between the Special Master and any District Court Judge, other than his report on 11/07/1929.

5 Who supervised him?

6 - 01/28/1924 Judge KERRIGAN appointment to the District Court confirmed
7 - 02/25/1924 Amended Answer of Defendants James Mills Orchards Corporation and Esperanza
8 Land Corporation to the Amended Complaint Herein box 5 file 26 of 39 , one page, some sort of
9 understanding that later unraveled? other downstream underflow Users disclaimed below except
10 for Andrew Kaiser? Were they all lulled by Mr. MORTON's assurances that these were the only
11 diversions intended as Mr. Freeman mentioned at tr p. 3535?; see protest before SWRCB
12 predecessor of Reclamation application #2212 for Stony Gorge 09/30/1925, by then Freeman was
13 dead and Chickering and Gregory represented them but this amended answer was not withdrawn
14 for some reason, possibly because the Angle case was considered closed 08/28/1924

15 - 04/13/1924 Lawyer Frank Freeman died, represented the Lower Stony Creek Underflow
16 Defendants plus more defendants than any other lawyer , Willows Journal, California State
17 Library History Collection microfilm, 04/14/1924

18 - Four of Frank Freeman's remaining 5 downstream underflow defendants disclaimed (all except
19 Andrew Kaiser)

20 - 06/05/1924 Disclaimer of Defendant Jos. M. Billiou box 5 file 26 of 39

21 - 06/03/1924 Disclaimer of Defendant Annie Hoever box 4 file 27 of 39

22 - 06/05/1924 Disclaimer of Defendant R.T. Jones box 5 file 26 of 39

23 - 06/10/1924 Disclaimer of Sacramento Valley Sugar Company box 4 file 27 of 39

24 - 08/28/1924 Transcript vol. 24 p. 4412, hand corrected to 4467, box 2 file 18T,

25 "MR. MORTON: ...may have to ask for a very brief session as to certain matters
26 that are pending on stipulation, and as to one or two other details.

27 "THE MASTER: ...subject to an application to reopen the matter on those
28 grounds, as I understand you, the plaintiff's case may be considered closed
at this time."

1 - 09/11/1924 Letter MORTON to Clerk. . . John F. Truesdell, Special Assistant to the Attorney
2 General is relieving Oliver P. MORTON on Angle as of 09/01/1924 box 5 file 25 of 39
3 - 10/29/1924 Stipulation, Chas. M. Hall & Gertrude G. Hall in relation to the Stony Creek
4 Irrigation Company agreements and deed, /s/ JOHN S. PARTRIDGE, JUDGE box 6 Large Brown
5 Envelope #2

6
7 Here is where the Angle Plaintiffs ran into problems:

8 - 02/13/1925 Fresno Superior Court Judge J.E. Woolley issued his 79 page *Amelia Herminghaus, et*
9 *al., v. Southern California Edison Company*, Opinion, case #35130; 03/06/1925 Judge J.E. Woolley
10 issued his *Herminghaus* Judgment; 04/13/1925 Judge J.E. Woolley denied new *Herminghaus* trial;

11 I have purchased photocopies of 4 of these *Herminghaus* documents, that is, the Opinion and
12 Judgment plus the two briefs later in 1925, from the California State Archives, 1020 "O" Street -
13 4th Floor, Sacramento, CA 95814, 916/653-2385; for the *Herminghaus* case, California Supreme
14 Court Case #S.F. No. 11630 In Bank.-- December 24, 1926, State Archives file number 25814;
15 Fresno Superior Court was unable to furnish any of these dates so the Archives were the best
16 source; if asked, I can furnish a photocopy of these, or place them upon my web site as corrected
17 OCR transcriptions with my Declaration as to authenticity. Portions of the Judgment were
18 excluded from the pages actually delivered to me by the Archives so I would need to return
19 and re-purchase the missing pages. I did not purchase the Findings dated 03/06/1925, or the denial
20 of new trial

21 - [from 01/07/1985 folder #4, Doc. #75 Declaration of Water Master re Water Rights and
22 Associated Problems within Stony Creek Watershed p. 2: "Hearings were held in Sacramento in
23 1925 and Oliver P. MORTON was retained to represent Orland Unit Water Users' Association in
24 this adjudication suit." the record of this is MISSING from the archives

25
26 Angle plaintiffs tried to push the case along:

27 - 10/13/1925 Notice of Motion box 5 file 24 of 39

1 - 10/13/1925 Motion for Order and Affidavit in Support of Motion for Order, box 5 24 of 39 , to 13
2 attorneys & 6 pro per, Plaintiff, to require Special Master George E. MCCUTCHEN to appear and
3 show cause why he should not return...Report of Special Master hereto annexed.....; attached Draft
4 Findings of Fact with 5 blueprint sheets of "Schedule of Water Rights in Stony Creek Watershed",
5 "prepared by affiant"; p. 6 of affidavit out of order, at end /s/ Harold BAXTER, Special Assistant
6 to the Attorney General, Phoenix, OCTOBER 10, 1925 box 5 file 20 of 39 ; disposition of this
7 motion is MISSING. Is there some recording in a journal somewhere with the Northern District?
8 Northern District Clerks not yet helpful. Is this the hearing the water master spoke of?
9

10 - 10/19/1925 Harold BAXTER and James F. Lawton signed & 10/22/1925 filed 76 page California
11 Supreme Court brief as amicus curiae in support of Appellants in *Herminghaus*

12
13 - 11/17/1925 Opinion & Order, SWRCB predecessor approved Reclamation Application #2212,
14 Decision D-83 allowing 50,200 a-f diversion and storage in Stony Gorge; Richard J. COFFEY for
15 Reclamation; protestors included James Mills Orchard Co., Esperanza Land, BROWNELL
16 Brothers, and Glenn-Colusa Irrigation District (GCID), each wanting to make sure their rights
17 were protected. As it turned out GCID's were, BROWNELL's definitely were not, James Mills &
18 Esperanza Land have been allowed to use underflow by Angle water master and the Angle Court so
19 it's hard to say if their rights were protected or not. D-83 is at
20 <http://www.waterrights.ca.gov/hearings/Decisions/WRD83.pdf>

21
22 - 11/19/1925 Richard J. COFFEY signed & 11/30/1925 COFFEY filed 129 page *Herminghaus* brief
23 with California Supreme Court, an encyclopaedic survey of riparian rights in the U.S. with a plea
24 to the Court to set aside California's riparian law and adopt the "reasonable and beneficial"
25 limitations of other western states, joined by Irrigation District Association of California and
26 35 individual irrigation districts including signed by Hankins and Hankins for GCID
27

1 - 12/30/1925 COFFEY withdrew his name from *Herminghaus* brief with California Supreme
2 Court, brief position conflicted with Mr. Baxter's Federal Power brief - pretty obvious DOJ and
3 Reclamation not communicating very well

4
5 - 01/26/1926 *Herminghaus* case argued before California Supreme Court

6
7 Angle plaintiffs bring out their back-up plan:

8 - 02/25/1926 Order (presumably signed by Mr. MCCUTCHEN) vacating the submission and
9 reopening the case, served on the solicitors of all parties by mail that day, with a copy of the (Mr.
10 Sheridan's) application therefor; contents of application unknown, with notice of hearing
11 03/23/1926, MISSING from Archives transcript pp. 4703,4,5, Volume 26, Box 6.

12 - 03/25/1926 hearings resume; these hearings were much more comprehensive than provided for at
13 the 1924 "submission"; they read into the record property descriptions for all disclaimer and *pro*
14 *confesso* defendants; were they trying to do an end-run on *Herminghaus* in case it was upheld, at
15 least to support a claim before an alert judge as to the rights taken from defaulters?

16
17 - 04/02/26 Stipulation (Olive Scearce Parsons, W.E. Scearce and Mary J. Scearce as to the meaning
18 of the Stony Creek Irrigation Company agreement & deed, etc. /s/ Frank N. [sic] KERRIGAN,
19 Judge" ; these two stips are Judge Kerrigan's first link with the case in the archives, box 6 Large
20 Brown Envelope #3

21 - 040226 Stipulation (Glenn-Colusa Irrigation District)(keeping the agreement but modifying some
22 of its terms, It is so ordered: /s/ Frank N. [sic] KERRIGAN, Judge" box 4 file 13 of 39

23
24 - 04/19/1926 Second mention of George E. MCCUTCHEN in Westlaw, bankruptcy case? Faulty
25 record on appeal?

26
27 - 07/29/1926 *Herminghaus* case re-argued before California Supreme Court

1 - 12/24/1926 *HERMINGHAUS* decided by California Supreme Court, public furor leading to
2 11/06/1928 Constitutional Amendment; basically riparian rights cannot be taken, they must be
3 purchased under eminent domain. Angle case comes to a dead stop.

4
5 - 03/03/1927 third mention of George E. MCCUTCHEN in Westlaw, defending a pimping charge

6
7 - 09/01/1927 *FALL RIVER* decided by California Supreme Court, in case *Herminghaus* wasn't
8 clear, *Fall River* is: if you take riparian rights, you must pay for them.

9
10 - 10/06/1927 *Herminghaus* before U.S. Supreme Court, cert. dismissed as improvidently granted

11
12 - 12/29/1927 Letter Oliver P. MORTON asking Clerk about two 1922 orders, appears to be
13 working on the Angle brief while the dust settles after *Herminghaus & Fall River* box 4 file 13 of 39

14
15 **Herminghaus Dust settled, time for a trial balloon?**

16 - 04/19/1928 DECREE BOOK (Plaintiff's Opening Brief, Findings of Fact and Conclusions of Law,
17 and Decree), all prepared by plaintiff (Brief, p. 5 for instance), filed with George E.

18 MCCUTCHEN, Special Master (noted on outside back cover of 1928 Draft Decree book) Brief,
19 findings and decree based on argument and erroneous prediction that California riparian law is
20 wrong and will eventually not stand, brief dismissive of *Herminghaus & Fall River*, the 70 page
21 brief including a 20 page rant on California Riparian rights box 2, front

22 Brief was signed by: B.M. Parmenter, Assistant Attorney General, G.A. Iverson & Oliver P.
23 MORTON, Special Assistants to the Attorney General, Solicitors for Plaintiff; Of Counsel: Richard
24 J. COFFEY, District Counsel, U. S. Bureau of Reclamation.

25 At p. 19 of the brief is the first of 3 references (pp. 19-21, 35-36, 47-48) to a case: "*In United*
26 *States of America v. Truckee River General Electric Company et al.*, the Government initiated an
27 adjudication of the relative rights to the waters of the Truckee River in the Federal Court for

1 the Nevada District. Service of original process was had upon some six hundred defendants, if the
2 writer of this brief, who was identified with the proceeding on the Government's side, remembers
3 correctly,..." The case with that name was actually from the same District as Angle, settled
4 to Consent Decree setting the Floriston [flow] Rates in 1915 (and currently assigned to Judge
5 KARLTON). The case with the fact pattern of the 3 references in Angle was actually *United States*
6 *v. Orr Water Ditch, et al.* with which both Mr. COFFEY and Mr. MORTON were associated in some
7 manner.

8 On 03/18/2009 I skimmed through much of the pre-1930 portions of the *Orr Water Ditch* files in
9 Reno continuing an effort to understand who wrote the Angle brief. Truckee River General
10 Electric was a defendant in that case as well. With the few hours I had available, I did not find the
11 procedural stipulation in *Orr Water Ditch* mentioned at p. 20 of the Angle brief, but did find one
12 like it dated 06/01/1925. Mr. MORTON did witness examination or cross examination for plaintiff
13 on 10/15/1919 and may have on other dates but it appears he was not allowed to after that first time
14 (8500 pages of transcripts, without indexed or other counsel identification except when they speak
15 without asking a question), and his name was typed as "District Counsel, Reclamation Service" on
16 most Replies to Answers. Did he forget the name of the case over the next 8 years?

17 Mr. COFFEY's name appears at least once in the Orr Ditch files in a 09/04/1925 letter as
18 having been in conference with George Springmeyer, United States Attorney for District of Nevada,
19 regarding objections to the Special Master's findings. The Angle brief reads like a sequel to his
20 *Herminghaus* brief

21 Special Master MCCUTCHEN's 11/07/1929 report Section III recites how the case lagged after
22 Mr. MORTON left in 1924 (09/11/1924 letter), and Section V how it got going again after he was
23 reassigned back to the case in May 1929 but that's 13 months after the date Mr. MCCUTCHEN
24 wrote "filed" on the Decree Book (including brief). Mr. MORTON was around 03/25/1926 as
25 an amicus in that hearing, and 12/29/1927 following up on court orders.

26 VOL XIX 1928, May, 1928 , NEW RECLAMATION ERA (Reclamation house magazine) p.
27 79, "Reclamation Organization Activities and Project Visitors":

1 "Associate Engineer E.T. Eriksen and Supt. R.C.E. Weber, Orland project, spent
2 several days at San Francisco in conference with District Counsel COFFEY and
3 Oliver P. MORTON, special assistant to the Attorney General, in connection with the
4 preparation of the Government's opening brief in the Stony Creek water right
5 adjudication suit."

6 http://www.archive.org/stream/newreclamationer19unitrich/newreclamationer19unitrich_djvu.txt
7 (the web URL is a crude OCR scan of the text; to see the actual, but hard to read text delete the last
8 piece of the URL, making it

9 <http://www.archive.org/stream/newreclamationer19unitrich> , and then use the arrows on the right
10 side of that page to get to May, and then find p. 79 within May. From reading a number of these
11 "Visitors" page in the ERA, it's obvious that they are not specific to the date of the magazine issue.
12)

13 And then in Mr. MORTON's 07/06/1929 letter Mr. MORTON seems to take sole personal
14 credit for the Decree's language, top of p. 2 of that letter, at least that provision of it.

15 - 08/20/1928 Fourth mention of George E. MCCUTCHEN in Westlaw, sale of sheep, venue problem

16 - 11/06/1928 California voters adopt changes to Constitution making riparian rights subject to
17 "reasonable and beneficial" limits

18
19 - 11/23/1928 Fifth mention of George E. MCCUTCHEN in Westlaw, first of a blizzard of fraud
20 cases against Sacramento Suburban Fruit Lands Co. which was peddling somewhat worthless land
21 to immigrants in Minnesota, etc., describing it as deep bottom land well suited to fruit orchards;
22 Westlaw shows 61 cases for Mr. MCCUTCHEN of which 41 were Fruit Lands; of the 61, in only
23 one did he appear alone.

24
25 - UNDATED Brief of Defendant J.E. Ayer, gives new meaning to the word "brief", box 4 file 37 of
26 39 , transcribed at <http://www.mjbarkl.com/ayer.htm>

1 - January, 1929 , NEW RECLAMATION ERA (Reclamation house magazine), Volume XX p. 14,
2 **R. J. COFFEY**, District Counsel article: "Riparian Rights in California", discussing California
3 riparian law since *Lux v. Haggin* including *Herminghaus* and the resulting 1928 California
4 Constitutional Amendment.

5 http://www.archive.org/stream/newreclamationer20unitrich/newreclamationer20unitrich_djvu.txt

6 - see note at May 1928 above on looking at these ERA archive web sites

7
8 **Robert M. RANKIN** (appointed to Superior Court by the governor in 1930) objects to the Decree:
9 - 01/01/1929 R.M. RANKIN, Brief and Objections to Proposed Findings and Decree by Certain
10 Defendants Represented by R.M. RANKIN, Solicitor; note that this does not appear in the archives
11 until it appears as Exhibit M, Doc #144 in Volume 6 in 1990. From this and Exhibit N from Mr.
12 **MORTON** it is obvious The Department of Justice has a historical file parallel to the Angle
13 Archives - a copy of the **BROWNELL** protest is appended to that Exhibit M for unknown reason.
14 Brief is transcribed at <http://www.mjbarkl.com/rankin1.htm> I was more than a month into the
15 Archives before I found this important piece.

16 Some excerpts:

17 "It is also well understood that in those early days exact measurements and
18 scientific statements of matters relative to water use were not in vogue. Therefore, the
19 various defendants who farm the lands and make use of the water involved in this
20 action, experience some difficulty in this case in making proof of their claims in the
21 manner and by use of the terms used and expected by the representatives of plaintiff.

22 "The evidence in this case is voluminous, and I find it difficult and practically
23 impossible to properly present this matter before the Master and the Court, which is
24 not surprising when we recall that the plaintiffs have taken more than four years'
25 time in which to analyze the evidence and [Page break] present the law and proposed
findings and decree in its opening brief served on April 5, 1928.

26 "Defendants have been limited in their time to make a reply to that brief and
objections. It will readily be understood that it requires much time and much labor to
27 analyze all the matter contained in plaintiff's opening brief affecting the rights of a
number of defendants, and that the cost of so doing, together with all the other costs
imposed on defendants in this action, render it impossible to do the matter justice in a
brief of this kind, and that, therefore, the judgment limiting defendants' property
rights should be closely scrutinized, first by the Master, and then by the Court."

28 Scrutinized, not ignored. But, of course, the Court never saw this Brief because **MORTON**, and
maybe **MCCUTCHEN** persuaded him to withdraw it. These days the concept of a lawyer

1 representing a class is well-defined, but in the 1920s I don't believe it was. The upstream owners
2 were an unrepresented class of defendants, from 15 lawyers to start (transcript p. 6, volume
3 1, box 1 file 1T), only one showed up at the 01/13/1930 hearing. And maybe not even one.
4 That hearing document appeared to have been prepared in advance and as to whether Mr.
5 McGowan actually showed up remains to be proven.

6 Mr. RANKIN continues with 12 pages of specific objections. Surprisingly he doesn't mention
7 that the treatment of riparian rights by the decree is illegal under Section 8 of the Reclamation Act
8 because of the holdings of the California Supreme Court.

9
10 But the BROWNELLs do:

11 - 02/05/1929 Protest by L.E. BROWNELL, R.H. BROWNELL, D.L. BROWNELL, Mrs. L.R.
12 BROWNELL (typewritten but very faint and hard to read or copy), basically, proposed
13 Findings and Decree incorrect under *Herminghaus* decision; appears professionally drafted? all 4
14 signatures identical and resemble attorney George Freeman's handwriting; box 4 file 37 of 39 ;
15 another much more legible copy, with typed signature, follows Exhibit M, Doc #144 in 1990 for
16 some reason; The BROWNELLs owned 14,000 acres on Stony Creek between Elk Creek and the
17 Government's diversion points at what were then called Miller's Buttes; they had irrigated 100 acres
18 for awhile, and had plans to irrigate 3,000 riparian acres, see generally testimony of the Brownells,
19 tr 2975-2995, vol. 16 box 2 second unmarked folder. The Army Corps of Engineers eventually
20 destroyed what was left of their ranching empire when they took it for pennies on the dollar
21 (compared to what it would have been worth irrigated) for Black Butte Reservoir; Protest
22 transcribed at <http://www.mjbarkl.com/brownell.htm>

23
24 - 06/17/1929 5 Stipulations signed by Judge KERRIGAN (June 1929?) 1) cancelling substuting
25 Edith McGahan, in that W.A. Morris filed an answer & submitted proof (This series of stipulations
26 from R.M. RANKIN 1927 & 1928); Stipulation for Substitution of W.H. Stites ; Stipulation for
27 Substitution of Charles H. Ridley ; Stipulation for Substitution of Harvey E. Provence ; Stipulation

1 for Substitution of M.G. Bedford

2
3 - 07/06/1929 Letter Oliver P. MORTON to R.M. RANKIN, re 01/01/1929 Brief - Exhibit N Doc
4 #144 1990)Volume 6 in 1990); again, like the brief to which it responds, it did not show up in the
5 Angle record until 1990 - referenced in Transcripts vol. #27 p. 8 box 6 file A1M of 12M , and in the
6 11/07/1929 Report of the Special Master p. 4 Section 6, box 5 file 24 of 39 ; MORTON letter is
7 transcribed at <http://www.mjbarkl.com/morton.htm>

8 "In talking over the matter of procedure in the premises, we came to the conclusion,
9 as I recall it, that our wisest course would be to have an understanding that your
10 brief and objections would be formally withdrawn at the September hearing. I have
11 given some further consideration to this feature, and am convinced that it is by far
12 the preferable plan.... You still join me, I know, in the conviction that a handling of
the matter by the retention of your brief in the cause, and the making and filing of a
stipulation covering and disposing of every controversial point therein, not only
would unnecessarily encumber the record, but also might have a tendency to disturb
the nicely balanced situation which we both want to preserve."

13 [emphasis added, the trap was sprung. Mr. Rankin cannot be faulted, he was representing his
14 clients, not the watershed.]

15
16 - 09/03/1929 Letter MORTON to Clerk enclosing stipulations signed by Judge KERRIGAN:
17 Thomas Fairlee for Preston Morris and John M. Morris; assent to general stip by Sutliff group box
18 5 file 26 of 39

19 - 09/05/1929 Stipulation to general stip, Sutliff group (Judge KERRIGAN, all sigs undated) box 5
20 26 of 39

21 - 09/05/1929 F Substitution of Defendant Thomas Fairlee in Place of Defendants Preston Morris
22 and John M. Morris dated 12/29/1927 (Judge KERRIGAN sig undated) box 5 26 of 39

23
24 - 09/18/1929 last hearing before Special Master, For Plaintiff: Oliver P. MORTON, Esq., Richard
25 J. COFFEY, Esq. For Defendants: R.M. RANKIN, Esq., H.W. McGowan, Esq.; in propria
26 persona: R.H. BROWNELL, transcript Vol. 27, box 6 file A1M of 12M

27 - UNDATED The Settlement of the Findings - Amendments Made in Printed Findings of Fact and

1 **Conclusions of Law and Suggested Decree, included in transcript Vol. 27**

2
3 **- 10/24, 28, & 29/1929, Wall Street Crash of 1929**

4
5 **- 11/05/1929 Acknowledgment of Service of opening brief, solicitors listed 04/20/1928 - 04/28/1928**
6 **plus Retzloff's in pro per (but no BROWNELLS) box 5 file 24 of 39**

7
8 **- 11/05/1929 3 Stipulations, all signed by Judge Frank H. Norcross from Carson City, Stipulation re**
9 **admission, notice of water appropriation C.L. Mensing (actually, Carl Green) ; Stipulation as to**
10 **introduction of missing deed, Thomas Brown to Lemon Home Water Power and Light Company**
11 **07/30/1900 ; Stipulation as to Stock Water Between Plaintiff and Defendant L. Huffmaster ; all box**
12 **5 file 24 of 39**

13
14 **- 11/07/1929 Report of Special Master *Pro Hac Vice*, listing accompanying documents & exhibits,**
15 **dismissive of BROWNELL's point without specifically mentioning what it was, not addressing the**
16 **BROWNELLS' *Herminghaus* issue:**

17 **"The protest of L.E.BROWNELL, R.H.BROWNELL, I.L.BROWNELL and MRS.**
18 **L.R. BROWNELL, presented by them in propriae personae, which is attached to**
19 **and filed with this report, was ruled upon adversely [but not in open hearing, and not**
20 **with any written notice found in the archives] it being the view and opinion of your**
21 **Special Master, after examination of the matter, that the point of claim made therein**
22 **is not well taken."**

23 **I have found no indication this Report or "ruling" was ever served on the BROWNELLS or**
24 **anyone else. I have also found no indication of any face-to-face or letter contact between**
25 **MCCUTCHEN and ANY judge regarding this Report or at any other time, no questions, no**
26 **answers, no explanations, no nothing. Who was supervising MCCUTCHEN's activities? it is pretty**
27 **obvious that even at this late date a Judge had not been assigned to Mr. MCCUTCHEN's**
28 **knowledge. He entitled his report "To the Honorable Judges of the United States District Court for**
29 **the Northern District of California:" box 5 file 24 of 39**

1 - 12/31/1929 Notice of Motion for January 13, 1929 (Yes. That's what it says, WRONG YEAR)
2 10:00 a.m. at the Court room in Sacramento to adopt report of Special Master, Findings, and make
3 and enter its Decree (Notice attached to 01/03/1930 Affidavit) box 5 file 24 of 39
4 - 01/03/1930 Affidavit of Mailing, 11 attorneys, 7 pro per including BROWNELLs, attached Notice
5 of Motion to adopt everything on 01/13/1929 (yes, WRONG YEAR), date is the filing stamp, 10 days
6 notice by mail, isn't that a bit short? I have not yet explored how the mail got out to the western
7 parts of the counties. box 5 file 24 of 39 -

8
9 - 01/11/1930 Glenn County Superior Court Judge Claude F. Purkitt died of stroke; Former
10 California State Senator and head of the California Democratic Party (Judge 01/01/1923 to now),
11 funeral the largest in Glenn County history, southbound train held for 10 minutes to let the
12 procession pass; succeeded as judge by Robert M. RANKIN appointed by Governor Young on
13 02/27/1930 ; Willows Journal, microfilm, California State Library History Collection, 01/11, 14, 15,
14 27, 29, 02/04, 07, 12, 13, 26, 02/27/1930 among others

15
16 - 01/12/1930 heaviest snow storm in decades, 3" at Willows, 6" and 19 degrees F at Stonyford,
17 storm continued until 01/14, Willows Journal, 01/12/1930, microfilm as noted above - note
18 "interrupted road travel" comment from heavy storms for these rural roads in 1942 Water Master
19 Report, p. 2 , b6 Large Brown Envelope #2 - in my memory roads west of Orland remained
20 unpaved until late 1950s; rural electrification did not reach out there until 1940, Reports of Water
21 Master, Season of 1940 and 1941, last page, b6 Large Brown Envelope #2 , I do not know when
22 phone service was put in, but all this was irrelevant unless you were a defendant (like Brownell)
23 trying to get to a hearing in Sacramento which had been noticed with a short lead time and with the
24 wrong year,

25
26 - 01/13/1930 Two orders: (Morton blue cover: vacate order pro confesso against Stonyford
27 Catholic Church, declare water right in Exhibit "A" attached) box 5 file 24 of 39; and (Sutliff

1 family, vacate order pro confesso and declare right in Exhibit "A"), both signed by Judge
2 Kerrigan, box 5 file 24 of 39

3
4 And then we get to:

5 - 01/13/1930 Untitled paper, box 5 file 24 of 39, transcribed at
6 <http://www.mjbarkl.com/order30.htm>; filed the same day as it was signed with a typewritten date
7 as if it was prepared in advance, signed by Judge KERRIGAN,

8 "IT IS HEREBY ORDERED that the report of the Master *pro hac vice* as now on file
9 herein, be approved and adopted; that his Findings of Fact and Conclusions of Law,
10 as embodied in said report, be and become the Findings of Fact and Conclusions of
11 Law herein, . . . Whereupon the Court, upon consideration thereof and being advised
12 in the premises, signed said decree and directed that the clerk enter the same in
13 accord with the rules."

14 Signed decree, if there ever was one, is MISSING, not in the judge's chambers, not in the Archives,
15 not with McDonough Holland, according to Mr. Hitchings not with Somach, not anywhere. The
16 blue cover of this bears, all in the same handwriting, the inscription "Proceedings and Order, filed
17 Jan 13, 1930, Walter B. Maling, Clerk." So just exactly what was it Judge KERRIGAN did other
18 than sign these 3 papers?

19 The filing said one defense attorney was present, H.W. McGowan of Willows, for the Sutliff
20 family. Out of 15 in 1922, one showed up. Or did he?

21
22 - 02/12/1930 printed Decree received by Attorney McGowan, shared with Willows Daily Journal,
23 per Journal Microfilm at the State Library as noted above.

24 - 04/05/1930 Notice and Petition with Affidavit of Service; appoint water master, fix dates for
25 installing structures, correct decree errors; Affidavit of Mailing, 11 attorneys [including Judge
26 RANKIN? why?] and 7 pro per box 5 file 21 of 39

27 - 04/15/1930 Order Re: Appointment of Water Master to Carry Out Provisions of the Decree,
28 Fixing His compensation, Providing a Fund for the Payment Therof and Apportioning the costs in
the Premises - Also Fixing a Date for the Installation of Head Gates and/or Measuring Devices and

1 **Correcting Certain Minor Errors in Decree; now this one was signed by Judge KERRIGAN box 4**
2 **file 27 of 39**

3
4 **In the front of Box 2 is a "Corrected Decree" that bears Judge KERRIGAN's signature at the end**
5 **of the following hand printing: "The within volumne [sic] has been corrected to accord with the**
6 **order of April 14th, 1930, /s/ Frank N [H looks like an N] Kerrigan, Judge"; this seems to be his**
7 **first and only signature on the decree; above that is only a printed name in the signature block**

8
9 **To summarize involvement of judges:**

10 **- 09/03/1923 Judge Van Fleet Died**

11 **- 01/28/1924 Judge KERRIGAN appointment to the District Court confirmed**

12 **- 10/29/1924 Judge PARTRIDGE signed stipulation**

13 **- 04/02/1926 Judge KERRIGAN signed 2 stipulations**

14 **- 06/17/1929 Judge KERRIGAN signed 5 Stipulations**

15 **- 09/05/1929 Judge KERRIGAN signed 2 Stipulations , which Mr. MORTON mailed to the clerk**
16 **afterwards but 2 days before he signed them (?)**

17 **- 11/05/1929 Judge Frank H. Norcross from Carson City signed 3 Stipulations**

18 **- 11/07/1929 MCCUTCHEN addressed his report "To the Honorable Judges of the United States**
19 **District Court for the Northern District of California:" which is strange if a judge were assigned to**
20 **the case?**

21 **- 01/13/1930 Ten days after notice of motion, Judge KERRIGAN signs two orders for Sutliff and**
22 **for Stonyford Catholic Church, and then signs an untitled paper which adopts the report, findings,**
23 **and decree and says he signed the decree.**

24
25 **Now why on earth would anyone in the 700 upstream square miles stripped of their water rights**
26 **get angry over all this? When I say they suckered Judge Kerrigan, I am understating it.**

1 **Note the lack of supervision of the Special Master and the process:**

2 -- sloppy introduction & handling of exhibits

3 -- government expert E.T. Eriksen not sworn?

4 -- MCCUTCHEN oath sworn & filed weeks late

5 -- year wrong on hearing date for adopting Decree

6 -- MCCUTCHEN ruling on BROWNELL protest not furnished to BROWNELL

7 -- James Mills' Orchards witness examined without counsel present

8 -- Morton testifying and arguing as much as examining? (pick most any page of the transcript,
9 especially the John P. Ryan testimony in vol. 16, pp. 2905-2934, 2996-3021, 3042-3049, 3072-3092,
10 box 2 second unmarked folder;

11 -- No communication of any kind in the record between MCCUTCHEN and the Court other than
12 with the Clerk

13 -- Court performing strictly a clerical function on 01/13/1930

14 -- Resolution of objections not found, in the transcripts,

15 -- No attack on riparian rights in any complaint or amendment, such that the Decree would
16 follow? The decree did not match the complaint?

17 -- and so on.

18
19 **Now, none of this would necessarily be of interest at this late date, but it certainly set up the**
20 **atmosphere where MORTON and COFFEY could do their mischief, which they did.**

21
22 **Who are the culprits? Obviously MORTON, COFFEY, HANKINS, and MCCUTCHEN**

23
24 **Oliver Perry MORTON filed a few more filings for a couple of years and then apparently**
25 **disappeared into private practice according to Westlaw, and then just disappeared, dying in 1948;**
26 **Richard J. COFFEY was sent to Boulder, NV to work on Hoover Dam construction issues and**
27 **disappeared from Westlaw shortly thereafter, dying in 1963 many years after disappearing; where**

1 HANKINS went I do not know yet; George E. MCCUTCHEN died a horrible death from spinal
2 tuberculosis on 08/30/1933 (Sacramento Bee 08/30/1933 and Sacramento Union 08/30/1933 and
3 08/31/1933, microfilm at Sacramento Public Library two blocks east of this court house) -
4 peculiarly, two of his associates defended the Werths on Contempt charges before Judge Kerrigan
5 in this Court on 10/13/1932, box 5 file 23 of 39; Judge KERRIGAN, who was well liked and well
6 respected from all accounts I have read, died February 9, 1935 at 67, 2 weeks after a heart attack
7 (Sacramento Bee, 02/11/1935).

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

11 Executed on April 13, 2009,

12 /s/ Michael J. Barkley

13
14 Michael J. Barkley, Defendant, in propria persona
15 California SBN 122433
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