

1 **B. Tabulation of diversions in excess of those allowed by the Decree, p. 9**

2 **VI. STORAGE OF DIVERSION WATER, p. 13**

3 **VII. ABANDONMENT OF DECREED RIGHTS, p. 14**

4 **VIII. PLEA, p. 15**

5 **IX. VERIFICATION, p. 16**

6 -o-0-0-

7 **EXHIBITS IN SUPPORT OF MOTION TO REQUIRE CHANGES IN PRACTICES OF THE**
8 **WATER MASTER (p. 1, Table of Contents of Exhibits)**

9 **DECLARATION OF CM/ECF SERVICE**

10 **DECLARATION OF SERVICE BY MAIL**

11 **[Proposed] ORDER**

12 -o-0-0-

13 **AUTHORITIES:**

14 **Decree, 01/13/1930, *U.S. v. H.C. Angle*, Northern District of California, Northern Division, Equity 30,**
15 **now #80-583, Eastern District of California, Sacramento Division - throughout**

16 -o-0-0-

17 **I. PRELIMINARIES**

18 **A. This filing is by Defendant Michael J. Barkley. who presents this Motion, Memorandum,**
19 **and Exhibits with Verification: he intends this to be as testimony, a truthful sworn statement of**
20 **what he knows, believes, has seen, has heard, and has read.**

21 **B. By Order at Document #295 p. 7 in this case this honorable Court acknowledged that**
22 **defendant Barkley has standing in this case.**

23 **C. On October 1, 2009 defendant Barkley filed the Protest Forms, Supplement, and Exhibits**
24 **attached thereto, all attached hereto as Exhibit "A", with the California State Water Resources**
25 **Control Board, Division of Water Rights, in response to plaintiff's application for extension of its**
26 **Black Butte Reservoir application and permit, Application file #A18115 and permit #13776, which**
27 **application for extension was in turn apparently filed in response to correspondence from SWRCB**

1 of March 27, 2009 instructing USA to take such action or risk cancellation of USA's 1985 petitions.
2 The table of contents appended to the front of Exhibit "A" hereto was not part of that filing, but
3 probably should have been and has been included to make it easier to find contents therein. In his
4 review of various SWRCB files, defendant notes that, if a protest is accepted, often about 60 days
5 after it is filed a notice goes to the applicant giving the applicant 15 days to respond. Defendant
6 received that notice 75 days after filing his Protest, Exhibit "B-1" hereto and has returned his first
7 two responses, Exhibits "B-2" and "B-3". The SWRCB process gives this motion some urgency.

8 **D. Defendant believes that one way or another the issues raised in his Protest will wind up**
9 **in this court and in this case.**

10 **E. Much of the content of defendant's Protest involves the Angle Decree Water Master. It**
11 **will be useful to have alignment among this Court, the Angle Decree, and the Water Master by the**
12 **time that Protest reaches this court. Among other things, various analyses by the Water Master will**
13 **be critical to establishing the amount of excess diversions by plaintiff USA in violation of the Angle**
14 **Decree.**

15 **F. Mention of the Water Master appears in the Decree starting on p. 174 and thence to the**
16 **end. The 04/14/1930 Corrected Decree appears in the Angle Record in the unmarked file in front of**
17 **Box #2, which record is at this moment on a cart in the 4th floor Office of the Court Clerk. For**
18 **everyone's convenience, defendant has transcribed into HTML-formatted text the 04/14/1930**
19 **Corrected Decree at <http://www.mjbarkl.com/Decree.htm> , or, if preferred, a true 15-megabyte**
20 **copy of the 01/13/1930 Decree filed by USA on CD-ROM 09/05/2008 is at**
21 **<http://www.mjbarkl.com/278-cd1.pdf> . At p. 176 of the Decree, Section XVI starts with "That a**
22 **Water Master shall be appointed by this court to carry out and enforce the provision of this**
23 **decree...."** Further down on that page,

24 **". . .that any person, feeling aggrieved [sic] by any action or order of the Water Master,**
25 **may in writing and under oath complain to the court, after service of a copy of such**
26 **complaint on the Water Master, and the court shall promptly review such action or order**
and make such order as may be proper in the premises;. . ."

27 **To the extent the Angle Decree requires a complaint to compel such a realignment of the Water**

1 **Master's practices with the Decree, this motion, memorandum, and exhibits is intended as such a**
2 **complaint, under oath. In every instance described in this memorandum, the Water Master is on**
3 **record as espousing the position challenged which is why it is time to bring those positions before**
4 **the Court. Angle Doc. #110, while not a court order, refers to instruction from the court as**
5 **providing for complaints within the Angle Case rather than filed as new cases.**

6 **G. As directed by this language, prior to this filing with the court, defendant has caused to**
7 **be served by mail the Water Master at his address as shown on the court's CM-ECF system. The**
8 **problems with cooperation suggested by the correspondence in Exhibit C, attached, plus the**
9 **probability that the irrigation season has ended on the watershed and the Water Master may not be**
10 **around his office for a few months has prompted defendant to include a return receipt and a**
11 **postage paid envelope with the service to the Water Master along with a request to sign & return it.**
12 **If that return is not received within a reasonable amount of time, defendant will attempt to have**
13 **service made at such other addresses of the Water Master as he can locate. From time to time since**
14 **the late 1940s, the Water Master has been represented by private attorneys and by the U.S.**
15 **Attorney's Office. Defendant is unaware of the exact nature of the Water Master's current counsel**
16 **or if anyone else is empowered to accept service for him.**

17 **H. Defendant has not caused to be served anyone else other than through the CM-ECF**
18 **system. If the Court wishes all Angle rights holders be served, or at least mailed a copy of this**
19 **filing, defendant would be happy to cause that to happen, except that if the correct list is other than**
20 **Exhibit 15 to USA's Doc. 278, some cooperation from USA and the Water Master will be needed on**
21 **updating the list.**

22 **II. ACCESS TO WATER MASTER RECORDS**

23 **A. At p. 4 of this Court's 02/11/2009 Order at Doc. #302, this Court pointed out this**
24 **defendant's lack of due diligence in his research. Well before then defendant was attempting to**
25 **cure that lack, but still faces refusals to comply with Freedom of Information Act Requests by the**
26 **Bureau of Reclamation and the United States Attorney General, ignoring of his inquiries by the**
27 **Administrative Office of the Courts, refusal to release back to this Court by the Federal Records**

1 Center & National Archives this Court's records in cases #8065, 8178, 8220, 8339, 8464, 8638 (the
2 Black Butte Condemnation cases) even after having paid for release and transfer, some court and
3 Water Master records simply misplaced or lost, and, most puzzling, repeated agreement by the
4 Water Master to allow review of his records followed by the review not happening. (In contrast,
5 some persons, such as those in this Court's 4th Floor Clerk's Office, have been quite helpful.)
6 While defendant would like to engage in considerable discovery in this case, defendant suspects this
7 court will not allow it and thus has sought the needed or useful information in these other ways.
8 Defendant has largely succeeded in indexing the Angle record, at
9 <http://www.mjbarkl.com/Aindex.htm> , but finds that with the numerous other related cases in this
10 court, 300 or so cases and filings with the SWRCB, a number of related cases in other courts, a vast
11 body of historical, biological and Indian affairs literature relating to the systematic extinction of
12 salmon on Stony Creek by USA, the body of law related to NEPA, CEQA, ESA, Cal ESA,
13 Regulations, Guidelines, and general stonewalling by numerous agencies of the United States
14 Government, defendant has actually just scratched the surface in his quest for light in this opaque
15 odyssey. Diligence will take decades.

16 **B. By his 03/10/1983 Order at Doc. #29 in the Angle Record, Judge Halbert approved the**
17 **Agreement with the current Water Master that was appended to Doc. #28. By his 06/23/1986 Order**
18 **at Doc. #97 Judge Wilkins approved the Exhibit "A" Amended Agreement that was appended to**
19 **Doc. #95. Just beneath Doc #97 in the record file is a letter from Attorney Paul Minasian explaining**
20 **why there is no Water Master's signature on the copy with Doc. #95 and that the difference between**
21 **that and the prior agreement was the deletion of general liability insurance as being unobtainable.**
22 **Defendant believes this Amended Agreement is the current Water Master Agreement. Paragraph 5**
23 **on p. 5 of both agreements states**

24 **5. It is agreed that all information, documentation, statistics, work, or other materials**
25 **produced as a result of this work are and shall remain the property of the Court and that**
26 **one set of all such documents shall be deposited and kept on file at the offices of the Orland**
Unit Water Users' Association, Orland, California, and therein be available to the public for
copying, reproduction or other inspection.

27 **At the time of these two agreements, Paul Minasian was attorney for the Orland Unit Water Users'**

1 Association (OUWUA). The reason why OUWUA would want to keep a copy of all the Water
2 Master's records is not precisely stated, but the loss of Water Master Garland's records as noted in
3 Exhibit C may be part of it. As Exhibit C-2 shows, Water Master Wilson's work space at OUWUA
4 is severely limited, and he had engaged in the practice of taking his records home. After this
5 defendant urged him not to do that in Exhibit C-3 he stated he had brought them back to OUWUA,
6 Exhibit C-4. Although, from examination of the various annual Water Master billings going back
7 to the beginning, it is obvious that the Project pays the lion's share of the Water Master's
8 assessments, still, this defendant pays a small portion of them and thus defendant has paid for these
9 records. This defendant feels that despite the Water Master's assurances, defendant will never be
10 allowed to examine the Water Master's records without intervention by this Court, and thus
11 defendant asks that this Court order the Water Master to allow him access.

12 III. HELP FOR THE WATER MASTER

13 A. Section XVI at p. 176 of the Decree states in part:

14 . . . that whenever the necessities of the situation appear to the court so to require, the court
15 shall authorize the employment by the Water Master of such person or persons to assist the
16 Water Master as to the court may seem necessary to carry out properly the provisions of this
17 decree and the orders of the court; that the term of employment, expenses and compensation
of said Water Master and his assistants, the payment thereof and the means and methods for
securing funds with which to pay the same, shall be fixed by orders which the court may
hereafter from time to time make;

18 B. On the other hand, the Agreement provides on p. 3:

19 3. Water Master agrees that he is in the nature of an independent contractor, and that
20 Water Master shall not for any purpose be deemed to be the agent, employee or
21 representative of any party to the Angle Decree nor any member of the Water Master
22 Supervision Committee. It is understood by Water master that there will be no workmen's
23 compensation coverage nor health insurance coverage, nor any other benefit or term or
24 form of compensation, other than that provided herein. Water Master will not employ any
other party in the performance of Water master work and thus no worker's compensation
insurance certificate will be required. If at any later time, Water Master seeks and gains
approval of the Court for employment and remuneration of any other party, worker's
compensation insurance and proof of that coverage will be required in accordance with the
laws of the State of California.

25 C. These two provisions seem somewhat inconsistent, and Paragraph 3 despite its careful
26 wording would seem to discourage the Water Master from getting the help he might need. Further,
27 considerable correspondence in the Angle Record in 1962 and 1963 among Judge Halbert, Water

1 **Master Garland, Clerk of the Court James Welsh, and the Administrative Office of the United**
2 **States Courts (Box 6, file 4M of 12M) relate to Judge Halbert helping Mr. Garland apply for and**
3 **ultimately receive Civil Service Retirement benefits. If Mr. Garland and Mr. Wilson perform the**
4 **same duties, why is one an employee and the other not? This discrepancy should be examined, and,**
5 **if appropriate, cured. And to the extent that paragraph 3 conflicts with the Decree and the rightful**
6 **status of the Water Master those portions of paragraph 3 should be stricken.**

7 **D. It would appear that the Water Master is inadequately compensated. His compensation**
8 **levels should be brought current, or even enlarged beyond that to the level necessary for him to**
9 **perform the tasks outlined in this Memorandum.**

10 **E. It would appear that the Water Master's office space is inadequate. To the extent that**
11 **the control of that space by OUWUA limits his work space and abilities, that control should be**
12 **stricken from the agreement. The Water Master should be allowed to and encouraged to find**
13 **larger office quarters with space sufficient for him and at least one other person, for storage of the**
14 **Court's records, and for appropriate computer and other equipment.**

15 **F. The Water Master should be encouraged to hire a permanent staff person, whether full**
16 **or part time, one to handle the phones, email, correspondence, reports, and computer work. That**
17 **person should have sufficient computer skills to be able to create or learn how to create**
18 **Wordperfect, Adobe Acrobat, and Microsoft Excel documents and use email and high-speed**
19 **internet. This staff person should be selected with an eye towards providing continuity with future**
20 **Water Master(s) and supporting the work of this Court.**

21 **G. The Water Master should be encouraged to obtain sufficient computer equipment to**
22 **handle his duties, or if useful, multiple computers; the computer for his staff person should have**
23 **high-speed internet connectivity, and should include Wordperfect, Adobe Acrobat, and Microsoft**
24 **Office, and a combination printer/scanner/fax.**

25 **H. To the extent advances of funds may be required to aid the Water Master in**
26 **accomplishing this expansion of his office, such advances should be provided.**

27 **IV. INTERPRETATION OF UNDERFLOW**

1 As described in paragraph III.O (three oh) at pp. 11 - 13 of the Supplement portion of
2 Exhibit A, the Angle Decree covers surface flows only. As also described therein, Water Masters
3 Garland and Wilson have seemed to interpret the Decree as covering underflow. Defendant
4 assumes, but does not know for certain that underflow is usually covered in such Decrees, see as an
5 example the specific inclusion of underflow at p. 2 para. 3 of the Hallett Creek Decree of which
6 defendant has placed a copy at <http://www.mjbarkl.com/hallett.pdf> . That inclusion appears to
7 echo the California Water Code Section 1200 definition that includes underflow (the review of the
8 Decree by the California Supreme Court, 44 Cal.3rd 448 (1988) cert.den. [California v. U.S.] 488
9 U.S. 824 (1988) seems to have no bearing on that inclusion of underflow). As discussed in that
10 portion of the Supplement in Exhibit A, any such language is specifically omitted from the Angle
11 Decree, and it seems to be so by design of its drafter, Oliver Perry Morton, Special Assistant to the
12 (U.S.) Attorney General, following intervention in the case early on by downstream defendants
13 represented by water lawyer Frank Freeman (James Mills Orchards, Esperanza Land, Sacramento
14 Valley Sugar, the Billious, et al.). Indeed, during the 90 pages of expert testimony in the Angle
15 Transcripts at pp. 2905 onward (see re-transcription at <http://www.mjbarkl.com/mills3.htm> or if
16 preferred the original in vol. 16 which is the 3rd volume in the 2nd unmarked file in Box 2 of the
17 Angle Record, pp. 2905-2934, 2996-3022, 3042-3050, 3066-3092) it appeared that Mr. Morton was
18 trying his best, unsuccessfully, to talk Mr. Freeman's expert witness out of his adamant assertion
19 that they were pumping from underflow. Wells into underflow of these interrelated defendants are
20 shown on difficult-to-reproduce maps in the Angle Record, Defendant James Mills Orchard Co.
21 Exhibit A at box 4 file 37/39 and Defendant James Mills Orchard Co. Exhibit B at box 4 file 34/39.
22 On 06/24/2009 defendant drove the public roads in the vicinity of James Mills Orchards and
23 noticed that at some time since that testimony the Orchards have converted from flood irrigation to
24 sprinklers, but the wells seem to be still there and in full use, especially the one at the northwest
25 corner of the James Mills property fully visible from California State Highway 32 and a stone's
26 throw from Stony Creek. Underflow pumpers remain an issue. If the Water Master still asserts
27 that underflow is in any way covered by the Decree, he should be required to quote the exact page,

1 paragraph, and text from the Decree that he relies upon for that assertion.

2 **V. COVERAGE OF ALL PARTIES**

3 **A. Recalling the Decree language from p. 176, Para. XVI, quoted above, "That a Water**
4 **Master shall be appointed by this court to carry out and enforce the provision of this decree....",**
5 **and with ALL agencies and actions of USA in this watershed covered by the Decree as described in**
6 **paragraphs I.I (one eye), II.C - E, II.G, II.J-M, III.C & D of the Supplement portion of Exhibit A**
7 **and in the discussion of Underflow in IV above, it appears that the current and prior Water**
8 **Masters have somehow decided USA, OUWUA, and downstream pumpers from underflow (if the**
9 **Water Master should successfully establish that underflow is covered by the Decree) are all**
10 **somehow exempt from his supervision. Indeed, when the current Water Master found himself**
11 **tasked with the problem of USA selling Project water to non-project lands, he opined in Doc. 258 p.**

12 **2**

13 **f. On April 17, 2001 I received an informal phone call regarding a complaint filed with the**
14 **Inspector General's Office. I believe the complaint was referred to the Bureau of**
15 **Reclamation Regional Office and indicated that the Bureau was [p. 3] delivering irrigation**
16 **water to lands outside the Orland Project boundaries and that possibly the Federal Water**
17 **Master was lax in performing his duties.**

18 **Although I have not received a complaint or direction, and I doubt if this is a responsibility**
19 **of the Water Master, I have initiated a program to map and delineate precisely all lands**
20 **receiving water from the Bureau's Orland Project."**

21 **Apparently this project took 7 years**

22 **(see pretty much the same paragraph in Docs 258, 261, 262, 267, 270, 273, 276) until USA filed it's**

23 **motion at Doc #277. If it is not his responsibility to monitor all Stony Creek diversions and**

24 **applications, then whose is it? It is understandable that with Water Master Wilson coming from**

25 **the Bureau of Reclamation, and more particularly being one of the persons at Reclamation tasked**

26 **with keeping the hordes of dissatisfied irrigators from plundering Reclamation's water (see his**

27 **resume as the 4th attachment to Doc. #22), he would tend to see his Water Master duty as a**

28 **continuation of that task. If he believes that USA, OUWUA, and downstream underflow pumpers**

are exempt from his supervision he should be required to quote the exact page, paragraph, and text

from the Decree that he relies upon for that assertion.

B. Tabulation of diversions in excess of those allowed by the Decree

1. This is the heart of this motion. Over the years since adoption of the Decree, USA (and to some extent GCID, and, if covered, underflow pumpers) has been diverting massive amounts of water in excess of what the Decree allows, in some years multiples of what the Decree allows.

If the Water Master does not believe they are exempt, he needs to begin preparation for the Court and SWRCB a tabulation of excess diversions by these parties. Exhibit D-1 attached is an updated copy of Exhibit C within Exhibit A (see <http://www.mjbarkl.com/limits2.htm> for most current version - cut and paste from the "view source" option on your web browser to obtain a work copy) , and Exhibit D-2 is an additional schedule defendant compiled to assist in removing some of the question marks on Exhibit D-1. Each line item on those two exhibits is cited to the reference from which it came, and the bulk of them are from filings of the parties to which they pertain (and are thus admissions) or from the Water Master reports which in turn cite to those same parties. The Water Master should be instructed to examine Exhibit D and accept, or reject in writing to this defendant and this Court with quotes to specific text in the Angle Decree that would warrant rejection of, the specific line items on Exhibit D and the totals therein.

2. The Water Master should begin compilation of a schedule of excess diversions year by year by USA and OUWUA (and GCID) (and downstream underflow pumpers if he believes and supports his belief that underflow is covered), solicit from USA and OUWUA defenses of specific parcel-by-parcel excess demands as allowed by the two loopholes on pp. 142-143 of the Decree, and if such defenses are proffered, begin compiling a schedule of soil types and crops and their unique and combined demands, parcel by parcel and crop by crop of the Project ensuring that the entirety of the Project, both before and after the inclusion of the added lands by the Court's order in Doc. #295, averages to 4.05 acre-feet/acre (call it "base delivery") before any loophole excesses. Reclamation and/or the Department of Justice may have Mr. Harding's (USA's expert witness establishing the 4.05 a-f/acre, see re-transcription at <http://www.mjbarkl.com/harding.htm> , or, if you prefer, Mr. Harding's testimony at pp. 3107-3128 et seq. in vol. 13 of Transcripts in folder 12T in Box #1 of the Angle Record) notes showing which parcels are of which soil types and show

1 the irrigation demand for the specific parcels and their soil types, and for their specific crops, in
2 which case the Water Master should demand that information from Reclamation or the
3 Department of Justice or both, and share it with the Court and this defendant once received.
4 Defendant is not a mathematician, but believes there are too many variables in Mr. Harding's cited
5 testimony to be able to pinpoint these amounts parcel by parcel from the transcripts alone for the
6 base delivery, and thus reference to USA's records are important to the determination of excess
7 diversions by USA. Thereafter, for profferred excess diversions claimed by USA and OUWUA
8 under these two loopholes the Water Master should test them against the Harding rules and
9 produce a schedule, parcel by parcel showing such portions as are allowable and such portions as
10 are not.

11 **3. The Water Master should begin schedules listing for each year actual Project acres to**
12 **which Project water has been delivered from the time of the adoption of the Decree, understanding**
13 **that those actual acres times 4.05 acre-feet per acre yield the total base delivery allowed for each**
14 **year. If the Water Master develops the schedules parcel-by-parcel described in the previous**
15 **paragraph then it is possible that in some years the total Project demand will exceed 4.05 a-f/acre of**
16 **parcels actually irrigated, and in others it will be less, but the only way USA should be allowed to**
17 **argue in favor of such an excess is if this parcel-by-parcel analysis is made and the resulting**
18 **irrigated parcels added up for each year.**

19 **4. The Water Master should begin schedules listing year-by-year acreages outside the**
20 **Project to which USA supplied water and the volume of that water until this court approved**
21 **that inclusion in Doc. 295 unless it is this court's intention that its approval should be retroactive,**
22 **and in that case the schedules should be designed to ensure that the overall Project pre-loophole**
23 **delivery (base delivery) does not exceed the 4.05 acre-feet per acre allowed.**

24 **5. The Water Master should begin tabulations of water supplied under OUWUA's "transfer**
25 **water" and "excess water" programs as described in Doc. 245 from time of inception of those**
26 **programs, as being not allowed under the decree unless those amounts came from other lands**
27 **within the project actually irrigated in those specific years but irrigated at such a lesser rate as to**

1 keep the total Project irrigation under 4.05 acre-feet per acre per year.

2 **6. The Water Master should begin tabulations of water supplied or sold to non-project**
3 **entities not covered by Doc 295 (such as to 4E Water District, Stony Creek Water District, and**
4 **Colusa County) going all the way back to the adoption of the Decree as not being allowed by the**
5 **Decree unless such water came from non-Project sources for which USA purchased the water**
6 **rights. Rights pertaining to lands purchased and subsequently submerged by USA reservoirs are**
7 **not to be considered such sources since the waters continue to be applied to those lands and the**
8 **annual evaporation in vertical feet from those waters would seem to exceed the acre-feet per acre**
9 **amounts of those rights. Rights to surface flow granted by SWRCB within the watershed are to be**
10 **excluded as not allowed under the Decree.**

11 **7. The Water Master should begin tabulations of water diverted to the Tehama-Colusa**
12 **Canal via the Lateral 40 Intertie or by any other means, going all the way back to the adoption of**
13 **the Decree as being not allowed by the Decree.**

14 **8. The Water Master should begin tabulations of water wasted and spilled by the project**
15 **starting with those notations on Water Master Garland's reports of 1935 through 1946, and for**
16 **years outside of those, examine Project records and collect such data for such wastage and spillage**
17 **for all years since adoption of the Decree, and showing on the annual totals a comparison with the**
18 **28% conveyance loss portion of the 4.05 acre-feet per acre limit on p. 141 of the Decree and showing**
19 **as excess diversions the amounts that exceed that 28% of the 4.05 acre-feet per acre of acres**
20 **actually irrigated plus 28% of loophole amounts successfully proffered and defended as described**
21 **above.**

22 **9. The Water Master should begin schedules to tabulate lands lost from the project by**
23 **urbanization, severance from access to supply, condemnation for other uses, and so on and ensure**
24 **that those amounts are deducted as they occurred from the Project limits for every year since**
25 **adoption of the Decree.**

26 **10. The Water master should begin tabulations of land included in the decree for which no**
27 **right was granted but which asserted underflow uses, if the Water Master successfully defends the**

1 application of the Decree to underflow, and build a schedule parcel by parcel of underflow wells,
2 and annual amounts diverted therefrom, and take action to halt that pumping.

3 C. As discussed in the pages pointed to in paragraph V.A (five-ay) above in the Supplement
4 within Exhibit A, and especially by the intermeshing and interaction of the seven clauses from the
5 Decree quoted in para II.D.1 thru II.D.7 on p. 5 of that Supplement as well as the rest of the
6 discussion in paragraphs II.C, E, and G, all USA land in the watershed is covered by the Decree,
7 and among other things the Decree (written by USA) wiped out any forest service reserved or
8 riparian rights, Hallett Creek (above) notwithstanding. If the Water Master disagrees with that
9 conclusion, he should be required to quote the exact page, paragraph, and text from the Decree that
10 states otherwise, or else he should begin preparing a schedule of all USA diversions within the
11 watershed outside the Project, showing which diversions derive from owned rights and which do
12 not - this should including reconciliation of the Fouts Springs rights that seem to have passed to
13 Wells & Matlick per Water Master Garland's early 1930's Reports but are shown by Water Master
14 Wilson at Doc. #75 among other places as remaining with the Forest Service.

15 D. The ultimate product of B and C will be a listing of excess diversions by USA (and others,
16 if relevant) for prosecution or similar disciplinary action by this Court and by the SWRCB.

17 E. The Water Master should begin schedules of all other diversions within the watershed,
18 incorporating the awards by the SWRCB and the Statements of Diversion filed with SWRCB, and
19 reconcile those diversions with the Decree and begin action to terminate each and every such
20 diversion that is not specifically allowed by the Decree.

21 VI. STORAGE OF DIVERSION WATER

22 In the case record for 91-1128 a declaration by Water Master Wilson is cited at p. 7 of the
23 Order as asserting that the Angle Decree grants a right to "'direct diversion only, *not* for storage'",
24 (Order is Doc #70 in the 91-1128 file, which record at this moment is on the Angle cart in the 4th
25 floor clerk's office, or, if preferred, the order is re-transcribed at <http://www.mjbarkl.com/levi.htm>
26 ; Wilson Declaration may be the one attached to Doc 13 in that record; George Wilson deposition is
27 Doc. #66 in that record or re-transcribed at <http://www.mjbarkl.com/wilson.htm>) and the Court

1 relied upon his quote to find that Glenn-Colusa Irrigation District, and by imputation any one else
2 with a diversion right other than USA, may not store their diversion right as a reasonable and
3 beneficial use even though the Decree language quoted as paragraph II.D.5 of p. 5 in the
4 Supplement in Exhibit A from the Decree would seem to allow it. If it is the Water Master's
5 contention that diversion of awarded surface flow may not be stored, then he should be ordered to
6 quote the page, paragraph, and exact text from the Decree that forbids storing such water, and
7 thereafter reconcile that position with the storage rights of USA, or else be ordered to abandon that
8 assertion in his Stony Creek watershed supervision.

9 VII. ABANDONMENT OF DECREED RIGHTS

10 In the 1930s Angle record are two purported abandonments of Decreed water rights, 1)
11 George and Emma Retzloff 03/09/1932 box 5 file 25/39, NE 1/4 of SE 1/4 Section 8 T22N R3W MDB
12 & M, and 2) F.M. and Annie M. Kesselring 01/14/1933 box 5 file 23/39 and letter 01/25/1933 box 5
13 file 22/39, Salt Creek, 30 acres, S/E 1/4 of N/E 1/4 of Section 32 T18N R6W MDB & M.

14 The Kesselring abandonment may have resulted from the right appearing to be listed in both
15 the appropriation schedule for which water master fees were charged and in the riparian schedule
16 for which there are no charges, and thus from an intention to avoid the fees. That Kesselring
17 abandonment became an issue (attachment to Water Master Declaration at Doc. 75, for instance) in
18 the Colusa County/Stonyford Water System proceedings both in this Court and at SWRCB, see
19 para. II.O.5 p. 12 of the Supplement within Exhibit A. At 19 different locations in the Decree it
20 acknowledges heirs, successors, and/or assigns but at no place in the Decree does there seem to be
21 any provision for abandonment. The ultimate result of this assertion of abandonment of the
22 Kesselring right appears to have been Colusa County accepting a settlement of less water for the
23 people of Stonyford than for which the County had purchased rights, followed by years of the
24 County pumping more than that water but less than the right it had purchased, while the Water
25 Master repeatedly complained of the excess and threatened legal action.

26 As for Retzloff, Robert & Bobbye Retzloff subsequently applied to the SWRCB for rights to
27 pump from Stony Creek underflow, see Ap # 20104 and License #8028, SWRCB web page

1 <http://swrcb2.waterboards.ca.gov/ewrims/wrims-data/1008028%20a020104.pdf> on parcels near but
2 not adjacent to that for which the Angle right was granted - defendant does not know whether or
3 not heirs of George and Emma Retzloff or their assigns are using that granted right in place of the
4 decreed right. Note the "underflow" issue again.

5 The abandonments seemed to be more an issue for Water Master Garland than for Water
6 Master Wilson, but if it is the current Water Master's contention that abandonment of a Decreed
7 right is provided for, then he should be ordered to quote the page, paragraph, and exact text from
8 the Decree that provides for such abandonment, or else ordered to cease that assertion in his Stony
9 Creek watershed supervision and restore the annual assessments against these right holders.

10 **VIII. PLEA**

11 That this honorable court order:

12 1. That Water Master records be made available to defendant Barkley without further
13 delay, including access to a reasonable on-site facility for purchasing photocopies of those records,

14 2. That para. 3 be stricken from the Water Master Amended Agreement in its entirety,

15 3. That "shall" be changed to "may" in the OUWUA co-location clause in para. 5 of the
16 Water Master Agreement,

17 4. That the Clerk's office consult with the Administrative Office of the Courts as to the
18 nature of the Water Master's records and if it be determined that those records are records of the
19 Court, that they henceforth be cared for in a manner appropriate for such Court records.

20 5. That the Clerk's office consult with the Administrative Office of the Courts and
21 determine the appropriate employment or contractor status and compensation level for the Water
22 Master and that such status and compensation level be ordered, but if it be determined that the
23 Water Master is an independent contractor not subject to the rules or procedures of the Clerk or
24 the Administrative Office the compensation of the Water Master shall be hereafter set to a new
25 annual level of _____ from its current level of _____.

26 6. That the Clerk's office consult with the Administrative Office of the Courts on the proper
27 manner of acquiring larger office space, furnishings, computer equipment and an assistant for the

1 Water Master as detailed above and that upon determining the proper manner, either the Clerk or
2 the Water Master as appropriate be ordered to carry out that determination.

3 7. That the Water Master be ordered to accept the interpretations described in this
4 Memorandum in Paragraphs IV, V, and VI or else defend his positions to the contrary with specific
5 quotes of the page, paragraph, and exact text from the Decree.

6 8. That for instances where the Water Master agrees with the assertions of defendant herein
7 that the described diversions violate the Decree, the Water Master take prompt action to halt those
8 diversions, or to urge the Court or the SWRCB to halt them.

9 9. That the Water Master be ordered to begin the analyses and tabulations in paragraph V
10 as described above and present to this court a prediction of how much time it will take to complete
11 each tabulation.

12 Respectfully submitted this 21st Day of December, 2009,

13 /s/ Michael J. Barkley

14
15 Michael J. Barkley, Defendant, in propria persona
16 California SBN 122433
17 161 N. Sheridan Ave. #1
Manteca, CA 95336
(209)823-4817 (no fax) mjbarl@inreach.com

18 **IX. VERIFICATION**

19 I declare under penalty of perjury under the laws of the United States of America that
20 the allegations and factual contentions and recitations in this memorandum and attached exhibits
21 are true and correct, except for those submitted on information and belief and as for those I believe
22 them to be true and correct. Executed on December 21, 2009,

23 /s/ Michael J. Barkley

24
25 Michael J. Barkley, Defendant, in propria persona
26 California SBN 122433
27 161 N. Sheridan Ave. #1
Manteca, CA 95336
(209)823-4817 (no fax) mjbarl@inreach.com