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13 UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
14 SACRAMENTO DIVISION

15 THE UNITED STATES OF AMERICA )

16 Plaintiff, )

17 v. )

18 H.C. ANGLE, *et al.*, )

19 Defendants. )  
20 )  
21 )

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

UNITED STATES' RESPONSE  
TO DEFENDANT BARKLEY'S  
MOTION TO REQUIRE  
CHANGES IN PRACTICES OF  
THE WATER MASTER

Date: April 5, 2010  
Time: 10:00 am  
Court: Courtroom 4  
Judge: Hon. Lawrence K. Karlton

22 **I. INTRODUCTION**

23 The plaintiff, United States of America, files this response to oppose the "Defendant  
24 Michael J. Barkley's Motion to Require Changes in Practices of the Water Master, Angle Decree  
25 ¶ XVI." Doc. 307. Mr. Barkley requests that the court modify the 1930 Angle Decree in several  
26 respects regarding the administrative responsibilities and duties of the court-appointed Water  
27 Master. He also asks the court to compel the Water Master to halt what Mr. Barkley  
28 characterizes as excessive diversions of water from the federal Orland Reclamation Project.

## 1 II. BACKGROUND

2 This court is familiar with operation of the Orland Project by the U.S. Bureau of  
3 Reclamation. The court has overseen this litigation since the adjudication of the water rights to  
4 Stony Creek, a tributary of the Sacramento River, commenced in 1918. The court has continued  
5 to exercise jurisdiction since it entered the Angle Decree in 1930. In recent decades, this court  
6 has been required on several occasions to adjudicate issues concerning Orland Project  
7 administration and implementation of the Angle Decree. *United States v. Angle*, 760 F.Supp.  
8 1366 (E.D.Cal. 1993), *reversed and remanded on other grounds sub nom. Wackerman Dairy,*  
9 *Inc. v. Wilson*, 7 F.3d 891 (9<sup>th</sup> Cir. 1993). More recently, the court ruled on a matter involving  
10 Mr. Barkley that relates to the subject matter of the present motion. *United States v. Angle*, 2009  
11 WL 347749 (E.D.Cal. Feb. 11, 2009), *reconsideration denied*, 2009 WL 122240 (E.D.Cal. May  
12 5, 2009). The February 11, 2009, Order provides much of background relevant to this motion.

13 George G. Wilson has served this court as the designated Water Master since 1982. *See*  
14 Declaration of George G. Wilson in Support of Plaintiff United States of America's Response to  
15 Defendant Michael J. Barkley's Motion to Require Changes in Practices of the Water Master,  
16 Angle Decree, Para. XVI (attached), ¶ 7. Mr. Wilson's Declaration addresses and responds to  
17 the matters raised by Mr. Barkley's motion and supporting papers.

## 18 III. DISCUSSION

### 19 A. There is no basis to modify the practices of the Water Master

20 The United States does not object to Mr. Barkley's motion to the limited extent that it is  
21 designed to ensure continued public access to the Water Master's files. The evidence presented  
22 in support of the motion, however, indicates that judicial relief is not necessary to accomplish  
23 this objective because the Water Master voluntarily resolved Mr. Barkley's concern over public  
24 access to his files. The documents that Mr. Barkley filed in support of his motion demonstrate  
25 that there is no need for the court to order this relief.

26 Mr. Barkley and Mr. Wilson exchanged several letters during the summer of 2009. *See*  
27 Exhibits in Support of Motion to Require Changes in Practices of the Water Master, Doc. 307-3

1 at pp. 76-81, Exhibit C-1 to Exhibit C-5. On September 11, 2009, Mr. Wilson informed Mr.  
2 Barkley that his “Water Master records are now stored in the office of the Orland Unit Water  
3 Users’ Association,” located in Orland, California. Mr. Wilson reiterated that he would “be  
4 happy to meet with you if you wish, and make my records produced as Water Master, available  
5 for you to review and copy.” Doc. 307-3 at p. 80, Exhibit C-4. Mr. Barkley replied on  
6 September 21, 2009, expressing his thanks to Mr. Wilson and requesting a date and time to  
7 review the records. Doc. 307-3 at p. 81, Exhibit C-5. This exchange of correspondence  
8 demonstrates that the Water Master’s records are available to Mr. Barkley and the public. Mr.  
9 Wilson’s attached Declaration confirms that his records have been and remain available, even  
10 though Mr. Barkley and his brother, who requested certain records, have not taken advantage of  
11 the opportunity to review them. Wilson Declaration, ¶ 6. Mr. Barkley’s motion requesting a  
12 judicial order to mandate that relief, therefore, is moot or, alternatively, unnecessary.

13 Mr. Wilson refutes the other contentions presented by Mr. Barkley as reasons to modify  
14 the existing practices of the Water Master. Mr. Wilson confirms that his work space, while  
15 limited, is adequate. Wilson Declaration, ¶ 5. He has acquired additional storage at the Orland  
16 Unit Water Users’ Association office for his files, which remain available to Mr. Barkley and  
17 other members of the public. *Id.* Mr. Wilson rebuts the concerns regarding his compensation,  
18 office space, staffing, and equipment, attesting that he does not seek or need any of the  
19 additional resources suggested by Mr. Barkley. Wilson Declaration, ¶ 7. Mr. Wilson notes that,  
20 since he was appointed Water Master in 1982, “I have never received a complaint or criticism  
21 from the Water Master Supervision Committee or other entity regarding my administration of  
22 the Angle Decree, with the exception of Mr. Barkley.” *Id.* In sum, there is no reason for the  
23 court to order the changes sought in the Water Master’s practices.

24 **B. The motion provides no rational basis to reopen or modify the Angle Decree**

25 The United States opposes the remainder of the Barkley motion on two principal  
26 grounds. For the following reasons, the United States requests that the court either dismiss the  
27 motion or else deny the motion for lack of merit.

1 First, the motion largely duplicates the claims that Mr. Barkley recently presented to the  
2 Division of Water Rights in the State Water Resources Control Board (SWRCB). He presented  
3 those contentions in a Protest that he filed on October 1, 2009, in connection with the Bureau's  
4 Petition for an extension of time concerning Permit Application 18115. *See* Doc. 307-3, pp. 8-  
5 39. On December 14, 2009, the SWRCB declined to grant Mr. Barkley's Protest. Doc. 307-3,  
6 pp. 71-72. On December 16, 2009, Mr. Barkley requested reconsideration from the State Board  
7 and, on December 20, requested a hearing on his petition. Doc. 307-3, pp. 73-75. While that  
8 request was pending with the State Board, Mr. Barkley filed this motion in federal court the next  
9 day, December 21, 2009.

10 Two weeks later, on January 5, 2010, Mr. Barkley submitted a "Petition" to the members  
11 of the SWRCB. *See* attached Declaration of Charles R. Shockey in Support of United States'  
12 Response to Defendant Barkley's Motion to Require Changes in Practices of the Water Master,  
13 Exhibit 1. That Petition consists of a two-page document signed by Mr. Barkley and a one-page  
14 attachment setting forth comments by Mr. Barkley to be presented during the Board's Public  
15 Forum at the January 5, 2010, Board Meeting.

16 One week later, Mr. Barkley filed a formal "Petition for Reconsideration of Staff Denial  
17 of Protest Letter of 12/14/2009," with the SWRCB on January 12, 2010. Shockey Declaration,  
18 Exhibit 2. The Petition for Reconsideration is a nine-page document containing Mr. Barkley's  
19 renewed objection to the Bureau's requested extension of its permit application to store water in  
20 Black Butte Reservoir on Stony Creek in Tehama and Glenn Counties. Along with that  
21 Petition for Reconsideration, Mr. Barkley filed with the SWRCB a four-page "Statement of  
22 Points and Authorities in Support of Legal Issues Raised in the Petition." Shockey Declaration,  
23 Exhibit 3.

24 The content of Mr. Barkley's Protest with the State Board largely parallels the motion  
25 that he subsequently filed with this court on December 21, 2009. The Protest addresses Mr.  
26 Barkley's views regarding the alleged fraud on the court (Doc. 307-3 at pp. 11, 17-20), alleged  
27 errors in the original Angle Decree (*id.* at p. 14), his criticism of this court (*id.* at p. 16), the

1 claims regarding underflow (*id.* at pp. 20-22), and the alleged excessive diversions of water (*id.*  
2 at pp. 25-29). The Petition filed with the SWRCB and the pending motion before this court,  
3 therefore, essentially duplicate his demands for various forms of relief concerning the Angle  
4 Decree and its implementation. Mr. Barkley's Petition for Reconsideration is still pending  
5 before the SWRCB, based on representations from the SWRCB staff to undersigned counsel for  
6 the United States on February 19, 2010. Shockey Declaration, ¶ 5.

7 Under the doctrine of primary jurisdiction, the court has the authority to dismiss or stay  
8 consideration of Mr. Barkley's motion in order to allow the SWRCB, as the responsible state  
9 agency, to rule on the pending petition for reconsideration, to the extent that it raises claims  
10 similar or identical to those presented in Mr. Barkley's motion. Courts in similar situations have  
11 routed the threshold decision to the agency charged with primary responsibility for governmental  
12 supervision or control of the particular activity involved. See *Rhoades v. Avon Products, Inc.*,  
13 504 F.3d 1151 (9<sup>th</sup> Cir. 2007); *United States v. Culliton*, 328 F.3d 1074, 1081 (9<sup>th</sup> Cir. 2003).  
14 Primary jurisdiction "is a prudential doctrine under which courts may, under appropriate  
15 circumstances, determine that the initial decisionmaking responsibility should be performed by  
16 the relevant agency rather than the courts." *Poulos v. Caesars World, Inc.*, 379 F.3d 654, 670  
17 (9<sup>th</sup> Cir. 2004), *citing Syntek Semiconductor Co. v. Microchip Tech., Inc.*, 307 F.3d 775, 780 (9<sup>th</sup>  
18 Cir. 2002).

19 The doctrine is appropriate where regulatory authority has been delegated to state  
20 agencies, which is the case with regard to SWRCB's ongoing consideration of the Barkley  
21 protest and motion for reconsideration of the Bureau's water rights under California law.  
22 "Accordingly, state agencies, *not* federal courts, have initial responsibility for deciding the issues  
23 raised by this case." *Poulos*, 379 F.3d at 670 (emphasis by court); *accord, Davel*  
24 *Communications, Inc. v. Qwest Corp.*, 460 F.3d 1075 (9<sup>th</sup> Cir. 2006) (decision is left to district  
25 court discretion whether to stay or dismiss case pending ruling within administrative agency's  
26 primary jurisdiction).

27 Abstention or stay by the federal court appears appropriate in the present situation with  
28 respect to plaintiffs' water rights claims. Mr. Barkley voluntarily chose to seek relief through

1 the State of California's administrative process. Having commenced that process, he should be  
2 required to exhaust his administrative remedies. Once the SWRCB finally resolves the matter, if  
3 Mr. Barkley believes that he is aggrieved or adversely affected by that result, he is free to pursue  
4 any rights of judicial review of the SWRCB final decision, which he presumably should pursue  
5 in state court. Having both this court and the SWRCB or a California state court review and  
6 simultaneously adjudicate similar or overlapping claims, as Mr. Barkley has proposed, would  
7 result in an unwarranted waste and duplication of judicial resources.

8 Second, even if this court decides that invoking the doctrine of primary jurisdiction is not  
9 warranted in this case and that it should decide Mr. Barkley's motion on the merits as part of its  
10 continuing Angle Decree jurisdiction, the United States submits that the motion should be  
11 denied. The motion and supporting papers demonstrate that Mr. Barkley is seeking, once more,  
12 to reopen and relitigate elements of the Angle Decree that have been fully adjudicated. Mr.  
13 Barkley's efforts at researching the background, history, and implementation of the Angle  
14 Decree, while certainly diligent and creative, fail to provide any credible or reasoned basis for  
15 the court to reopen the Decree or entertain any of the extraordinary forms of relief that he seeks.

16 With regard to the issue of "underflow," for example, Mr. Barkley attempts to place the  
17 burden of proof on Mr. Wilson, as Water Master, to "quote the exact page" in the Decree if he  
18 believes that underflow is covered. This court previously reviewed, considered, and declined to  
19 accept Mr. Barkley's position on the underflow issue as a basis to amend the Decree. *See United*  
20 *States v. Angle*, 2009 WL 122240, \*3 (E.D.Cal. May 5, 2009) (order on reconsideration). He  
21 should not be permitted to renew his objections to the Decree under the guise of a novel motion  
22 to change the Water Master's practices.

23 Mr. Wilson attests that, in his opinion, interpreting the scope of water rights covered by  
24 the Angle Decree and addressing the issue of underflow are legal matters that properly rest  
25 within the jurisdiction of this court, not with the Water Master. Wilson Declaration, ¶ 8. Even  
26 so, to the best of Mr. Wilson's knowledge, neither the United States nor the Orland Unit Water  
27 Users' Association have diverted underflow, nor is he aware that downstream diverters have  
28 done so. Wilson Declaration, ¶ 9.

1 Mr. Barkley also attempts to revive his charges of bias and fraud, which the court also  
2 reviewed and found lacking in merit in connection with its 2009 ruling. *United States v. Angle*,  
3 2009 WL 347749, \* 4-6 (E.D.Cal. Feb. 11, 2009). Mr. Barkley now suggests that Mr. Wilson,  
4 having previously worked at the Bureau of Reclamation before his retirement, has not  
5 discharged his duties as Water Master fairly and impartially. Mr. Barkley submits, for example,  
6 that “Water Master Wilson coming from the Bureau of Reclamation, and more particularly being  
7 one of the persons at Reclamation tasked with keeping the hordes of dissatisfied irrigators from  
8 plundering Reclamation’s water (see his resume as the 4<sup>th</sup> attachment to Doc. #22), he would  
9 tend to see his Water Master duty as a continuation of that task.” Barkley Memorandum at 9:21-  
10 27. Mr. Wilson testifies, to the contrary, that he has never favored the Orland Project or the  
11 Bureau’s position over other Angle Decree diverters and notes that he is not aware that any other  
12 diverter shares Mr. Barkley’s opinion. Wilson Declaration, ¶ 10. Absent any proof, Mr.  
13 Barkley’s speculative charge is unsubstantiated, patently incorrect, and wholly lacking in merit.

14 Mr. Barkley continues to press, relentlessly, in his quest to set aside or significantly  
15 modify the Angle Decree, including his demand that the court mandate an exhaustive audit of  
16 water diversions over the past 80 years since the Decree was issued. This demand is based on  
17 his perception that some terrible injustice was visited upon his ancestors and his predecessor  
18 landowners back in the 1920s, which he, alone, contends deprived them and now him of valid  
19 water rights. He seeks extraordinary relief that would order the Water Master “to accept the  
20 interpretations described in this Memorandum in Paragraphs IV, V, and VI or else defend his  
21 positions to the contrary with specific quotes of the page, paragraph, and exact text from the  
22 Decree.” Barkley Memorandum, Doc. 307-2 at 16:3-5. Those interpretations in Paragraphs IV,  
23 V, and VI of his Memorandum concern the issues of underflow, coverage of all parties to the  
24 Decree, and storage of diversion water. Mr. Barkley, however, has no standing to demand that  
25 the Water Master – who is an official appointed by the court to assist in administering a judicial  
26 decree – either “accept the interpretation” proffered by one party 80 years after the Angle Decree  
27 “or else defend his positions to the contrary.” Mr. Wilson answers to the court, not to Mr.  
28 Barkley.

1 Mr. Barkley also seeks to compel an analysis and tabulations of what he, alone, contends  
2 are excessive diversions, effectively demanding an 80-year back audit of diversions of Project  
3 water. His desire for this information, no matter how fervently pressed or repetitively  
4 demanded, has no basis in fact and no legal justification.

5 Finally, Mr. Barkley renews his allegations regarding the perceived fraud on this court,  
6 as well as his contention that the court has not properly discharged its responsibility. His  
7 Petition filed with the SWRCB states: "It should be obvious to anyone that the Angle Court is  
8 indifferent to USA's mischief. SWRCB needs to take it on." Doc. 307-3 at p. 16. These  
9 allegations, as with his allegations regarding underflow and excessive diversions, present issues  
10 that "are not cognizable," as this court ruled during the February 9, 2009, hearing in this case.  
11 Doc. 296, Transcript of Proceedings at 1:15-17, at 3:18-19 (Feb. 9, 2009). Simply providing his  
12 own version of "The Stony Creek Water Wars," Barkley Memorandum, Exhibit A, Doc. 307-3 at  
13 pp. 39-41, accompanied by attached pages of often indecipherable data, *e.g.*, Doc. 307-3 at pp.  
14 42-49, and by rather convoluted legal argument does not provide a valid basis to reopen the  
15 Angle Decree, nor does it cure his prior failure to present a cognizable basis for relief.

16 Mr. Barkley's motion lacks merit and should be denied. The United States does not  
17 believe that a hearing is warranted or would provide any benefit to the court. The United States  
18 requests that the court summarily deny the motion on the basis of the written submissions.

19 **IV. CONCLUSION**

20 The United States requests that the court deny defendant Barkley's motion and attaches a  
21 proposed order for the court's consideration.

22 Respectfully submitted,

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*/s/ Charles R. Shockey*

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