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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

<p>10 THE UNITED STATES OF AMERICA,) 11) 12 Plaintiff,) 13 v.) 14 H. C. ANGLE, et al.,) 15 Defendants.)</p>	<p>Civil No. S-80-583-LKK [In Equity No. 30] DEFENDANT MICHAEL J. BARKLEY'S REPLY BRIEF IN SUPPORT OF MOTION TO REQUIRE CHANGES IN PRACTICES OF THE WATER MASTER, Angle Decree para XVI. DATE: April 5, 2010 TIME: 10:00 a.m. COURT: Courtroom 4, 15th Floor</p>
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25 **Authorities:**

- 26 **California Water Code Section 1052, p. 3**
- 27 **Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944), p. 13**

1 **Moore's Federal Practice §60.21[4][g] , p. 13**

2 **Wright, Federal Practice and Procedure, Civil 2d, v. II, 2005, §2870 , p. 13**

3 **-o-0-0-**

4 **I. INTRODUCTION - there have been three responses to this defendant's motion,**

5 **1) The Water Master at Doc 310-2 attached to USA's Doc. 310;**

6 **2) USA's Doc 310, and**

7 **3) The Somach law firm at Doc. 311 for Orland Unit Water Users' Association (OUWUA) and**
8 **Glenn-Colusa Irrigation District (GCID).**

9 **Collectively, these are very disappointing. Having presented USA's and OUWUA's facts**
10 **and figures they reported to the State Water Resources Control Board (SWRCB), and through the**
11 **Water Master to this honorable court up until 1945, defendant had hoped to see the beginnings of**
12 **an effort to reconcile those diversions with the limits in the Decree. Instead, these parties have**
13 **presented smoke screens and misstatements. This defendant intends this brief to be as testimony,**
14 **a truthful sworn statement of what this defendant knows, believes, has seen, has heard, and has**
15 **read.**

16
17 **II. RESPONSE OF WATER MASTER WILSON: Rather than responding directly, the Water**
18 **Master has chosen to respond by declaration attached to the response of USA, Doc 310-2. Taking**
19 **up the points of the Water Master's Response in the Response's order:**

20 **1. His paragraph 3 states "At this time I do not have an attorney retained to represent me."**

21 **As part of his motion, defendant asks the court to clarify the employment status of the**
22 **Water Master. Defendant is aware that the Water Master is a sworn U.S. Marshal (Angle Doc 30**
23 **deputizing him), aware that the Water Master speaks as if he speaks for the court when he**
24 **addresses Stony Creek Water issues, see for instance Doc. 13 & Doc. 66 in 91-1128 (which at this**
25 **moment is on the Angle cart in the Clerk's Office), but backs off from that stance in paragraph 8**
26 **of his Doc 310-2 declaration now asserting a need to defer to the opinion of the court in a matter**
27 **on which he has regularly taken a position. Defendant is aware Water Master Garland retired**

1 with what defendant understands was an employee annuity, aware that the Water Master contract
2 (apparently drafted by OUWUA's attorney Minasian) specified that the Water Master was NOT a
3 court employee, so some clarification would be helpful. Defendant assumes that if the Water
4 Master is a court employee, then litigation involving him in his official capacity would be defended
5 or prosecuted by the Department of Justice, and defendant understands that pursuing him at his
6 home address or home telephone number for access to his records or service of process would
7 probably not be a good idea for reasons defendant imagines but does not know for certain.
8 Defendant suspects but again is unsure whether similar protections (including entitlement to DOJ
9 representation) follow from the Water Master's federal marshal status.

10 On the other hand, if the Water Master is just another vendor, then a different set of rules
11 for contact with him would seem to apply with no immunities, including perhaps for personal
12 liability under California Water Code Section 1052, for instance, for excess diversions allowed USA
13 during his tenure. The court's clarification would be useful, and none of the Water Master's
14 responses have addressed this. Defendant's inquiries to the Administrative Office of the Courts
15 have been met with dead silence, and thus defendant raises these issues with the court.

16 2. In paragraph 4 of Doc 310-2 the Water Master asserts "These records are available for review.
17 If anyone asks to meet with me at anytime I will be happy to oblige them." and paragraph 6, "I
18 have repeatedly informed Mr. Barkley that I will make myself available at his convenience. My
19 only request for material came from Mr. Dennis Barkley on March 17, 2009, when he visited the
20 Orland Office and left me a message. The message stated that he would return to pick up the
21 material in one to three weeks. He has never returned."

22 It would seem that defendant's repeated written requests for the Water Master to set a date
23 and time convenient for him continue to be ignored, and that the Water Master is asserting that it
24 is up to this defendant to guess when it is convenient for the Water Master (which defendant is
25 willing to do, but suspects will not solve the problem). The Water Master has also ignored repeated
26 requests that the ability to purchase photocopies be part of any such meeting. That request seemed
27 reasonable to this defendant except considering the Water Master's limited office space and what

1 defendant would guess to be his dependency on OUWUA for clerical services including
2 photocopying. Considering, for instance, OUWUA's hostility towards Holly Reimers (discussed
3 below), this defendant expects no cooperation whatsoever from OUWUA, and thus the request that
4 the Water Master ensure in advance the availability to purchase of photocopies is reasonable.

5 It took several visits by defendant's brother and 2 copies of one letter to get the Water
6 Master to respond the first time. Exhibit A attached is a true copy of excerpts from emails between
7 defendant and his brother regarding the Water Master over several months in 2009. While this is
8 not a declaration from defendant's brother, defendant believes his brother's assertions and
9 mistrusts those contrary comments from the Water Master. Trying to gain this access feels a bit
10 like dealing with "Major Major" in Joseph Heller's Catch-22: If you don't want him he's in, but if
11 you do want him he's out. The court's intervention would be helpful to stop this nonsense.

12 3. In paragraph 5 of Doc 310-2 the Water Master asserts "My work space within the OUWUA
13 building is limited, however; it is adequate." This would seem to be a change from his comment in
14 his 07/22/2009 letter (Doc 307-3 pdf p. 78 of 97): "...Orland Unit Water Users' Association's office
15 where I utilize a desk and very limited space for record storage." Basically, in his letter he says he
16 doesn't have the resources but in his declaration he says he does. Still, the suggestion in his
17 declaration is:

- 18 a) he doesn't have an office, he has a desk, and may or may not have more than one chair,
- 19 b) it is not secure in a separate lockable room but it is there at the pleasure of one of the Angle
20 parties which, by the way, has been misbehaving in a huge way,
- 21 c) he does not have separate phone lines,
- 22 d) he has no room for an assistant, or computer, printer, scanner, cable-modem access, locked
23 storage, work room for reviewing massive amounts of diversion records, or much of anything else.

24 If any of this is untrue, the Water Master has not adequately addressed the limits on his
25 physical resources, and should be encouraged to do so if any of this misstates the facts.

26 4. In paragraph 7 of Doc 310-2 the Water Master asserts "Due to excellent cooperation of entities
27 involved, after the Water Master Program was re-established, my work has been reduced

1 considerably." In Angle Doc 86, "Report of Water Master...years 1983 & 1984", he stated,
2 paraphrased, that he proposed to the Water Master Committee to make measurements on an
3 exception basis; in Doc 96, his 1985 report he stated, paraphrased, that measurements will be on an
4 exception basis, apparently no longer asking but now telling. In his report at Doc. 262 following
5 the complaint someone (not this defendant) made to the Inspector General (which Inspector
6 General was that?) that USA was selling water to non-project users and the Water Master was lax
7 in his duties, he stated, paraphrased, that he doubts it is the water master's duty but began a
8 program to map and delineate lands receiving Project water (Doc 307-2 p. 9 l. 13). It's rather
9 apparent that for years he has avoided this kind of detail work which is required if he is to treat
10 fairly and equally all persons and entities bound by the Decree. He needs a computer literate
11 assistant to do the analyses, build the spreadsheets, publish them to pdf format, and file them with
12 the court. He has shown neither the interest nor the ability to do this sort of work himself, and
13 while he has been monitoring thimble-sized excess diversions upstream, his "office mates" have
14 been diverting huge unpermitted excesses. Until a thorough analysis is conducted of requirements
15 by Project parcel and crop, reconciled with the soil studies used by USA expert Harding in crafting
16 the 4.05 a-f/acre limits in the Decree, the days of work "reduced considerably" should be set aside
17 along with the days of "exception basis" and the Water Master should stop being "lax in his
18 duties" - that is, unless everyone wants to stipulate to the excess diversions and an appropriate
19 punishment. And of course, the Water Master should be compensated and funded commensurate
20 with this more intensive task, which apparently exceeds what he thought he was required to do
21 when he signed up.

22 5. Further down in paragraph 7 of Doc 310-2 the Water Master asserts "Since my appointment in
23 1982 I have never received a complaint or criticism from the Water Master Supervision Committee
24 or other entity regarding my administration of the Angle Decree, with the exception of Mr.
25 Barkley." Assuming this defendant is an "entity", then this is an amazing statement. According to
26 the Somach law firm, Ms. Reimers spent over \$100,000 on her complaint regarding the water
27 master's administration of the Angle Decree (Doc. 238, para. C). Year after year his Reports show

1 disagreement with the Colusa County Staff (Doc 258, Doc 161, etc.) on the Water Master's
2 interpretation of the Decree (or interpretation of the Colusa settlement, Doc 94?). Paragraph
3 III.C.3 at Doc 307-3 pdf pp. 25-29 of 97 lists some 35 different instances of discriminatory
4 enforcement of the Decree, some 17 of which (including Reimers and Colusa County) were on this
5 Water Master's watch - how can it be that the Water Master does not feel these people have a
6 "complaint"? In the Application file for the SWRCB Retzloff Appropriation, Ap. 20104 (index at
7 <http://www.mjbarl.com/20104.htm>), and the skimpy SWRCB complaint file (
8 <http://www.mjbarl.com/swrcompl.htm>) for the entirety of Stony Creek including the Retzloffs,
9 appears the tale of how USA severed the Stony Creek at the dam (quotes on that groundwater are
10 included in part at <http://www.mjbarl.com/seismic.htm>), and in Mr. Retzloff's 07/23/1996
11 Complaint (Permit 13490, CID #679 262.0, 11-04-03, changed to 04) appears: "The alleged
12 offender's intentions are: 'They said they could do anything about [sic]. That was George
13 Wilson.'" This was at a time when USA appears to have been moving water around Mr. Retzloff
14 via the Project Canals and dumping it into the Tehama-Colusa Canal via Lateral 40, see paragraph
15 2.H at Doc 307-3 p. 61 of 97 - The Bureau of Reclamation has been dragging its feet on responding
16 to defendant's Freedom of Information Act Request for the rest of those numbers for paragraph 2.H
17 but the pattern is obvious.

18 If the Water Master feels he has not received a complaint, then this defendant is perplexed as
19 to just exactly what the Water Master would regard as a complaint.

20 6. In paragraph 8 of Doc 310-2 the Water Master asserts: "In regard to underflow associated with
21 the Angle Decree, I believe this should be interpreted by the court. The James Mills Orchards
22 referred to by Mr. Barkley are downstream from all Angle Decree diverters." The Orchards and
23 their neighbors were defendants in the case and in the Decree and are bound by the Decree. How is
24 it the Water Master has determined they are not bound? And in paragraph 9 of Doc 310-2 the
25 Water Master asserts: "The USA, OUWUA have never diverted underflow. I am not aware that it
26 has ever been determined that downstream pumpers are diverting underflow." Well, the testimony
27 in the Angle transcripts show how East Park severed underflow. And the complaints of Mr.

1 **Retzloff and the quotes in defendant's <http://www.mjbarkl.com/seismic.htm> page show how Black**
2 **Butte severed the underflow; although Black Butte was constructed by a different agency, the**
3 **plaintiff in the Angle case was USA and all USA agencies are bound by the Decree USA wrote (Doc**
4 **293, p. 19 of 36, line 7). More importantly, for the Water Master to assert being unaware that**
5 **downstream pumpers are diverting underflow, again, as in past filings, he is urged to review either**
6 **the re-transcribed or the original transcribed testimony of the expert for James Mills Orchards and**
7 **its related entities described at Doc 307-2 p. 8 lines 15 - 17. It is proven.**

8 **Is this part of the problem? Does the Water Master not have internet access? If this is the**
9 **problem, then again he needs a computer-literate assistant to teach him internet access, conduct his**
10 **research, build his Excel Spreadsheets and Word Perfect Documents, print them to pdf format, file**
11 **them with the court, and so on, skills possessed by many local high school students. Meanwhile,**
12 **pumping from underflow by the downstream defendants is quite thoroughly made out by expert**
13 **testimony in the transcripts and those defendants are barred from it by the Decree if someone**
14 **should decide that underflow is covered by the Decree, which the Water Master has apparently**
15 **decided is "yes" for upstream defendants and "no" for downstream defendants.**

16 **The Water Master should be encouraged to review the cites or get someone to help him who**
17 **can and then respond to the question.**

18 **7. In paragraph 10 of Doc 310-2 the Water Master asserts: "This statement as I interpret it**
19 **indicates that due to my background with the Bureau of Reclamation water rights I perform in a**
20 **manner favoring the Orland Project over other Angle Decree diverters. I am not aware of any**
21 **Angle Decree diverters who share this opinion." If there is some other reason for ignoring any**
22 **possible excess diversions by USA, this defendant would like to hear them.**

23 **Angle Decree issues can get complex quickly . This defendant started the reconciliation page**
24 **at <http://www.mjbarkl.com/limits2.htm> to attempt to bridge between the Decree as written and the**
25 **rights as they exist today. Eight months after starting it, defendant's brother and sister explained**
26 **their silence on it by pointing out that it was too complex to explain to people. One newspaper**
27 **editor responded to defendant's brother's contacts that the Angle filings and issues "make his head**

1 hurt".

2 **Thereafter, defendant's brother placed in an Excel table and on an Excel bar chart the**
3 **excess diversions as to the Project alone , <http://www.mjbarkl.com/excess.xls> , which defendant has**
4 **printed to pdf format (and there are some incompatibilities between the various Excel versions and**
5 **pdf formatter so there are a few minor pieces missing), attached hereto as Exhibit B (table) and**
6 **Exhibit C (chart). Defendant's brother finds this much easier to explain to people, so the question**
7 **now becomes, "how many Angle Decree diverters does the Water Master want to hear from?" For**
8 **him to spend three decades chasing thimbles-full of excess diversions upstream, while USA's excess**
9 **diversions over the life of the Decree are somewhere between 2,500,000 and 5,000,000 acre feet,**
10 **suggest that "lax in his duties" does not even begin to describe how badly he and his predecessors**
11 **have let down the upstream defendants.**

12 **8. In paragraph 11 of Doc 310-2 the Water Master asserts: "I see no provision in the Angle Decree**
13 **granting the right to store water with the exception of East Park Reservoir." Yes? And? Is that**
14 **all? Is it the Water Master's assertion that the Decree provision recited at II.D.5 of defendant's Doc**
15 **307-3 Exhibit pdf p. 14 of 97 allowing reasonable and beneficial change in diversion and use**
16 **excludes diversion to storage? Defendant understands that's the argument in the Water Master**
17 **declaration and deposition that got sold to Judge Levi leading to his decision in 91-1128.**

18 **Again, defendant asks the Water Master to point to the exact Decree language that prohibits**
19 **this change in diversion and use. As the discussions regarding the Glenn-Colusa Irrigation District**
20 **in Section IV below suggest, this is more than just a rhetorical question - it stripped an important**
21 **agricultural resource of its entitlement at a time of serious crisis.**

22 **9. In his Conclusion in Doc 310-2 the Water Master asserts: "I believe that many of Mr. Barkley's**
23 **comments and proposals in this memorandum do not warrant comment by me at this time." Does**
24 **that mean he concedes them?**

25
26 **III. RESPONSE OF USA:**

27 **USA's response at Doc 310 is a puzzling mixture of misinformation and smoke screen, with no**

1 substance. Sifting through it line by line:

2 1. p. 1 line 25 "Mr. Barkley requests that the court modify the 1930 Angle Decree...." Not at all.

3 USA is "pushing the court's hot buttons". This defendant's motion is to align the court, the Water
4 Master, and the Decree in preparation to enforcing the letter of the Decree as USA wrote it,
5 precisely, exactly, not one change, none. Where the Water Master's expressed opinion deviates
6 from that written word, this is a motion to require that the Water Master either recite the
7 language he relies upon for that deviation, or adjust his activities to conform to the precise word of
8 the Decree that USA wrote.

9 2. p. 2 l. 27, "...asks the court to compel the Water Master to halt what Mr. Barkley characterizes as
10 excessive diversions...." Well, certainly if it is improper for the Water Master to halt it, then
11 defendant asks the court to require the Water Master to quantify the excess diversions precisely
12 so the court may halt them on its own (understanding that the court is extremely busy and the
13 Water Master should be doing what he can to require conformance to the letter of the Decree before
14 bothering the court), but not just the Project diversions, all diversions by USA and anyone else,
15 including those "allowed" by the SWRCB.

16 3. p. 2 l. 23, "...the Water Master voluntarily resolved Mr. Barkley's concern over public access to
17 his files." So why isn't access happening?

18 4. p. 2 l. 26 et seq, the "exchange of correspondence demonstrates" exactly nothing, the words are
19 there, but it's not happening.

20 5. p. 3 l. 12, "moot or, alternatively, unnecessary." It would be nice if that were the case but it's still
21 not happening. As this defendant discusses in Section II above, the Water Master's status as a court
22 employee, or at least as a federal marshal would seem to limit the extremes to which defendant may
23 go to urge access and thus court intervention is necessary.

24 6. p. 3 l. 24 "...no rational basis to reopen or modify the Angle Decree." And that would be just the
25 opposite of what this defendant seeks with this motion. Defendant seeks to align the court, the
26 Water Master and the Decree (which USA wrote), preparatory to seeking enforcement of the exact
27 letter of the Decree. USA is pushing the court's "hot buttons".

1 7. pp. 4 - 6 is a smoke screen. Defendant filed this motion to answer the logical question that has not
2 yet come from the SWRCB, as in "why are you raising this here? Shouldn't you be raising it with
3 the Angle Court? Asserting at p. 4 ll. 7-8, "...while that request was pending" implies
4 some sort of dual forum shopping that is not the case:

- 5 • defendant had requested a hearing all along
- 6 • SWRCB denial was a surprise
- 7 • defendant had been preparing this motion when the denial came
- 8 • USA's "while that request was pending" linkage is factually correct but USA's implication is not
9 Not that it's particularly relevant to the motion here, but the activity before the SWRCB has
10 a different purpose. The motion here is to bring the court and the Water Master and the Decree
11 into alignment. The activity before the SWRCB is to persuade the SWRCB that ALL of its surface
12 water rulings in the Stony Creek Watershed have violated the Decree and ALL of them must be
13 rescinded, and failing that, substantial adverse cumulative environmental effects must be
14 acknowledged and mitigated, including restoring the chinook and steelhead that USA has
15 extirpated. Should the court and its Water Master and the Decree realign with the letter of the
16 Decree, a number of issues within those cumulative effects disappear and SWRCB's task is much
17 simpler.

18 This defendant's 01/05/2010 SWRCB California Public Records Act petition, as with the
19 12/16/2009 and 12/20/2009 letters, were all intended to ferret out the SWRCB procedure since it was
20 not stated in their denial letter, their regulations or their enabling statutes; it took until 01/04/2010
21 and 01/05/2010 for SWRCB to state (verbally) what their appeal procedure was
22 and of course by then defendant only had 7 days left to file his internal appeal; USA omits
23 SWRCB's 01/14/2010 response to the 01/05/2010 petition, <http://www.mjbarkl.com/cpra5.pdf> which
24 reinforces the obvious, that the entire SWRCB protest procedure is governed by underground
25 regulations and solving the riddle of those underground regulations is required in order to appeal
26 the denial.

27 Yes, this defendant filed his petition for reconsideration 01/12/2010, within the remaining 7

1 days of the 30 days' notice he should have received on notice of the procedure.

2 8. p. 4 l. 24, "The content of Mr. Barkley's Protest with the State Board largely parallels the motion
3 that he subsequently filed with this court...." Not really. They seek different things: SWRCB to
4 find it has no jurisdiction to make surface water awards in the Stony Creek Watershed, or, failing
5 that, to require mitigations for the substantial adverse cumulative effects, whereas this motion is
6 intended to tighten up the agreement among the court and its Water Master and the Decree,
7 followed by appropriate enforcement.

8 9. p. 5 l. 3 "essentially duplicate his demands for various forms of relief". Not so. Same as #8
9 above.

10 10. p. 5 l. 4 "still pending"? This defendant cannot discern whether or not his matter before the
11 SWRCB is still pending. The Division of Water Rights staff has a habit of pondering issues for
12 months or years, and then issuing a sudden terse letter not even characterized within itself as an
13 order or ruling of the board and with no mention of any internal appeal right. This defendant has
14 filed two subsequent letters (<http://www.mjbarkl.com/021110.pdf> and
15 <http://www.mjbarkl.com/031410.pdf>) but the response is still dead silence; one basic problem with
16 SWRCB's 12/14/2009 protest rejection letter is that it does not conform to the statute and
17 regulations regarding a final decision by the board, so this defendant cannot tell whether or not his
18 petition for reconsideration is tardy, timely, or premature. Still, all that shows only that the two
19 actions are related, not that they are parallel.

20 To repeat, these two efforts are different:

- 21 • Here: alignment of court, Water Master and Decree to the letter of the Decree that USA wrote,
22 followed by enforcement
- 23 • There: withdraw from considering awards of Stony Creek Watershed surface flows, or, failing
24 that, require adoption of mitigations for the substantial adverse cumulative effects.

25 11. p. 5, line 28, "Mr. Barkley voluntarily chose to seek relief through the the State of California's
26 administrative process." That is absolutely not true. USA chose that jurisdiction, this defendant
27 did not (Doc 307-2 line 25). Defendant filed a Protest to USA's Petition for Extension. He was

1 required to do so to raise the jurisdiction issue, or, failing that, the environmental issues, both of
2 which are not before this court in this motion, or else waive them for the duration of his lifetime.
3 USA's entire discussion over these pages regarding this defendant's state-level efforts is a smoke
4 screen. Still, defendant believes the state-level case will wind up in this court when USA successfully
5 petitions for it to be moved despite state law requiring it be maintained in state court.

6 12. p. 6 ll. 11 & 12, "...seeking, once more, to reopen and relitigate elements of the Angle Decree that
7 have been fully adjudicated." No, read it again: Alignment of the court, the Water Master and the
8 Decree in enforcing the letter of the Decree USA wrote and has ever since abused. USA is just
9 "pushing the court's hot buttons".

10 13. p. 6 l. 15 "...court to reopen the Decree or entertain any of the extraordinary forms of relief that
11 he seeks." This is false. There is no request here to reopen the Decree, and the relief sought is
12 alignment of the court, its Water Master, and the letter of the Decree that USA wrote and to that
13 end ensuring the Water Master has the resources he needs and understands the tasks required.

14 14. p. 6 ll. 18 & 19 "This court previously reviewed, considered, and declined to accept Mr.
15 Barkley's position on the underflow issue as a basis to amend the Decree." First off, at doc 302 p. 6,
16 ll. 23-25 the court did not consider the underflow issue at all, the court merely declined to
17 consider the issue in that context. And secondly, defendant seeks to clarify, either,

18 1) underflow is not included in the Decree (except in the stipulation between USA and GCID), or
19 2) it is included and ALL underflow pumpers not authorized by the Decree must cease their
20 pumping.

21 In this motion this defendant has brought, the context in which it should be considered is
22 administration and enforcement of the letter of the decree as USA wrote it. As to underflow, it was
23 not then and is not now an effort "to amend the Decree." More USA smoke.

24 15. p. 6 ll. 23 - 25, "legal matters within the jurisdiction of the court." Well, certainly, but the
25 Water Master has been doing exactly that for 28 years up and down the state and was doing that
26 before he was appointed Water Master according to references here and there in SWRCB files
27 which defendant would be happy to recite on anyone's request but are beyond the scope of this

1 motion.

2 16. p. 7 "...fraud, which the court also reviewed and found lacking in merit." Not exactly. The
3 court found this defendant "guilty of laches" which is something quite different, and this finding is
4 contrary to all the authorities, Doc 302, 05/05/2009 Order p.3 l. 18:

5 "Instead, defendant argues that fraud was committed relating in the proceedings
6 adopting the original decree. While the court may have the power to reconsider, it
7 is clear that the moving party is guilty of laches, and the court will not consider the
8 motion."

8 This finding seems contrary to every authority. The issue is not dead but has not been re-raised
9 before this court and defendant has not asked this court to (re-)consider it. There are other
10 courts. The court of appeal has independent original jurisdiction to consider the issue since it heard
11 the Reimers matter on the Decree. Subsequent judges in this court might wish to consider it. USA
12 might suddenly develop a pang of conscience and dig through its files looking for proof or disproof
13 and finding nothing further ask this court to consider it, which would solve the laches problem since
14 it is well known USA is not subject to laches. In addition to Moore's Federal Practice (Doc 307-3
15 pdf pp.10 & 11 para. #10, referring to Moore's §60.21[4][g] second paragraph) and Hazel-Atlas
16 Glass (Doc 307-3 pdf p. 20 of 97 paragraph #11) , a quote from Wright, Federal Practice and
17 Procedure, Civil 2d, v. II, 2005, §2870 is relevant, footnotes omitted:

18 "[p. 409] The power to vacate a judgment that has been obtained by fraud upon the
19 court is inherent in courts. Indeed even the Tax Court, which has a strong statutory
20 policy of finality of judgments recognizes this inherent power, on the theory that 'a
21 decision produced by fraud on the court is not in essence a decision at all and never
22 becomes final.'...[p. 411] Although a party may bring the matter to the attention of
23 the court, this is not essential, and the court may proceed on its own motion....[p.
24 412] There is no time limit on setting aside a judgment on this ground, nor can
25 laches bar consideration of the matter....[p. 413] If it is found that there was a fraud
26 on the court, the judgment should be vacated and the guilty party denied all relief."

23 And so on. Contrary to USA's implication, defendant is not requesting this court to do anything
24 about the fraud on the court, which fraud is made out in the court's own records.

25 But certainly, if the State suddenly wanted make an effort to set aside the Decree and restore
26 its jurisdiction (and as a successor and assign the State has standing in the Angle case), this
27

1 defendant would hope he has presented the state with sufficient information to find the facts and
2 the reasoning it would need, but while that is a part of the substantial cumulative adverse effects of
3 USA's activities in the watershed (see, for instance, <http://www.mjbarkl.com/decline.htm> - note the
4 building moratoria for at least 3 decades upstream while the population of Orland has tripled since
5 the 1950s), it was not specifically the goal of defendant's SWRCB filings. It's an invitation, not a
6 plea.

7 Yet, none of this is subject of this motion. Should this court decide to enforce the letter of the
8 Decree that USA wrote, USA might suddenly decide its purposes would be better met if the decree
9 disappeared, and bring its own motion to set aside and dismiss. Defendant points to one road map
10 for USA to use in that course of action.

11 17. p. 7 ll. 14-15, "...set aside or significantly modify the Angle Decree." Not in this motion, which
12 seeks only to align the court, the Water Master, and the letter of the Decree USA wrote, preparatory
13 to whatever enforcement is necessary.

14 18. p. 7 l. 15, An "exhaustive audit of water diversions over the past 80 years" is not a modification
15 of the Decree; with USA and its OUWUA surrogate appearing to have diverted upwards of
16 2,500,000 acre feet more than they were entitled to under the decree (Exhibits B & C attached), it is
17 not a modification of the Decree, it is an enforcement of it. USA obviously doesn't like it, but the
18 excess diversion numbers are their numbers and they ought to be required to support them as part
19 of the enforcement of the letter of the Decree USA wrote.

20 19. p. 7 l. 27, "Mr. Wilson answers to the court, not to Mr. Barkley." Well, certainly, and that is
21 what this defendant has asked the court to require, that the Water Master answer to the court and
22 that where his pronouncements deviate from the letter of the Decree that USA wrote, he be guided
23 back to the true word of the Decree. However, the court is quite busy and needs the Water Master
24 to step up to the task, diligently, thoroughly, correctly to carry the burden the court needs him to
25 shoulder.

26 20. p. 8, ll. 1-4; "...tabulation of...excessive diversions". USA has the opportunity to defend the
27 diversions, to reconcile the actual diversions with the Decree requirements, but does not choose to

1 do so; instead "His desire for this information, no matter how fervently pressed or repetitively
2 demanded, has no basis in fact and no legal justification." The basis in fact is the collective filings of
3 USA and OUWUA with SWRCB, and filed with this court through its Water Master up until those
4 reports stopped after 1945. USA's admissions have no basis in fact? Did USA and OUWUA make
5 false filings? Defendant would certainly support a request by USA and OUWUA for more time
6 before this motion is heard so that they might themselves prepare a proper reconciliation, but for
7 them to urge that the excess diversions didn't happen is simply a case of deny, deny, deny. It's to be
8 expected from the average felon in the dock, but from the USA?

9 21. p. 8 l 10, "not cognizable"; the full comment was: Doc 296, 02/09/2009 p. 3 l. 17:

10 "MR. BARKLEY: May I comment, Your Honor?

11 "THE COURT: Sir, I've just told you, your issues are not cognizable."

12 Obviously the task has been to dig further and find whether or not they actually were cognizable,
13 and in the process, other major "cognizable" issues became evident, for instance.

14 1) Fraud on the Court

15 2) Behavior of the Water Master

16 3) Deliberate diversions of USA and its surrogate OUWUA in excess, grossly in excess of what the
17 Decree allows

18 4) issuance of permits & licenses by the SWRCB in violation of the Decree

19 These issues are cognizable by this court. Defendant has brought issues #2 and #3 by this motion.

20 22. p. 8 l. 13, "indecipherable data", Doc. 302-7 pp. 42-49; actually those pages list the filings with

21 the SWRCB in violation of the Decree, and yes, defendant has perhaps erroneously assumed that

22 much of the data he culls and presents is self-evident on its face which has turned out not to be

23 exactly correct, hence defendant's brother preparing Exhibits B & C attached for instance. But the

24 indecipherable data pointed to by USA would be issue #4, which this defendant has taken up with

25 the SWRCB, not with this motion

26 The data most relevant to this motion is on Doc 302-7 pp. 54-64 and as to it being

27 indecipherable, it is for the most part USA's data. They are welcome to help clarify it by presenting

1 **their own reconciliation of what they diverted versus what they were entitled to. USA has missed**
2 **this opportunity to do so, but perhaps should be given another chance.**

3 **23. USA's overall Response is very disappointing. Facts & figures would be far more helpful. This**
4 **is just smoke and mirrors.**

5 **24. Additionally (and going beyond USA's response) the tabulations urged by this defendant at**
6 **paragraph V.B.6 of Doc 307-2 should be expanded to include all water diverted to the Elk Creek**
7 **Community Services District, since USA & OUWUA have apparently been supplying all Municipal**
8 **& Industrial water to that town for quite some time (defendant is still tracking down when it**
9 **started), see paragraph 2.M of <http://www.mjbarkl.com/limits2.htm> , for quotes from various**
10 **SWRCB files on this unpermitted diversion.**

11
12 **IV. RESPONSE OF THE SOMACH LAW FIRM ON BEHALF OF OUWUA & GCID:**

13 **A. This response is perhaps the most curious. As defendant understands it, over the years Mr.**
14 **Somach, Ms. Dunn, & Mr. Hitchings have represented some 7 or 8 parties in the Angle & related**
15 **cases, parties with often diametrically opposing interests; from notes not intended to explore this**
16 **issue (so there are gaps, etc.), some of the filings include:**

17 **1. Water Master appointment pleadings, Angle Case, 80-583 Doc 24, 30, 31, 36, apparently for**
18 **Reclamation, Stuart L. Somach; Water Master Notice, Doc 101 & adjacent letter [both misfiled at**
19 **beginning of Angle Record Vol #3], Sandra K. Dunn**

20 **2. U.S. Forest Service, against Reclamation, Water Master, OUWUA, & Buckley defendants, Doc**
21 **37, 38, order lodged 02/03/1984 filed next to Doc 39, and others, Stuart L. Somach;**

22 **3. [At beginning of Angle Record Vol. #3, letter of 09/20/1989 apparently in response to letter from**
23 **Mr. Somach to Sandra K. Dunn at DOJ with DOJ finding no conflict of interest, with letter of**
24 **10/18/1989 to Judge Karlton forwarding a copy of it, neither assigned a Doc number]**

25 **4. Reimers & Wackerman, generally the bulk of Docs 105 - 245 (or 103-), plus U.S. Court of**
26 **Appeals #91-16515, U.S. Court of Federal Claims #94-660, Glenn County Superior #27859 (against**
27 **Water Master, OUWUA, Reclamation); Stuart L. Somach; Angle Docs 238 - 245 Andrew M.**

1 **Hitchings**

- 2 **5. Stonyford diverters, Donald Garlin (& Water Master?), Docs. 172 - 180, Stuart L. Somach**
3 **6. Reclamation, Contempt proceeding against diverter Gary Gregory, Doc 77 - 79; Wackerman Stip**
4 **Doc 108, Answer to Reimers & Wackerm Doc 117, other anti-Reimers Docs up to about Doc 159; all**
5 **Sandra K. Dunn**
6 **7. GCID, Doc 250, no abandonment of Stony Right, Sandra K. Dunn; Case #91-1074 (record on**
7 **Angle cart in Clerk's office, defendant's index at <http://www.mjbarkl.com/91-1074.htm>), Doc 70,**
8 **various internet references on resulting MOU, etc. (such as copy of 08/05/2002 letter at**
9 **<http://www.mjbarkl.com/mou1997b.pdf>), "Stuart L. Somach, General Counsel, Glenn-Colusa**
10 **Irrigation District"; GCID case 01-1816, 05/28/2002 oral argument, Andrew Hitchings; Angle Doc**
11 **311, concurrence, Stuart L. Somach & Andrew M. Hitchings**
12 **8. OUWUA, Doc 281, 292, 294, 299 & 311, concurrence with USA positions, Stuart L. Somach &**
13 **Andrew M. Hitchings**

14

15 **B. Although Mr. Somach et al., on behalf of OUWUA and GCID, concur with USA's positions,**
16 **on many issues their clients' interests and the interests of others they have represented over the past**
17 **3 decades are directly opposite. For instance:**

18 **1. GCID:**

19 **a) GCID effectively lost the remaining balance of its Stony Creek rights with Judge Levi's**
20 **decision in 91-1128 wherein, in apparent reliance on the Water Master's stated opinions, Judge**
21 **Levi decided that GCID was prohibited from diverting to storage by the Angle Decree. This**
22 **defendant has asked this court to order the Water Master to recite the Decree language that states**
23 **that position since the Decree allows (under the language recited at II.D.5 of defendant's Doc 307-3**
24 **Exhibit pdf p. 14 of 97) reasonable and beneficial change in diversion and use. And, of course,**
25 **with USA allowed to divert its irrigation water to recreational uses for the full summer in East Park**
26 **and Black Butte Reservoirs, it should be no less reasonable for GCID to store its water for irrigation**
27 **use later in the season. It is true that in years past GCID diverted far in excess of the 20,315 a-f the**

1 Decree allowed, see table at #3 at defendant's Doc 307-3 Exhibit pdf p. 62 of 97, but with GCID's
2 Stony Creek canal crossing now in a siphon, those years would seem to be long gone, and would not
3 seem to be any cause for GCID to concur with the opinions of OUWUA for instance.

4 b) Should this court, or the court of appeal, or some other judge to whom the Angle case is
5 eventually assigned, suddenly decide that the court's own record satisfactorily makes out a case of
6 Fraud on the Court and that in accordance with every authority laches does not apply, and
7 thereafter set aside the Decree and dismisses the case with prejudice, GCID would suddenly resume
8 its position as the most important diverter on Stony Creek with the right to divert well over a
9 million acre-feet in wet years such as 1942 (even if all it ever decided to do was sell water to the
10 Tehama-Colusa Canal Authority, for instance; see the recently filed 2;10-cv-00357-JAM-KJM).
11 Defendant understands that parties often take positions for reasons not revealed, but the right to
12 that much water would seem to be a compelling interest opposite to those of OUWUA & USA.

13 2. Reimers (& Wackerman): Mr. Somach, et al., won an impressive victory for Ms. Reimers in the
14 Court of Appeal -- a victory this defendant disagrees with since the 10/29/1924 stipulation with the
15 Halls and the 04/02/1926 stipulation with the Searces seemed to subtly change the compensation for
16 their diversion rights from a stated amount of water to a stated amount limited to the 4.05 a-f/acre
17 project limits, as the Water Master had argued during that Reimers & Wackerman controversy.
18 And then when they got back from the Court of Appeals OUWUA cut off her water once again,
19 despite the victory, forcing her to the settlement table and to walk away from over \$100,000 in
20 cumulative legal fees (Doc. 238, para. C). How might Ms. Reimers feel about the excess diversions
21 USA was enjoying during the years OUWUA was cutting off her water, see Exhibits B & C
22 attached? how might Ms. Reimers feel about the Somach firm representing her arch enemy,
23 OUWUA? Again, if this or some other court suddenly decided to set aside the Decree and dismiss
24 the case, Reimers and Wackerman would find their rights restored to those as presented by USA in
25 its blue-print first findings of fact, top of p. 5 attached to USA's 10/13/1925 "Motion for Order to
26 require Special Master George E. McCutchen to appear and show cause why he should not
27 return...Report of Special Master hereto annexed...." (Angle Record, Box 5, File #20; see an

1 inadequate copy at <http://www.mjbarkl.com/BAXTER.PDF>), which rights are identified as 2396
2 a-f/year (1198 a-f each) as confirmed in testimony by Orland Project Manager R.C.E. Weber in his
3 08/27/1924 testimony for USA at pp. 4416-4418 of the Angle transcript. Certainly Ms. Reimers'
4 interests are diametrically opposed to those in which this law firm concurred and are subject of
5 defendant's motion. How can the representation of OUWUA in support of USA's position not be in
6 conflict with its previous representation of Ms. Reimers? Did she sign a waiver? Was there full
7 disclosure? Do they owe her nothing for her \$100,000 plus?

8 **3. U.S. Forest Service:** As defendant laid out in paragraphs H.C, D, E, G, Doc 307-3 Exhibit pdf pp.
9 13-15 of 97, the Forest Service's "reserved or riparian rights" were wiped out by the Decree USA
10 wrote; the only rights the Forest Service now owns are those it has purchased. If, by chance, some
11 court set aside the Decree, the Forest Service "reserved or riparian rights" would be restored.
12 Certainly anyone concurring for the Forest Service without it having full knowledge would be
13 mis-speaking. How can this not be a conflict of interest for its previous representative?

14 **4. Stonyford Diverters:** would recover their riparian rights if the Angle Decree went away.

15 **5. Reclamation:** hard to say; if they suddenly faced the prospect of the Angle Decree (which USA
16 wrote) being strictly interpreted against all parties, they might suddenly decide to dig through their
17 Angle files to look for evidence that the Fraud on the Court reflected in the Court's record actually
18 did or did not happen; and thereafter if they find nothing to contradict it, they might start to
19 consider whether or not their functioning in the watershed would be easier without the Decree, and
20 with laches definitely not applicable to them, move to set aside the Decree and dismiss the case;
21 Reclamation power over the watershed would be dramatically reduced, but as against a strict
22 interpretation and enforcement of the Decree they might find that with the Decree gone, they enjoy
23 more flexibility in using their rights, and access to the SWRCB or the power of eminent domain
24 would be adequate to protect or extend their rights.

25 **6. OUWUA:** the big loser if the Decree is set aside, in that Reclamation may start treating it like
26 every other California Reclamation contractor -- instead of massive surplusses each year, they
27 would be told their allotment would be, 10%, 20% and so on in the puzzling annual Reclamation

1 ceremony informing contract irrigators that only a small part of the water they paid for will be
2 delivered.

3 7. The Water Master: should the Decree be set aside & dismissed, he would be out of a job. The
4 conflict is the detriment to him and the benefit to the others, but interests of the others have not
5 been shown as waived.

6 Of course, this motion does not seek to set aside the Decree, but the possibility of it being set
7 aside by this or some other court creates conflicts of interest among the various current and
8 previous clients of Somach, et al.

9
10 C. Every three years as with every non-exempt member of the California bar this defendant is
11 required to review "legal ethics". This defendant understands that legal ethics are every lawyer's
12 business, not "none of your business," and in accordance with that, puzzles over the behavior of the
13 Somach law firm in this case. The Angle case is unusual in that it's not two-sided, it's many-sided.
14 This defendant is somewhat certain that for one law firm to go flitting from client to client in the
15 same case, slowly working its way up the food chain to the more lucrative irrigation district clients,
16 is highly improper. Some intervention by this court may be appropriate, and if the court finds
17 similarly, this defendant asks the court to administer some guidance to ensure all those current and
18 previous clients are properly notified and their interests well-represented.

19
20 **V. PLEA:**

21 Wherefore, defendant prays for this honorable court's order, as follows:

22 1. As described above in paragraph III.24, this defendant asks that the tabulations urged by this
23 defendant at paragraph V.B.6 of Doc 307-2 be expanded to include all water diverted to the Elk
24 Creek Community Services District,

25 2. And should this honorable court find a conflict of interest problem exists among the various
26 clients the Somach law firm principals have represented in this case, that the court counsel that firm
27 towards a resolution of such conflicts,

1 **3. And that the relief prayed for in defendant's memorandum at Doc. 307-2 be granted.**

2 **Respectfully submitted this 22nd Day of March, 2010,**

3 **/s/ Michael J. Barkley**

4 **Michael J. Barkley, Defendant, in propria persona**
5 **California SBN 122433**
6 **161 N. Sheridan Ave. #1**
7 **Manteca, CA 95336**
8 **(209)823-4817 (no fax) mjbarkl@inreach.com**

8 **VERIFICATION**

9 **I declare under penalty of perjury under the laws of the United States of America that**
10 **the allegations and factual contentions and recitations in this reply brief and attached exhibits are**
11 **true and correct, except for those submitted on information and belief and as for those I believe**
12 **them to be true and correct. Executed on March 22, 2010,**

13 **/s/ Michael J. Barkley**

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

CERTIFICATE OF SERVICE

I certify that my residence address is 161 N. Sheridan Ave. #1, Manteca, CA 95336, and that I am a person of such age and discretion to be competent to serve papers, and that on March 22, 2010 I served copies of the attached:

Defendant's Reply Brief in Support of Motion

Exhibits in Support of Defendant's Reply Brief in Support of Motion

on all counsel of record through the court's CM/ECF system and, in addition, by placing a copy in a prepaid envelope addressed to the following person as required by the listing of persons on the court's CM/ECF system and depositing that envelope and contents in the United States Mail in Manteca, California:

**Mr. George Wilson,
Water Master
Orland Water Users Associaton
828 Eighth Street
Orland, CA 95963**

/s/ Michael J. Barkley

Michael J. Barkley, Defendant, in propria persona