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12 UNITED STATES DISTRICT COURT
13 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

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

UNITED STATES' RESPONSE
TO COURT ORDER REGARDING
PROCESS TO ENFORCE DECREE

21 The plaintiff, United States of America, files this response to the court's Order dated
22 April 27, 2010. Doc. 316; *United States v. Angle*, 2010 WL 1729826, * 6 (E.D.Cal. Apr. 28,
23 2010). That Order directed that the parties "SHALL file briefs not to exceed ten (10) pages
24 addressing the manner in which the parties may bring actions seeking to enforce the limits
25 imposed by the Decree. Such briefing SHALL be filed within twenty-eight days of the date of
26 this order." *Id.* Doc. 316 at 14. The court signed the Order on April 27, 2010, and the clerk
27 entered the Order on the court's docket on April 28. The United States files this response on
28 May 25 to ensure that it is timely filed "within twenty-eight days of the date of this order."

DISCUSSION

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2 The United States addresses three points in response to the court’s Order: (1) the proper
3 forum and appropriate process for filing a motion to enforce the Angle Decree; (2) the prospect
4 of future motions for declaratory judgment by the defendant Michael J. Barkley; and (3) the
5 tools available to this court to ensure that its jurisdiction is not impaired by a pending state court
6 case.

7 1. The appropriate process is to file a motion to enforce the decree in this court.

8 a. All judicial review of the Angle Decree should be limited to this federal court.

9 This case is a water rights adjudication to determine all rights to the beneficial use of
10 water from the Stony Creek watershed tributary to the Sacramento River. Ninth Circuit case law
11 holds that, under the doctrine of prior exclusive jurisdiction, the court that entered the final
12 judicial decree adjudicating the water rights retains jurisdiction to oversee the administration of
13 that decree. This includes the exclusive jurisdiction to ensure compliance with the decree,
14 including all modifications of water rights and enforcement actions. This jurisdictional principle
15 applies regardless of whether the decree-issuing court is a federal district court, as in *United*
16 *States v. Alpine Land & Reservoir Co.*, 174 F.3d 1007 (9th Cir. 1999), or a state court, as in *State*
17 *Engineer of Nevada v. South Fork Band of Te-Moak Tribe of Western Shoshone Indians of*
18 *Nevada*, 339 F.3d 804 (9th Cir. 2003).

19 Applying that principle of prior exclusive jurisdiction here, the United States submits that
20 the only proper judicial forum for any party to seek enforcement of the limits imposed by the
21 Angle Decree is this court. This court issued the decree in 1930 and has maintained continuing
22 jurisdiction ever since, including the present docket, Civil No. S-80-583-LKK (E.D.Cal.). The
23 United States emphasizes this jurisdictional doctrine because Defendant Barkley recently filed a
24 Petition for Writ of Mandate in Superior Court for the State of California, County of
25 Sacramento, No. 34-2010-80000513. *See* Doc. 314. The state court petition involves several
26 claims that are closely related to this court’s administration, interpretation, and enforcement of
27 the Angle Decree. Although that state court case potentially could impair this court’s continuing
28 jurisdiction, the United States believes that procedures exist, as discussed below, for this court to

1 protect its jurisdiction against any improper interference from the state court proceedings.

2 The United States submits that the appropriate process to seek relief regarding the Angle
3 Decree is for that party to file a motion in this ongoing federal court action to enforce the decree.
4 This procedure has been employed consistently to resolve earlier controversies over compliance
5 with the Angle Decree. *See, e.g., United States v. Angle*, 760 F.Supp. 1366, 1369 (E.D.Cal.
6 1991), *rev'd and remanded sub nom. Wackerman Dairy v. Wilson*, 7 F.3d 891 (9th Cir. 1993);
7 *United States v. Angle*, 2009 WL 347749 (E.D.Cal. Feb. 11, 2009), *reconsideration denied*, 2009
8 WL 122240 (E.D.Cal. May 5, 2009);^{1/} *United States v. Angle*, 2010 WL 1729826, * 6 (E.D.Cal.
9 Apr. 28, 2010). The United States is not aware of any independent court action brought outside
10 the confines of the present case since 1930 that pertains to the Angle Decree, with the exception
11 of Mr. Barkley's recent state court petition.

12 Confining judicial review of issues regarding the enforcement of the Angle Decree is
13 properly limited to proceedings in this court, for two reasons. First, the decree expressly
14 reserves continuing jurisdiction in this court. As the court previously found, "[u]nder Article
15 XVI of the Angle Decree, a Water Master is appointed to carry out and enforce the provisions of
16 the decree. Decree at 176." *Angle*, 760 F.Supp. at 1369. The decree also states that "any
17 person, feeling aggrieved [*sic*] by any action or order of the Water Master, may, in writing and
18 under oath complain to the court, after service of a copy of such complaint on the Water Master,
19 and the court shall promptly review such action or order and make such order as may be proper
20 in the premises." Angle Decree, Art. XVI, p. 176. Thus, the decree itself prescribes the
21 appropriate process for requesting judicial review to enforce its provisions.

22 Second, since this court entered the decree in 1930, its rulings consistently upheld the
23 resort to the court's continuing jurisdiction as the appropriate forum to resolve all issues and
24 disputes concerning the decree. Past proceedings have included issues including (a) motions to
25 modify the purpose and place of use of various water rights, *e.g., United States v. Angle*, 2009

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27 ^{1/} The Ninth Circuit reached a different result than this court when it applied the decree in one
28 earlier controversy, but, in doing so, recognized this court's continuing jurisdiction to enforce the
decree. *Compare Angle*, 760 F.Supp. at 1369 & n.2, with *Wackerman Dairy*, 7 F.3d at 902 & n.28.

1 WL 347749, and (b) controversies over interpretation and application of the decree to elements
2 of adjudicated water rights. *United States v. Angle*, 760 F.Supp. 1366.

3 Mr. Barkley's recent Motion to Require Changes in the Practices of the Water Master,
4 Doc. 307, raised the issue of "underflow." Although the United States believes that all past
5 disputes brought before this court have been limited to deciding issues of surface water rights, a
6 recent Ninth Circuit opinion indicates that an issue regarding the allocation of groundwater
7 rights under state law (in Nevada) also could be brought before the federal court that issued the
8 water rights decree, provided that the moving party were to present sufficient evidence of a
9 hydrologic connection with the surface water and evidence that the groundwater permits could
10 adversely affect water rights under the decree. *United States v. Orr Water Ditch Co.*, 600 F.3d
11 1152, 1160 (9th Cir. 2010). If that ruling were to apply to the present controversy, even if the
12 California State Water Resources Control Board (SWRCB) were to address the threshold
13 question of Mr. Barkley's claim regarding "underflow," any judicial review of that state board
14 finding should be heard in federal court. The April 27 Order found that this court, rather than
15 the SWRCB, "is better equipped to interpret the Decree in this regard." *Angle*, 2010 WL
16 1729826, * 4. As the court correctly noted, however, "it is not clear whether there is any dispute
17 as to whether the Decree covers underflow." *Id.* at * 4 & n.1. Mr. Barkley contends that "the
18 *Angle* decree covers surface flows only." *Id.* at * 3. "The Decree does not explicitly discuss
19 rights to groundwater." *Id.*^{2/} The United States submitted the testimony of the court-appointed

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21 ^{2/} The April 27 Order described "underflow" as "subsurface water flowing in association with
22 a surface stream" *id.*, citing three California state court cases issued before 1921 which discuss the
23 term "underflow." The court authorized Mr. Barkley to file a counterclaim for declaratory judgment
24 on underflow after the SWRCB completes its proceedings, but any discussion of that topic remains
25 premature. If Mr. Barkley pursues this issue, the United States will file a substantive response to
26 address "underflow." The Ninth Circuit opinion in *United States v. Fallbrook Public Utility*
27 *District*, 347 F.2d 48, 51-52 & n. 3 (9th Cir. 1965), cited prior sections of the California Water Code
28 defining "underflow" of a surface stream as "water in soil, sand, and gravel composing the bed of
a stream which supports the stream in its natural state and is essential to its existence. The
underflow and the surface flow must be in contact with each other, and must flow in the same
general direction in order to be part of the same stream." See also Water Code § 1200, referring to
surface water and subterranean streams "flowing through known and definite channels." *North*
Gualala Water Co. v. State Water Resources Control Board, 139 Cal.App 4th 1577, 1585, 1604-06

1 Water Master that “neither the United States nor the Orland Unit Water Users Association are
2 diverting underflow.” *Id.* at *4 n.1, *citing* Declaration of George Wilson.

3 As the court noted, the United States had suggested that, following the completion of the
4 pending SWRCB proceedings, Mr. Barkley “should turn to state court.” 2010 WL 1729826, *4.
5 The SWRCB proceedings to which the court referred pertain to the Bureau of Reclamation’s
6 petition for extension of time to put water to full beneficial use from Black Butte Lake on Stony
7 Creek under Application 18115. Doc. 307-3 at 8. Mr. Barkley first objected to the SWRCB
8 Division of Water Rights’ decision not to accept his protest of this petition through the
9 SWRCB’s administrative procedures, then filed the mandamus petition in state court, seeking to
10 compel the SWRCB to take final action on his motion for reconsideration. That state court
11 petition, however, also seeks relief under a variety of state and federal statutes.

12 In response to the court’s April 27, 2010 Order, the United States has conducted
13 additional research into the relationship between the Angle Decree judicial proceedings and the
14 SWRCB administrative proceedings. As a result, the United States now believes that, if Mr.
15 Barkley seeks judicial review of the SWRCB decisions, any such review should proceed in this
16 court, rather than in a state court, to the extent those proceedings relate to the Angle Decree.
17 This result is warranted because Ninth Circuit cases applying the doctrine of prior exclusive
18 jurisdiction, cited above, make clear that the court that issued a water rights decree – *i.e.*, this
19 court for the Angle Decree, not a state court – is the only proper court to conduct judicial
20 proceedings to interpret, apply, and enforce the decree. *United States v. Alpine Land &*
21 *Reservoir Co.*, 174 F.3d at 1012-15 (state court proceeding impairs federal court’s jurisdiction);
22 *State Engineer of Nevada v. South Fork Band of Te-Moak Tribe*, 339 F.3d at 810 (federal court
23 proceeding could interfere with state court’s jurisdiction). In light of these rulings, the United
24 States agrees that any “argument should be presented here” in federal district court to contest the
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27 (2006) (explaining four-part test to determine whether underground water is classified as a
28 subterranean stream). The United States has no reason to believe that underflow pertains to Stony
Creek or is covered by the Angle Decree, but assures the court that it will address the substance of
any claim regarding underflow that Mr. Barkley may elect to pursue.

1 final SWRCB determinations related to the Angle Decree. *Angle*, 2010 WL 1729826, * 4.

2 b. Any motion to enforce the decree must adhere to proper standards for review.

3 The Angle Decree makes clear that the proper method of seeking enforcement is the
4 filing of a motion, and the retention of jurisdiction makes clear that the proper forum is this
5 court. The decree also provides some limited guidance regarding the process. The motion to
6 enforce must be submitted under oath and served on the Water Master, with the court thereafter
7 promptly reviewing such action and making “such order as may be proper in the premises.”
8 Angle Decree, Art. XVI, p. 176. Because the decree’s guidance is rather limited, the United
9 States submits that the following procedures should govern any motion to enforce the Angle
10 Decree.

11 A party filing a motion to enforce the limits in the decree should be required to present
12 evidence to establish a *prima facie* case for noncompliance. This would include, at a minimum,
13 evidence in a clear and readily understandable form to demonstrate (1) each specific diversion
14 limit in the decree that the party contests, (2) specific quantities of excess water that the party
15 contends actually have been diverted by each party in question, (3) specific time periods for the
16 actual diversions that the party contends exceed the decree’s limits for the decreed water rights,
17 (4) an explanation of how the actual diversions deviate from the decree; (5) a demonstration that
18 the alleged failure to comply with the decree adversely affects the party’s interests and decreed
19 water rights, and (6) an order describing the specific relief sought.

20 If a party presents such evidence, the opposing party or parties would respond with
21 evidence and argument on their behalf. The moving party then would have the opportunity to
22 reply. While the United States believes that this evidence likely can be presented through sworn
23 declarations and supporting documentation, the possibility exists regarding the need for limited
24 and focused discovery. Once the motion has been fully briefed, the United States expects that
25 the court would schedule a hearing on the motion and any opposition.

26 2. An alternative process would be to file a motion for declaratory judgment.

27 The court’s April 27, 2010 Order, in addition to inviting briefing on the process for
28 enforcing limits on water use imposed by the decree, also authorized Mr. Barkley to file

1 counterclaims for declaratory judgment on two issues: (1) whether the parties to the decree may
2 store decree water; and (2) whether the decree adjudicates underflow, although the latter
3 counterclaim “SHALL NOT be filed until Barkley’s proceedings before the SWRCB in
4 connection with this issue are complete.” *Angle*, 2010 WL 1729826, * 6.

5 This United States agrees with the court that, if Mr. Barkley seeks relief with respect to
6 these two issues, a motion for declaratory judgment may provide an appropriate procedure under
7 28 U.S.C. §§ 2201-2202. Any such motion, if properly presented to the court, would enable the
8 court to issue a declaratory judgment as to the rights of Mr. Barkley and other parties under the
9 Angle Decree, along with any further necessary or proper relief that the court determines to be
10 warranted. The United States reserves the right to respond to any such motion that Mr. Barkley
11 may elect to file with regard to the two potential counterclaims regarding storage water rights
12 and underflow.

13 3. This court should ensure that the recently filed state court action does not interfere with
14 this court’s jurisdiction to oversee and enforce the Angle Decree.

15 Although the court did not expressly invite briefing with regard to the pending state court
16 action that Mr. Barkley has filed, the United States respectfully requests that the court remain
17 cognizant of the potential that exists for interference with, and conflict between, the ongoing
18 Angle Decree litigation in federal court and the state court proceedings. The Ninth Circuit’s
19 opinion in the *Alpine* case illustrates the dire result that can arise if federal and state courts each
20 attempt to assert competing jurisdiction over water rights that are the subject of final decrees.
21 The *Alpine* case concerns the water rights of the Truckee and Carson Rivers in California and
22 Nevada. The District of Nevada in 1944 entered a final decree for the Truckee River, known as
23 the Orr Ditch Decree. That court also entered a final decree for the Carson River in 1980, known
24 as the Alpine Decree. *United States v. Alpine Land & Reservoir Co.*, 174 F.3d at 1009-10.

25 After a federal agency filed applications to change the place of diversion and the manner
26 and place of use of adjudicated water rights under the two decrees, the Nevada State Engineer
27 (that state’s counterpart to the SWRCB) conducted proceedings and granted the applications.
28 Litigation ensued simultaneously in both state and federal courts in Nevada, with the state court

1 enjoining the federal proceeding and the federal court enjoining the state court proceeding. *Id.* at
2 1010. Clearly, this was an untenable and most decidedly injudicious result. The Ninth Circuit,
3 on appeal from the Nevada district court, ruled that both decrees provided for federal district
4 court review of the State Engineer's decisions. *Id.* at 1011. The court of appeals ruled that the
5 federal agency's "transfer application at issue comes within the scope of jurisdiction intended by
6 the Alpine and Orr Ditch Decrees." *Id.* at 1012. The circuit held that the federal district court
7 implicitly retained exclusive jurisdiction in both decrees. *Id.* at 1013. The court also held that
8 the "Nevada state court could not have exercised *in rem* jurisdiction first because the federal
9 court had already asserted jurisdiction over the water rights in question when it adjudicated the
10 Alpine and Orr Ditch Decrees and because it continued to retain such jurisdiction." *Id.* at 1014.
11 For this reason, the federal district court properly enjoined the state court proceeding that
12 impaired its jurisdiction. *Id.* at 1014-15.

13 A similar prospect looms here. Mr. Barkley filed his petition against the SWRCB, but
14 also named the Bureau of Reclamation and one Bureau employee as "real parties in interest."
15 The relief that Mr. Barkley seeks, moreover, invites the state court to construe the Angle Decree
16 and thereby presents a very real possibility of substantial interference between the pending state
17 and federal court actions. For example, the petition asks the state court to direct the SWRCB to
18 accept Mr. Barkley's protest of the Bureau of Reclamation's petition for extension of time and
19 also to "find that the Angle Decree preempts State jurisdiction to allocate surface flows to
20 anyone bound by the Decree, which includes USA, and therefore SWRCB has no jurisdiction to
21 even consider [Application] 18115 . . ." Doc. 314-3 at 8. This court, however, already has
22 determined that the SWRCB does have a legitimate role to play under California law and, in
23 fact, that the SWRCB is "'better equipped' than this court to interpret the scope of California
24 water rights." *Angle*, 2010 WL 1729826, * 3. A contrary ruling by the state court, declaring that
25 the SWRCB lacks any such authority and mandating the state agency to accept Mr. Barkley's
26 protest of the Bureau's petition for extension of time, would conflict with this court's ruling that
27 the SWRCB should make that determination under state law.

28 The United States has yet to respond to the state court petition and is considering all

1 available options, including the possibility of removal under 28 U.S.C. §§ 1441 and 1442
2 because the petition includes at least three separate claims alleging violations of federal statutes.
3 When the United States responds on behalf of the Bureau, it will make a concerted effort to
4 inform the Superior Court as to this scope of this court's pending proceedings and its prior
5 exclusive jurisdiction over administration and enforcement of all matters concerning water rights
6 adjudicated in the Angle Decree. The Superior Court for Sacramento County has not yet taken
7 any action with respect to Mr. Barkley's recently filed state court mandamus petition, nor has
8 that court done anything that might impair or interfere with this court's prior exclusive
9 jurisdiction to administer and enforce the Angle Decree. If the United States determines that the
10 state court has taken action or is considering any future action that might implicate this court's
11 jurisdiction, the United States will advise this court promptly and request relief that it believes is
12 appropriate under the circumstances in order to avoid a repetition of the federal versus state court
13 confrontation that arose in the *Alpine* case.

14 **CONCLUSION**

15 The United States proposes that any motion to enforce the Angle Decree (1) proceed
16 exclusively in this court, (2) adhere to the requirements of the decree, (3) conform to the law-of-
17 the-case established by this court in prior litigation over the decree, (4) comply with governing
18 case law concerning the enforcement of similar adjudicated water rights decrees, and (5) provide
19 specific and documented evidence to demonstrate any alleged violation of the decree, including
20 allegations of excessive diversions of water under the decree.

21 Respectfully submitted this 25th day of May, 2010.

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28 /s/ *Charles R. Shockey*

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12 **CERTIFICATE OF SERVICE**

13 The undersigned hereby certifies that: he is an employee in the Sacramento Field Office
14 of the United States Department of Justice, Environment and Natural Resources Division, 501
15 "I" Street, Suite 9-700, Sacramento, California, 95814-2322; he is a person of such age and
16 discretion to be competent to serve papers; and, on May 25, 2010, he served a copy of the
17 "United States' Response to Court Order regarding Process to Enforce Decree" on all counsel of
18 record through the court's Electronic Case Filing system and, in addition, by causing copies to
19 be placed in a prepaid envelope addressed to the person hereinafter named, at the place and
20 address stated below, which are the last known place and addresses, and by depositing said
21 envelope and contents in the United States Mail at Sacramento, California:

22 **VIA U.S. MAIL:**

23 **George Wilson**
24 Office of the Water Master
25 Stony Creek and Tributaries
26 828 Eighth Street
27 Orland, CA 95693

28 /s/ *Charles R. Shockey*

Charles R. Shockey