

1 SUPPLEMENT TO WATER RIGHTS AND ENVIRONMENTAL PROTEST AGAINST EXTENSION
2 OF TIME FOR BUREAU OF RECLAMATION's (USA's) APPLICATION 18115, PERMIT 13776

3 I. Preliminaries

4 A. I am Michael J. Barkley. I present this Protest and Supplement with a Verification: I intend this to
5 be as testimony, a truthful statement of what I know, believe, have seen, have heard, and have read.

6 B. Although I do not speak for them, I am a member of the Natural Resources Defense Council, the
7 Sierra Club, the Audubon Society, and a regular contributor to the Nature Conservancy, and from time to
8 time member of various other environmental organizations over the past half century.
9 The environmental destruction the United States of America (USA) has been allowed to wreck upon the
10 Upper Stony Creek Watershed above Black Butte over the past century is shocking, appalling, outrageous
11 and the State Water Resources Control Board (SWRCB) has been derelict in its duty to halt and reverse
12 that destruction. I am interested in and, in the absence of anyone else stepping forward, speak for the
13 entire Stony Creek Watershed above Black Butte, more specifically, agricultural, commercial, social,
14 infrastructure, fish, flora, avian, and other interests. I present this protest on Water Rights, Jurisdiction,
15 Public Trust, Environmental, violation of law, and Public Interest issues.

16 C. By email of 09/08/2009 I asked Ms. Mrowka for an extension of time to file this protest. At the
17 time, my request was based on the reduction in public access to SWRCB records by the State budget and
18 furlough problems. Her response was a denial. I ask again for an extension of time, only this time for six
19 months for anyone to file or amend protests. A list of the cases relevant to USA's Extension Request,
20 including the Angle case, is at <http://www.mjbarkl.com/cases.htm> , a copy of which I have attached as
21 Exhibit A - total page count for these cases are somewhere around 100,000 including several hundred
22 SWRCB filings (Exhibit A-1 and A-2) for which the indexing is inconsistent, on-line links yield error
23 messages, some actual filings seem to be missing, and so on. On Exhibit A, question marks are place
24 holders for records lost, missing, not yet found, and so on, or for where access to records has been
25 withheld such as by the Stony Creek Water Master for 6 months until finally agreeing last week to allow
26 me to examine his records. A proper protest to this extension requires a working knowledge of NEPA,
27 ESA, and related statutes and regulations, CEQA and Guidelines and Discussions, CESA, the Water
28 Code, SWRCB regulations, the entirety of this body of Stony Creek cases, and so on. 30 days is
insufficient time to gain access to all relevant SWRCB files, let alone all this other material (Division of
Water Rights Records Unit personnel have been very helpful but seriously impacted by the State budget
problems). USA should be required to contact interested parties and interest groups upstream (such as the
Century Ranch Homeowners Association with lands at the South end of East Park Reservoir - at the
moment, they seem to be silent out of fear of retaliation by Reclamation, with good reason), and solicit
interest from them. SWRCB should send a delegate to such interest groups and assist them in preparing
protests. None of this can be accomplished in 30 days. Additionally, with USA filing requests for
extensions for all CVP components, presumably the fish and wildlife agencies and interest groups are too
overwhelmed to do any of it justice. As I understand the application, I will be long-dead by the time it
expires, so for me, it's now or never. Had I not spent much of the past year immersed in the Angle
Decree, I would be unable to file this protest. Again, I ask that time be extended and the nature of the
USA extension request be made known to the people of the Upstream Stony Creek Watershed.

24 D. Section 706 of your Regs require that for application supplements, "The data included should be
25 segregated into paragraphs with numbers corresponding to the paragraph numbers and titles of the printed
26 form and should be properly cross-referenced to the form." I have not found a corresponding requirement
27 for protests, but even if I had, it would be complicated by the absence of paragraph numbers on the protest
28 form. I will do my best to cross reference this supplement with that form, but ask that if the correlation is
not clear, SWRCB so state and allow me to clarify.

27 E. My address is 161 N. Sheridan Ave. #1, Manteca, San Joaquin County, CA 95336, 209/823-4817,

1 mjbarkl@inreach.com . Depending on which parcel, I own 20% to 25% of 3,745 acres on North Fork
2 Stony Creek and to the north in Sehorn Creek (tributary to Burch), as descendant of Francis P. & Florence
3 Masterson, via Frances Lorene Masterson Stevenson and Merle M. Masterson Hamm, in Sections 27, 28,
4 33 & 34 in T23N, R5W, Sections 4, 5, 6. and 7 in T22N, R5W, and Sections 1, 12, & 13 in T22N, R6W,
5 MBD & M. As more specifically set out below, with my family I hold appropriation rights to 70 acre-feet
6 of surface flow under the Angle Decree as shown on Decree pages 133 & 134 (see transcribed copy of the
7 Decree at <http://www.mjbarkl.com/decreed.htm> or, if you prefer, the version submitted by USA to the
8 Angle Court on CD-ROM on 09/05/2008 at <http://www.mjbarkl.com/278-CD1.pdf> [I ran a checksum on
9 it (unix sum -r) to prove it is identical to the one in the back of box #6 of the Angle Archives in the Clerk's
10 Office but note that USA's is not the Corrected, 04/14/1930 version with the differences being listed in the
11 04/14/1930 Order, see transcription of the order at <http://www.mjbarkl.com/041530.htm>). In contrast to
12 the amount allowed in the Decree, average annual rainfall on our lands is 18" per year, yielding some
13 5600 acre-feet of percolation, transpiration, evaporation, or runoff per year. We lost our riparian rights to
14 surface flow to the Fraud on the Court perpetuated by lawyers for the United States of America leading to
15 the Decree, see "Fraud on the Court" paragraph II.N. below, this includes the loss of all rights on lands
16 owned by my mother's mother's parents, George and Lenore Clark, most of which lands were
17 subsequently taken by USA for the north arm of Black Butte reservoir, for pennies on the dollar of what
18 they would have been worth had they been allowed to irrigate. Yet, we were fortunate in that we did
19 receive some Angle rights, as did one other North Fork family, the Conklins. Most everyone else lost
20 everything.

21 F. We also have Applications/Permits/Licenses to various stock ponds which I believe include (my
22 brother manages the ranch, keeps the records and pays the bills), under the names "Masterson Properties"
23 or "Masterson West":

24 Our SWRCB Applications/Licenses/Permits, all MDB & M, all reasonable & beneficial uses, all unnamed
25 streams tributary to North Fork Stony Creek thence Black Butte Reservoir, Stony Creek, Sacramento
26 River, etc.:

27 A019903/013065/007878 8 a-f/yr 01/03/1961 North Fork Diversion at South
28 3440 feet from North Fence Line S28 T23N R5W and West 1800 feet from East
29 Fence Line of same Section, within NW1/4 of SE1/4, used at reservoir
30 within NW1/4 of SE1/4 of S28 T23N R5W

31 A019904/013066/007879 8 a-f/yr 01/03/1961 Burris Creek diversion at North
32 2150 feet and West 1700 feet from SE corner S4 T22N R5W used as reservoir
33 within NW1/4 SE1/4 S4 T22N R5W,

34 A019905/013067/007880 16.5 a-f/yr 01/03/1961 (called "partnership dam")
35 on property line north 1100 feet from SE Corner S27 T23N R5W, used within:
36 NE1/4 of SE1/4 & SE1/4 of SE1/4 S27 T23N R5W
37 NW1/4 of SW1/4 & SW1/4 of SW1/4 S26 T23N R5W

38 A020727/013734/008302 9.4 a-f/yr 04/19/1962 diversion at North 396 feet and
39 East 1,848 feet from SW corner of S27 T23N R5W within SE1/4 of SW1/4
40 of S27, use at reservoir within SE1/4 of SW1/4 S27 T23N R5W

41 A020849/014027/008567 5.4 a-f/yr 07/11/1962 4800 gpd from 3 Developed
42 Springs (seeps) without hydraulic continuity to any stream,
43 1) North 3,900 Feet and East 2,220 feet, 2) North 3,590 feet and East
44 2,220 feet, and 3) North 3,900 feet and East 2,250 feet, all from SW
45 Corner S4 T22N R5W, use within SE1/4 of SE1/4 S33 T23N R5W; domestic
46 & livestock use

47 A025928/017871/011931 2.8 a-f/yr 02/26/1979 diversion North 1,300 feet and
48 West 2,000 feet from SE corner S13 T22N R6W witin SW1/4 of SE1/4 S13,
49 use within SW1/4 of SE1/4 & NW1/4 of SE1/4 S13 T22N R6W

50 A026206/018072/011860 2.5 a-f/yr 02/15/1980 divert at North 1,200 feet

1 and East 1,675 feet from SW corner of S5 T22N R5W within SE1/4 of SW 1/4
2 S5 use within SE1/4 of SW1/4 of S5 T22N R5W

3 Also shown on SWRCB e-WRIMS, as we understand it,

4 S009676 0 a-f/yr North Fork,
5 E1/2 S33 & W1/2 SW 1/4 S34 T23N R5W, Stock watering from Creek
6 (Angle rights)

7 Angle Rights, Decree page, all MDB & M, all from North Fork Stony Creek:

8 p. 133 60 a-f 04/15/1917 by pump SW1/4 SE1/4 S33 T23N R5W
9 p. 134 10 a-f 04/15/1920 by pump and ditch NE1/4 NE1/4 S12 T22N R6W

10 Some of these ponds were built years or decades before they were registered. As near as I can tell, various
11 ancestors have been on some of our lands as far back as before the gold rush, using these waters routinely
12 for stock watering and gardens and some irrigation. Obviously, the few stock ponds and the tiny award in
13 the Decree are only a small percentage of what we used up until the start of the Angle Case. Proving
14 usage to the USA during the Angle Case, 1918 - 1930 was somewhat impossible without the sort of
15 dedicated ditching systems in use up near Stonyford, which is why most of our neighbors lost all of their
16 rights. Diverters along the main stem of Stony Creek also benefitted from several surveys by USA during
17 the first two decades of the 20th century, before USA decided it would go after every water right for every
18 parcel in the watershed. They did not survey this tributary since we weren't yet a (known) target.

19 G. These days we use 100% of that Decreed water and the stock pond water for watering stock,
20 although in between droughts when they go dry, we do stock fish in some of the larger ponds. It is very
21 sad when the ponds go dry and the fish, frogs, salamanders, turtles, and so on all die.

22 H. I am aware of the language in your regulation Section 749. Rejection of Protest: "Since an
23 upstream water user can take water before it reaches a downstream applicant, a protest based upon
24 interference with a prior right of such upstream user normally will not be accepted." This refusal to accept
25 protests is not appropriate in the case of the Stony Creek Watershed above Black Butte. Basically, as
26 expanded on further in this Supplement, the Angle Decree, the excess diversions by USA, prosecutions of
27 upstream defendants only by the Angle Court at the behest of USA, your own "fully appropriated"
28 designation, and your practice of allowing USA diversions while rejecting applications upstream, make
29 your rejection of upstream protests falsely based, illogical, damaging to the watershed and the
30 environment, fosters violations by USA of the Angle Decree and the Water Code, and produces an
31 extraordinary gift to USA. You should have allowed and heard the 54 or so protests filed by Martin
32 McDonough and 2 by Duard F. Geis in 1961, see index of this application at
33 <http://www.mjbarkl.htm/18115.htm> . To reject them as you did was improper and an injustice, and
34 demonstrated a lack of understanding of the stranglehold USA has on the watershed.

35 I. USA's total project is the systematic capture and exploitation of nearly all the water of Stony
36 Creek, for which matters covered by Ap 18115 are a small piece but a list of most of the important pieces
37 includes:

38 04/16/1864 Hall & Scarce or their predecessors begin diverting Stony at Black Butte into their own
39 canals and onto their own southside lands

40 05/04/1897 Lemon Home Colony begins diverting into their canals and onto lands on the north side,
41 downstream from Hall & Scarce

42 05/09/1904 Under threat of condemnation (see Angle Transcript p. 3062) Hall & Scarce transfer rights
43 to Stony Creek Irrigation Company in exchange for guarantees, SCIC runs canals to or towards
44 Orland

1 1906 United States Government buys both SCIC and Lemon Home systems, endorsing guarantees to Hall
& Searce; builds East Park Dam & Reservoir, rebuilds north & south diversion dams, and canals
2 and lateral network
3 1913, After figuring out they'd used wrong rainfall numbers for East Park, USA builds Rainbow Diversion
Dam on Big Stony with diversion canal to East Park
4 1918, USA sues persons it accuses of diverting its stored water, and later adds entire watershed
1924 downstream riparian underflow pumpers relinquish all Stony Creek rights apparently as part of a
backroom deal to exclude all underflow from the Decree
5 1925 Angle Court rejects first USA Findings of Fact after (maverick?) former Special Assistant to the
Attorney General Oliver Perry Morton shows up at the hearing as an amicus curiae
6 1926 USA adds Stony Gorge Dam & Reservoir (SWRCB predecessor Ap #2212)
1930 Angle Decree, 01/13/1930, Corrected Decree 04/14/1930.
7 For flood control U.S. Army Corps of Engineers Constructs Black Butte; Ap #18115 and #19451,
SWRCB Decision D1100
8 USA builds Tehama-Colusa Canal and Red Bluff Diversion Dam, Sacramento River winter-run chinook
salmon populations begin precipitous fall towards zero, eventually listed as endangered
9 USA adds intertie from Orland Project Lateral 40 to Tehama-Colusa Canal, forgets to mention it to
SWRCB as it violates D1100?
10 1970 Congress pass The Black Butte Integration Act turning storage over to Bureau of Reclamation,
USA provides Tehama-Colusa Canal Constant Head Orifice to aid restoration of Salmon on Stony Creek
11 to mitigate Red Bluff Diversion Dam
USA negotiates early Sacramento River Settlement Contract with Glenn-Colusa Irrigation District
12 (GCID), later using that to strip GCID of any control over its Stony Creek Rights, #91-1128,
USDC ED Cal.
13 USA gains permission from SWRCB to use Tehama-Colusa Canal Constant Head Orifice backwards, to
divert from Stony Creek
14 GCID siphon across Stony Creek is built, leaving USA in full control of each and every barrier to
anadromous fish migration on Stony Creek
15 2009 USA applies for 40-year extension of Black Butte Permit, Ap. 18115

16 J. I ask for a hearing on the issues presented in this Protest and an opportunity to comment at each
and every stage during the drafting and reviewing of environmental documents.

17
18 II. Jurisdiction/Contrary to Law:

19 A. Under the Angle Decree, you have no jurisdiction whatsoever as to any surface flowing waters
with regard to any lands designated in the Decree or over Angle case party or their successors or assigns
20 with regards to surface flows within the watershed. You DO have jurisdiction when any party, successor
or assign takes more water than is allowed under the Decree, since at that point they are taking water from
21 non-Decree pesons including, possibly, the State of California, and your jurisdiction (shared with the
Angle Court) is to make the excessive diversion stop under Water Code Section 1052 for instance.

22 B. I have been indexing the Angle case since about February 2009, see
<http://www.mjbarkl.com/Aindex.htm> - my index is in straight text with html coding to allow you to use
23 your browser or to download and use your editing software to find documents within the case. I have
included annotations to assist me in relocating materials I have read and may need to retrieve. I also have
24 on-line a number of documents from the Angle case, listed on my page at
<http://www.mjbarkl.com/wars.htm> . After I file this protest I will attempt to add html links for those
25 documents to my Aindex.htm page by 10/05/2009 .

26 C. The USA is a party to the Decree. Note that the way the Decree is written, it is not the "Bureau of
Reclamation", it is the United States of America. ALL activities of the USA within the watershed are
27 covered by the Decree since it is a party to the case.

1 D. Remember the rule of law that a legal document such as the Angle Decree is interpreted most
2 strictly against its draftsman (see discussion of who wrote the Decree under Fraud on the Court,
3 paragraph II.N. below). Specific relevant language from the Decree includes, all under the heading
4 "General Provisions" therein:

5 1. Para XV. p. 173: "...except as herein specifically provided no diversion of water from the natural
6 flow of the stream into any ditch or canal for direct conveyance to the lands shall be permitted as against
7 any of the parties herein except in such amount as shall be actually and reasonably necessary for the
8 beneficial use for which the right of diversion is determined and established by this decree, to wit: shall be
9 made only at such times as the water is needed upon their lands and only in such amounts as may be
10 required under the provisions hereof for the number of acres then being irrigated;"

11 2. Para XV. p. 173: "...in such instance diversions may be made outside of the irrigation sea- [p. 174]
12 son, provided that the amount diverted as against any of the parties hereto from the natural flow for direct
13 application to such lands during the calendar year shall not exceed the quantity in acre-feet per acre
14 allowed to be thus diverted herein during an irrigation season under any particular right;"

15 3. Para XV. p. 174: "...that where amounts or rates of diversions or flows of water are limited in this
16 decree to stated figures for each irrigation season, such limitations apply as well to the entire calendar year
17 containing said irrigation season;"

18 4. Para XV. p. 175: "...when permitted by said Water Master, divert a larger head or flow into his
19 ditch for short periods of time in lieu of the smaller flow allowed to him under his said right, providing
20 always that such use shall not exceed for the irrigation season the amount in acre-feet herein specified
21 and allowed to be diverted from the stream for his lands;"

22 5. Para XV. p. 175: "...any of the parties to whom rights to water have been decreed herein shall be
23 entitled, in accord with applicable laws and legal principles to change point of diversion and the places,
24 means, manner or purpose of the use of the waters to which they are so entitled or of any part thereof, so
25 far as they may do so without injury to the rights of other parties as the same are defined herein."

26 6. Para XVII p. 177: "...each and all of the parties to whom rights to water are decreed herein (and
27 the persons, estates interests and ownerships represented by such thereof as are sued in a representative
28 capacity herein), their assigns and successors in interest, servants, agents, attorneys and all persons
claiming by, through or under them and their successors, are hereby forever enjoined and restrained from
asserting or claiming-- [p. 178] as against any of the parties herein, their assigns or successors, or their
rights as decreed herein--any right, title or interest in or to the waters of the Stony Creek or its tributaries,
or any thereof, except the rights specified, determined and allowed by this decree,

7. Para. XVII, p. 178: "...and each and all thereof are hereby perpetually restrained and enjoined
from diverting, taking or interfering in any way with the waters of the Stony Creek or its tributaries or any
part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters
by the owners of prior or superior rights therein as defined and established by this decree;"

E. Reading the entire Decree and then focusing on these seven phrases from it, it is obvious that the
Decree is both *in rem* and *in personam*, and its jurisdiction is in the general nature of a virus: once
infected, fully infected - 1) parcels named in the Decree are covered by the Decree; 2) persons named in
the Decree binds all property that named person owns in the watershed; 3) Becoming a successor or
assign to a party named in the Decree binds all property in the watershed owned or possessed or controlled
by that successor or assign. Thus the Decree grows in scope until it covers the entire watershed.

F. There are many errors in parcel descriptions in the Decree. With our own lands, some 320 acres
or more are not named at all since the description in the Decree and in the Findings of Fact and

1 Conclusions of Law (<http://www.mjbarkl.com/find.htm>) are listed in the wrong Township or Range.
2 These errors seemed to come from the hastily called hearing on 03/25/1926 wherein the (maverick?)
3 former Special Assistant to the Attorney General Oliver Perry Morton took over examination of the
4 witnesses as a friend of the court, mostly of USA's agent Erik Theodore Eriksen, a longstanding
5 Reclamation employee who had worked on the Umatilla River litigation in Oregon as well as appointed
6 Water Commissioner in the Angle Case in 1918 (Angle Tx. 3243-4). Mr. Eriksen spent time in the
7 courthouses in Colusa, Willows and Red Bluff extracting legal descriptions of parcels for all persons
8 defaulting and disclaiming. The errors in his recorded testimony (and the reporter made his own mistakes
9 in the transcript) regarding our lands reappear in the Findings and the Decree. Mr. Morton was apparently
10 in a hurry to get all the defaults into the record because of the impending pressure of a potentially adverse
11 ruling in the California Supreme Court in *Herminghaus v. Southern Cal. Edison Co.*, 200
12 Cal 81, 12/24/1926) , and later Fall River (*Fall River Valley Irr. Dist. v. Mt. Shasta Power Corp.*, 202
13 Cal. 56, 09/01/1927), see "Fraud on the Court" at paragraph II.N. below, which would have kept him from
14 taking riparian rights without compensation. Nevertheless, since the Decree works in personam as well as
15 in rem, all our lands are covered regardless of description errors. Some of the errors may put the lands
16 described outside the watershed for persons never served; fortunately for all concerned the issue has not
17 come up so far as I am aware.

18 G. As you can see from the phrases quoted in II.D. above, the Decree wipes out any other reserved
19 rights that USA might have thought it held, such as all rights within the Stony Creek Watershed within
20 Mendocino National Forest. On this issue See Exhibit B attached, for which I have received no response.

21 H. As you can see from those quoted Decree phrases, the United States District Court has
22 exclusive jurisdiction to all surface flowing waters within the watershed, and to disputes over those waters
23 between any Angle parties or their successors and assigns, including over changes in place of diversion
24 and place or nature of use. It is true that the SWRCB ordinarily has jurisdiction in California over these
25 matters, but not where this power has been preempted by the Angle Court. Paragraph II.D.6. above,
26 supported by II.D.1, 2, 3, 4, and 7 shows that no party, or successor or assign under the Decree may obtain
27 from SWRCB any rights to any surface flow waters. Of course, where such a party is prohibited from
28 seeking it, SWRCB lacks jurisdiction to grant it since that would be a conspiracy to violate an order of the
United States District Court, an act beyond the SWRCB's jurisdiction. One might focus on the "as against
another right holder" concept in those quoted phrases. I discuss that below, mostly in paragraph III.C.

I. In various cases the SWRCB has been handling disputes between Angle parties, successors, and
assigns, as for instance in the Ap. 27382 case. SWRCB must stop this until such time as the Decree is set
aside and dismissed or the Court delegates the function to SWRCB.

J. I have been building a schedule of the Decree limits on diversion from surface-flow waters , see
<http://www.mjbarkl.com/limits2> , attached as Exhibit C. Question marks thereon indicate amounts for
which records are missing or lost, or withheld, or for which the indexes are missing or lost or withheld, or
for which I have received Freedom of Information Act responses so recently that I have not yet had time to
post the information thereon. You can see from that schedule that for nearly every year since 1930, USA
has been taking more water than allowed by the Decree. These excesses violate Water Code Section 1052
and should be prosecuted. Note in that Exhibit comments by the Angle Water Master in paragraph 2.B.
taken from his reports of 1935 to 1946, "spilled from or wasted" by the Orland Project (Orland Unit Water
Users' Association (OUWUA) apparently took over day-to-day management of the Project in 1953 or
1954, but, as USA lawyers pointed out in 2008, USA still owns the project and OUWUA is at most a
surrogate); this wasting & spillage often exceeded the entirety of the upstream diversion. After 1946
Reclamation apparently went after the Water Master and his reports stopped appearing in the Angle
Record - I have not yet found out why. In the Water Master reports of 2001 and every year thereafter
is a comment that the Project was selling water to non-project users. As with the excess diversions and
the waste and spillage, this was apparently ignored by the Angle Court until USA filed a motion to adjust
the District Boundaries on 09/05/2008, Angle Doc. #277 . That's where I became involved with the case

1 for the third time, first out of curiosity in 1976, second in a tussle with DWR over the Sites Reservoir EIR
2 in 2001 (shortly before the incidents of 09/11/2001 made them seem unimportant). It should be obvious
3 to anyone that the Angle Court is indifferent to USA's mischief. SWRCB needs to take it on. Every drop
4 of flow covered by the Decree is outside SWRCB jurisdiction. Every drop outside the Decree is within
5 SWRCB jurisdiction, but SWRCB lacks jurisdiction to grant applications to it from any Decree party,
6 successor, or assign, including USA. SWRCB lacks jurisdiction to allow USA anything of Black Butte
7 Lake, 50% of Stony Gorge (less natural flow), the 150 or so U.S. Forest Service applications or filings
8 within the watershed, California Department of Forestry and/or California Department of Corrections
9 filings as successors or assigns of the U.S. Forest Service, Bureau of Land Management applications, or
10 any other such. It is very important that SWRCB be intimately familiar with the Decree in order to police
11 these boundaries. It may be raised that the stock ponds such as those I own are also illegal. I would not
12 argue with that, except to point out that my Angle rights exceed the amount I store and nothing in the
13 Decree prevents me from changing my place of diversion and my beneficial place and purpose of use for
14 that Decreed amount in such a way as to keep those ponds filled, and under II.D.5 above I don't need to
15 notify anyone or ask anyone's permission to do it. Starting with Angle Doc. #38 filed 02/03/1984 by
16 Stuart Somach when he was with the U.S. Department of Justice there seemed to be some sort of idea that
17 permission of the Court needed to be sought in order to make these changes, but no such requirement
18 appears in the Decree.

19 K. Two sets of USA loopholes from the Decree are noted under "Diversion Limits" in Exhibit C

20 1. Loophole #1, Excess required during initial reclamation, p. 142

21 2. Loophole #2, p. 143 (favoring the Project, of course) which MAY increase Project allowances for
22 beneficial uses FROM STORAGE ONLY, for "the aforesaid beneficial uses in excess of such basic
23 requirements (p. 143)" - "necessary and beneficial uses of amounts of water in excess of such basic
24 requirements, as demanded by (p. 142)":

- 25 a) changing crop conditions, such as more extensive cultivation of forage
26 crops
- 27 b) heavier applications in times of drought or severe drying winds,
- 28 c) occasional maturing of additional cuttings of forage,
- d) and the like (meaning?)

all of which is limited to the lesser of 51,000 a-f MAXIMUM STORAGE or flow available for storage
(and that's at the point of release, not diversion, so less transpiration & evaporation and less conveyance
losses to point of diversion); Loophole #2 is in tricky language, but at the very least probably does not
allow the massive waste spillage the project shows in Water Master Garland's reports up to 1946.

L. These loopholes are not automatic. They may be charged only against storage. They require some
level of proof. For USA to be fairly credited with amounts due under these loopholes, for #2(b) they
would need to claim system-wide, such as the 1977 drought; for #1, they would need to state what lands
were in the process of reclamation, and of course that would diminish to zero fairly quickly. For #2(d)
some explanation as to what "the like" would be is necessary, and for 2(a) and 2(c) a showing
parcel-by-parcel is necessary. None of this has ever been required by any Water Master. Instead they
have concentrated on chasing down and punishing mis-appropriations upstream, while leaving the real
mis-appropriator, USA, unchallenged, USA which has routinely diverted in excess of the Angle Decree
limits, USA which has routinely diverted in excess multiples of the entire amount diverted upstream
(remembering that many of the upstream rights are for streams that run dry before the end of the normal
season so the actual diversion is less than the scheduled limit), and USA which has never accounted to the
Court, the Water Master or the SWRCB for this crime under Water Code Section 1052. And of course,
lands left fallow in the Project for the irrigation season would count against USA's limit since those lands
would not be receiving water. The second document from the top in Ap 18115 file Vol. 6 of 12
is a USA brochure type map for the Orland Project. On the back of that map is the narrative "Water
requirements for general irrigated agriculture in the project area is approximately 3.8 ft/acre...each year."

1 There is no indication in that admission whether or not that includes conveyance but even if it did,
2 diversions in many years exceed even that number plus the Conveyance at p. 4367 of the Angle Transcript
3 (The Decree allows 4.05 a-f per Project acre including conveyance). SWRCB should accept the
4 79,622.78 a-f USA total I show on Exhibit C as the limit allowed by the Decree and until such time as
5 USA can show and defend otherwise USA has been diverting more water than the Decree allows. USA
6 should be required to show, parcel by parcel the amount required for the Orland Project for every year
7 back to 1930. USA should be required to account for the excess in every year going back to 1930. USA
8 should be punished for the violations of Section 1052 and any other relevant section of the California
9 Codes for any excess diversion. And the excesses should be referred to the Attorney General of the
10 State of California to recover for the people of this state a sum equivalent to the total excess diversion at
11 Los Angeles Metropolitan Water District wholesale rates, plus interest. And this should be a requirement
12 for extending Ap. 18115/Permit 13776, plus, of course, a promise not to do it any more.

13 M. As noted at paragraph 2.H. of Exhibit C, it appears that USA has created at some time in the past
14 an intertie between Orland Project Lateral 40 and the Tehama-Colusa Canal. I have not yet found where
15 that point of rediversion has been approved by the SWRCB. If not approved by the SWRCB or if the
16 SWRCB upon investigation finds other interties between the Orland Project and the Tehama-Colusa
17 Canal, the use of these interties should be halted and punished.

18 N. FRAUD ON THE COURT -

19 1. Over the decades there have been comments in filings, Judge Kerrigan said this, Judge Kerrigan
20 said that, none of those comments are true. He didn't even sign the Decree until 4 months later when he
21 signed a note at the bottom saying it was a corrected Decree. There is nothing in the Angle record that
22 shows he even read it. Of course, there is nothing that shows he didn't, either. To those with any
23 familiarity with the case, you might wonder how did USA manage to get a decree that took nearly all
24 upstream riparian rights without compensation. The answer, Fraud on the Court. The decree was
25 apparently written by Oliver Perry Morton, assisted by Richard J. Coffey who was Regional Counsel for
26 Reclamation at the time (see VOL XIX 1928, May, 1928, NEW RECLAMATION ERA [Reclamation
27 house magazine] p. 79, "Reclamation Organization Activities and Project Visitors": "Associate Engineer
28 E.T. Eriksen and Supt. R.C.E. Weber, Orland project, spent several days at San Francisco in conference
with District Counsel COFFEY and Oliver P. MORTON, special assistant to the Attorney General, in
connection with the preparation of the Government's opening brief in the Stony Creek water right
adjudication suit."

29 http://www.archive.org/stream/newreclamationer19unitrich/newreclamationer19unitrich_djvu.txt
30 [the web URL is a crude OCR scan of the text; to see the actual but hard to read text delete the last piece
31 of the URL, making it <http://www.archive.org/stream/newreclamationer19unitrich> , and then use the
32 arrows on the right side of that page to get to May, and then find p. 79 within May. From reading a
33 number of these "Visitors" page in the ERA, it's obvious that they are not specific to the date of the
34 magazine issue.]). If he used some other decree as a model, I have not yet found it but I am still looking.

35 2. Mr. Morton was some sort of water rights gunslinger or groupie. In the teens he apparently
36 practiced out of Portland Oregon. During that time Westlaw mentions him in connection with one of the
37 Silvies River, Oregon cases. After that he apparently became Regional Counsel for Reclamation, worked
38 on the Umatilla River Oregon litigation and moved on to the Orr Ditch cases in Nevada where his name
39 appears on all the replications and in which he did some examination of witnesses the first day and after
40 which his name no longer appears. Thereafter he showed up in the Angle case. Sometime in the early
41 1920s he moved from Reclamation Regional Counsel to Special Assistant to the Attorney General. He
42 conducted all of the examination of witnesses in the Angle case. The initial round of testimony ended
43 08/28/1924 after which he left the title of Special Assistant to the Attorney General.

44 3. A comment by the Water Master in Angle Doc #75 says Mr. Morton attended the 1925 hearings
45 representing OUWUA. I have not yet found verification of that, nor have I found that the hearings in

1 question were the 11/02/1925 hearings on the effort by Special Assistant to the Attorney General Harold
2 Baxter to force adoption of Findings of Fact in the Angle case, which Mr. Baxter was apparently seeking
3 in anticipation of the coming adverse decision to Reclamation's position in the *Herminghaus* case which
4 was in appeal with the California Supreme Court. Mr. Coffey filed a brief with the Supreme Court in the
5 *Herminghaus* case, joined by irrigation districts all up and down the state, only to have to withdraw his
6 name 40 days later because Mr. Baxter had also filed a brief advocacy positions different from Mr.
7 Coffey's.

8 4. In early 1926, more hearings were noticed in Angle, and Mr. Morton did the witness examination
9 as described in paragraph II.F. above. I do not yet know (Freedom of Information Act Requests have been
10 ignored and I will be pursuing them) when Mr. Morton returned as Special Counsel but his return was
11 described with approval by the Court's Special Master in his 11/07/1929 final report to the Court: " That,
12 upon reassignment to the case, in May, 1929, of Oliver P. Morton, as Special Assistant to the Attorney
13 General, consideration of the possible adjustments and understandings aforesaid was carried forward
14 forthwith, and a resumption of said hearing duly arranged," (transcription at
15 <http://www.mjbarkl.com/report.htm>) Whether Mr. Morton was operating as a Special Assistant or
16 a volunteer when he drafted the Decree I do not yet know. It does appear that he was poorly supervised
17 and that he and Mr. Coffey engaged in an "unconscionable plan or scheme" to mislead the court. The
18 draft of the Decree, supporting Findings, and Brief received as a bound and typeset book by the Special
19 Master 04/19/1928, bearing no signature date, lists him as a Special Assistant to the Attorney General at
20 that time. The Brief is a polemic castigating California's riparian rights and predicting they would
21 not last. He was wrong. But the people of Stony Creek suffered for his mischief.

22 5. Defense of the Angle case was not coordinated, and was mostly left to the local bar. Nobody
23 spoke for the entire watershed. The more popular lawyers such as Mr. Purkitt and Mr. Freeman
24 represented many defendants. Unfortunately conflicts of interest were rampant between representing
25 appropriators and representing riparians or representing clients who were both. Mr. Purkitt had been a
26 State Senator, led the California Democratic Party for much of the 1920s, and was, I believe, elected
27 Superior Court Judge in Willows on 11/07/1922, and early the next year Mr. Rankin began appearing for
28 his clients. Mr. Freeman was a mover and shaker in the county, having spearheaded its separation from
29 Colusa County while a newspaper editor before taking up the practice of law; as his pleadings show, he
30 knew quite a bit about water law, as I recall, being on the boards of Reclamation Districts or one of the
31 associations , and representing the larger downstream riparian underflow pumpers like James Mills
32 Orchard Corporation; during testimony in 1923 Warren Gregory of Chickering and Gregory showed up to
33 assist him and shortly thereafter, I presume but have not yet proven, in response to some
34 off-the-record-deal all the major downstream riparian underflow pumpers withdrew their answers and
35 signed disclaimers relying, as the transcripts show, on Reclamation promises there would be no further
36 upstream storage. Mr. Gregory's appearance for his clients in Ap. #2212 show how long that lasted. Mr.
37 Freeman died 04/13/1924 and his son George took over his practice. From his pleadings, etc., George did
38 not seem to be the advocate his father was. His last act for any Angle defendant, as near as I can tell, was
39 to prepare for the Brownells a one page protest filed 02/05/1929, without George's imprint, asserting that
40 neither the findings nor the Decree are in accord with *Herminghaus* without adequate elucidation, see
41 transcription at <http://www.mjbarkl.com/brownell.htm> - the copy filed with the Court is very faint, seems
42 to bear all 4 signatures in George's handwriting, and was given short dismissive comment by the Special
43 Master in his Report, which report does not appear to have been served on the Brownells. No indication
44 appears in the record that Judge Kerrigan even saw the protest (or that he didn't). The only real brief, by
45 Mr. Rankin (<http://www.mjbarkl.com/rankin1.htm>) discussing what appear to be only appropriative, not
46 riparian uses, was withdrawn by him from the record after negotiation by Mr. Morton (<http://www.mjbarkl.com/morton.htm>) - these two documents surfaced again as Exhibits M and N
47 attached to Doc #144 filed by DOJ 01/12/1990 , which, while they show that Mr. Morton skillfully
48 picked off all opposition before the adoption hearing, also suggest the scope of the Reclamation and DOJ
49 files paralleling the Court's Angle archives. The stage was set.

1 6. I have not yet learned how judges were assigned to cases in that era. I have looked at other
2 reported cases in the District Courts, California Supreme Court, and California Court of Appeals while
3 Judge Kerrigan was on each of those courts and find no cases mentioning him in any telling way showing
4 that he had any familiarity with the issues several years earlier before the California Supreme Court when
5 once and for all California's Court refused to allow the taking of riparian rights without compensation as
6 had been set up in the Water Commission Act of 1913. One of the Oregon cases mentioned how Oregon
7 had changed its law in response to lobbying by Reclamation, but I have not yet found out whether or not
8 California's legislature was similarly influenced in crafting the Water Commission Act. Mr. Morton
9 noticed a hearing on short notice at the U.S. District Court for January 13, 1930.

6 7. 36 hours before that hearing, Judge Purkitt suddenly died. His funeral several days later was
7 reported to be the largest in county history, and every lawyer in 3 counties was there. Following this was
8 a struggle for succession, and Mr. Rankin was appointed Judge by Governor Young on 02/27/1930. No
9 one was left to appeal, should they even have known what or why or how. The day before the 01/13/1930
10 hearing the largest snow storm in decades hit the county, 3" in Willows, 6" beyond the hills where the
11 Brownells live. Nothing appears in the record that the Brownells attempted to attend the Sacramento
12 hearing. Roads out west were still unpaved, electrification was a decade away, I don't know when
13 telephone service was extended out there, Rural Free Delivery of the mail had started nationwide 2
14 decades earlier but it's not clear if any mail ever got to the Brownells or that they would have known what
15 to do if it had since George Freeman obviously let them down. Mr. Morton was headed for success.

11 8. There is a filing from that hearing, see transcription at <http://www.mjbarkl.com/order30.htm> . It is
12 untitled. It was marked "Proceeding and Order" on the blue cover in the handwriting of the Clerk, Mr.
13 Maling. Several matters were taken up: 1) a stipulation to include rights for the Catholic Church; 2) a
14 stipulation including rights for the Sutliff family with the report in the filing that their lawyer, the only
15 defendant lawyer present, H.W. McGowan was there to represent them, a presence I have as yet not
16 verified or refuted; 3) an order that the Special Master's report be approved and adopted, that "his Findings
17 of Fact and Conclusions of Law, as embodied in said report be and become the Findings of Fact and
18 Conclusions of Law herein" (those findings written by Mr. Morton and Mr. Coffey in 1928 with minor
19 modifications in 1929) ; 4) that various expenses be ordered assessed and paid; 5) " Solicitor for plaintiff
20 thereupon advised the Court that the United States, acting through the Department of Justice, had
21 authorized and provided for the printing of the suggested form of decree, with the amendments made in
22 the course of the proceedings before the master in a convenient sized volume, and, in accord with
23 plaintiff's motion, offered same to the Court for its use in the making and entry of the decree herein."
24 Judge Kerrigan hadn't even seen it before that day? And " Whereupon the Court, upon consideration
25 thereof and being advised in the premises, signed said decree and directed that the clerk enter the same
26 in accord with the rules. " No signed decree from that day exists in the record. This untitled filing was filed
27 the same day as the hearing, typewritten of course. Was the filing prepared in advance of the hearing
28 which is why it bore no title? It's rather amazing to think that the 500-page Decree book was "offered" the
same day it was adopted. How can anything stated in that untitled finding be considered true? And this is
how nearly all riparian rights upstream from Black Butte disappeared without compensation despite
California Law to the contrary and Section 8 of the U.S. Reclamation Act of 1902 to the contrary, in
one Black Day in January, 1930.

23 9. No signed copy of the Decree appears in the record until the signed note at the bottom of a copy
24 marked "Corrected Decree" following the motion of 04/14/1930.

25 10. The normal approach where there has been a pervasive "unconscionable plan or scheme" to
26 mislead the court is to set aside the judgment and dismiss the action, with prejudice, see Wright, Federal
27 Practice and Procedure, Civil 2d, v. II, 2005, Section 2870 p. 413). It is within the power of the USA to
28 move to set aside the Decree and dismiss the Angle Case. At line 21 of p. 3 of Judge Karlton's
05/04/2009 Order, Angle Doc. #302 (copy at <http://www.mjbarkl.com/302.pdf>) Judge Karlton asserts
that I am guilty of laches for not having moved to dismiss the case, I would guess, before I was born. This

1 is unfortunate, since Moore's Federal Pactice assert laches does not apply to instances of Fraud on the
2 Court. Part of the problem in bringing any of this earlier was the state of total chaos in the Angle record,
3 which I have since worked on curing with my case index at <http://www.mjbarkl.com/Aindex.htm> - this
4 chaos was commented on in the adjudication files for WR 79-6 and 80-11 (index at
5 <http://www.mjbarkl.com/27382.htm>) File 263.1 Regular Functional Activities - Supervision of Water
6 Rights: Pleadings, Item 21 03/03/1984 by Mr. McDonough when he derided Mr. Basye's late argument
7 about the Angle language quoted in paragraph II.D.5 above as being delayed by the lack of order in the
8 Angle record. Pieces of the record are still missing and I am still chasing them down. Mr. Somach, in his
9 able Reimers advocacy, made no mention, if I recall, of the sworn Findings of Fact filed 10/13/1925 by
10 Special Assistant to the Attorney General Harold Baxter asserting that Hall & Scarce (Scarce the
11 predecessor to Ms. Reimers) were entitled to 2,396 acre-feet per year, or 1,198 each - I assume he would
12 have found it relevant if he could have found it at all. If the finest of the California Water Bar have these
13 problems with these cases, what hope do I have?

14 11. Still, it is within the power of USA to set aside the case and dismiss the Decree, because laches
15 does not apply to the USA. And, if it does not apply to the State either, it is also within the power of
16 the State of California. Either USA or the State should do so. I still have the right to bring a writ action in
17 the Court of Appeals since that court has original jurisdiction in accordance with the landmark United
18 States Supreme Court fraud on the court case *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S.
19 238 (1944) , that court having heard Mr. Somach's appeal on the Reimers issues. But writs are an uphill
20 battle. It is more appropriate for USA and/or the State to address and cure this fraud.

21 12. Some riparian rights, as proven, were recognized in the Decree. 2/3 of those have since
22 disappeared with the taking of land for Black Butte. Note how slickly USA destroyed upstream rights
23 despite SWRCB belief to the contrary in Section 749 of the SWRCB regulations. There have been
24 other ways, discussed below.

25 13. After 1930 Mr. Morton shows up in several filings in the Angle case, including in the prosecution
26 of Henry & May Werth (with whom he tangled during witness examination, Angle Tx 1348 et seq.), and
27 is mentioned a few more times in other cases but never again in a water rights case involving USA. On
28 the 1913 Act, eventually the legislature gave up and stripped the riparian sunset clause out of the Water
Code.

O. UNDERFLOW:

1. I have not read many stream adjudication decisions. The last one I've looked at is the 07/1984
Lassen County Superior Court case No. 16291 Decree in the "Hallett Creek Adjudication", of which a
bound copy is in the Ap. 30010 file. I would guess this Decree is fairly typical. It specifically covers
stream flow and underflow. As described above under Fraud in the Court and in various comments above
about Mr. Morton, the Angle Decree is atypical. The Angle Decree specifically excludes any coverage of
underflow or supporting flow or underground streams, except for mention in the portion of the decree that
relates the stipulation between USA and GCID where it reserves to USA, as between those two parties
only, the right to pump from underflow at USA's two diversion points, Decree pp. 171 & 172. There was,
of course, no way to recite the stipulation without quoting that language, but it does not bind any other
defendant or their successors and assigns. For some unknown but inconsistent reason there is also
mention of underground waters regarding the Billiou claims on p. 109, and it might be argued that as to
them only, the Decree also prohibits them and their successors and assigns from pumping from underflow,
but that seems to be a Decree drafting error considering how careful Mr. Morton was to exclude all other
underflow references.

2. I have been collecting bits and pieces from the Angle Decree regarding underflow and
downstream riparian pumpers from underflow in the section of my <http://www.mjbarkl.com/wars.htm>
web page entitled DOWNSTREAM RIPARIANS/UNDERFLOW USERS . At

1 <http://www.mjbarkl.com/mills3.htm> I have retranscribed the bulk of the testimony of the chief engineer
2 for downstream underflow pumpers James Mills Orchards Company, Esperanza Land Company,
3 Sacramento Sugar Company, et al., all Frank Freeman clients, Angle Tx. 2905 et seq. In reading this
4 transcript you will note something very curious: instead of trying to pin down the defendant and forcing
5 the defendant to admit they are pumping from underflow, Mr. Morton seems to be trying his very best to
6 talk him out of it. All I can do is guess at his motives, which may be that he had not planned on the rich
7 and powerful downstream users asking to be added as defendants in the case and to have them there
8 would seriously complicate what he considered to be "slam-dunk litigation" against a gaggle of
9 defenseless and impoverished hill people. As mentioned above after Mr. Gregory joined the defense there
10 was apparently some sort of off-the-record settlement with all the downstream underflow pumpers after
11 which they changed their answers and disclaimed any rights.

12 3. Except as between USA and GCID, at the exact point of USA diversion, and possibly except as to
13 the Billious, their lands and successors and assigns, the Angle Decree does not cover underflow,
14 subsurface flow, underground stream flow, or supporting underground flow. It's just not in the Decree.

15 4. For some unknown reason, possibly since they assumed that the Angle Decree covered underflow
16 just like most such decrees, both long-time water masters have comments attributed to them that
17 underflow IS covered by the Decree. Mr. Garland was water master from 1932 to 1964. He is credited in
18 a 09/01/1978 memo from Reclamation Geologist Phillips to Files, "Stony Creek Underflow", in SWRCB
19 adjudication file "263.01 Regular Functional Activities - Supervision of Water Rights: Correspondence"
20 for the referral opinion behind WR 79-6, WR 80-11, as having determined several wells proposed
21 along the north side of Big Stony at Stonyford were from underflow and brought a halt to the plans for
22 them in an as-yet unlocated court action. Water Master George Wilson started service in 1982 and
23 continues. In Angle Doc. #75, 01/07/1985, "Declaration of Water Master re Water Rights and Associated
24 Problems within Stony Creek Watershed" Mr. Wilson concluded that the Colusa County wells for
25 Stonyford were from underflow and that Water Master Garland did not permit pumping from underflow,
26 with no citation to the record to support either contention. In various water master reports since then, Mr.
27 Wilson has asserted that Century Ranch at the south end of East Park has been pumping domestic water
28 from underflow, see for instance the report of Water Master between Angle Docs. #99 & #100 in the
Angle Archives. After 6 months of trying I have been granted access to Mr. Wilson's water master
records and now am waiting for an appointment date and time. Neither Mr. Garland nor Mr. Wilson have
pointed to the language in the Decree that supports their position, which is understandable since it is not
there.

1 5. THE COLUSA COUNTY/STONYFORD WATER SUPPLY CASE, WR 79-6, WR 80-11, and
2 Ap. 27382. As with its treatment of a number of other Applications, with the Stonyford Water System
3 case the SWRCB extended the reach of the Angle Decree:

4 a. UNDERFLOW - The SWRCB determined that the County wells pumped from underflow and
5 thereby took supporting flow from Westcamp and their related protestants, as well as from the Orland
6 Project, this at a time when the Orland Project was diverting water far in excess of what was allowed
7 under the Angle Decree. The correct decision would have been to determine that the Stonyford
8 underflow, whether the "approximately 3,607 acre-feet of unused channel storage within the underflow of
9 Stonyford Valley" per the 08/02/1985 Report, Staff Analysis, in re the Matter of Application 27382,
10 or the 10,000 a-f estimate available in the aquifer and recharged rapidly at the beginning of each rainy
11 season as noted in the 06/15/1984 Declaration D.E. Kienlen, Civil Engineer attached to Angle Archive
12 Doc. #58, or the 15,047 a-f of "Effective Storage Area" in the Stonyford aquifer by Geologist Paulsen
13 discredited by the SWRCB referral report as "not supported by any evidence," is unappropriated, and the
14 full amount of the storage is available for the County of Colusa for domestic supply should it wish
15 to apply for it. Allowing underflow to be pulled within the Angle orbit has serious consequences for the
16 entire watershed.

1 b. SWRCB allowed Protests by Angle parties and their successors and assigns as against other Angle
2 parties and their successors and assigns, despite the fact that the moment it appears the parties are covered
by the Decree, SWRCB loses jurisdiction and these parties must instead be referred to the Angle Court.

3 c. As noted in II.D.5. Angle parties are absolutely entitled to change their "point of diversion and the
4 places, means, manner or purpose of the use of the waters to which they are so entitled or of any part
5 thereof, so far as they may do so without injury to the rights of other parties as the same are defined
6 herein." Westcamp and USA could have protested to the Court, but their positions were in error since
underflow was not covered, and they should have lost. SWRCB changed the balance of rights under the
Angle Decree and did not have jurisdiction to do so.

7 d. Someone got the bright idea of having Colusa County negotiate a contract with USA for
8 replacement water from Black Butte. This was wrong because USA has no rights to Black Butte water
since Black Butte Storage violates the Angle decree (it far exceeds USA's limits, see Exhibit C), and for
9 SWRCB to require that contract to sell what USA had no right to sell was in excess of SWRCB
jurisdiction.

10 e. ELDERBERRIES - On North Fork, we have been growing elderberries. Elderberry bushes are one
11 of the few crops that thrive in that environment. We have a half dozen overall healthy but somewhat
12 drought-damaged bushes within a deer-safe fence in SE1/4 SE1/4 S33 T23N R5W. We have quite a few
13 other elderberry bushes here and there on the ranch. Last year I planted a number of cuttings from these
14 and purchased some elderberry seedlings, but unfortunately the aphids got the ones indoors, and the snails
15 killed the ones outdoors in one night long after the cuttings and seedlings were doing well; organic
16 farming is not easy. I am trying this nursery again this fall and winter. We have 2 solar wells we plan to
17 fit for drip irrigation (one of these is in the portion of our lands over the ridge line into the Sehorn Hollow
18 tributary to Burch Creek where we have several hundred acres) and plan to add more, as well as the
19 developed springs in S33 supplying drip irrigation. As noted above, we have 70 a-f of pumped Angle
20 rights available. Our goal is to plant elderberry bushes in the various draws and gullies on our land out of
21 the way of grazing at a slow but escalating pace, supplied by drip irrigation, and eventually develop what
22 we believe will be the world's largest organic elderberry plantation, including retail, wholesale,
23 manufacturing and research components, much the same as Moana Loa Macadamia did at Hilo, Hawaii.
24 If the "Valley Elderberry Longhorn Beetle" (which I believe are still Federally listed) thrives in our
25 plantation that is fine with us. If our irrigation in the gullies produces pools and ponds where our
26 population of California Red Legged Frogs, California Tiger Salamanders, and Northwest Pond Turtles (if
any) manage to thrive so much the better. All this is threatened by SWRCB deciding that the Angle
Decree covers underflow, because before that we could pump from the ground to whatever degree we
chose without worrying about other Angle parties or their successors or assigns or an overly ambitious
assessment by somebody as to what water under any given gully is underflow. As I see it, SWRCB's
extension of Angle coverage to include underflow effectively limits our elderberry plantation to about
10% of what we envisioned, some 300 acres instead of 3,700 and probably makes it economically not
viable. This is part of how Ap 18115, USA's taking of huge excess diversions of water to which it is not
entitled, SWRCB's allowance or requirement that USA sell Ap 18115 water to Colusa County's Stonyford
water system (which USA is not allowed to do under the Angle Decree), SWRCB's mistaken opinion that
underflow is covered by the Angle Decree, and SWRCB's allowance of protests that belong in the Angle
Court and that SWRCB has no jurisdiction to hear, all damage our efforts to foster and protect listed
species on our property. We can develop part of this project over the hill in Sehorn, but our capacities are
wrongfully limited by SWRCB in general, by SWRCB under Ap 27382 specifically, by USA's diversions
in excess of Angle limits, and by USA's application to extend its excessive diversions under Ap
18115/Permit 13776. SWRCB needs to require that USA move to set aside and succeed in moving to set
aside the Angle Decree before proceeding further with its extension application, and SWRCB needs to
correct its enlargement of the Angle Decree's Scope under Ap 27382 until that happens, etc.

27 III. PUBLIC INTEREST:

1 A. FULLY APPROPRIATED - in WR 89-25, 94-07, 98-08 SWRCB pronounced Stony Creek as
2 fully appropriated. For Stony Creek SWRCB seems to rely on 1) D 1042, 2) D 1100, and 3) The Angle
3 Decree,

4 1. In D 1042/Ap 19355 the decision made no sense - as discussed above on the Colusa
5 County/Stonyford cases including Ap 27382, SWRCB had no jurisdiction to consider either the Ap or the
6 Protests, which, among Angle parties (OUWUA being a successor or assign of USA), should have been
7 before the Angle Court where the Ap would have been disallowed unless it was a change in place of
8 diversion or of use, etc. and if it had been a change the Applicant was not even required to notify the
9 court. I have not yet re-reviewed this file after looking at it in 2001.

10 2. For D1100 as discussed above, SWRCB had no jurisdiction, since Ap 18115 was for water in
11 excess of that allowed under the Angle Decree. Further, the schedule on page 9 of that Decision relies on
12 water entering the Sacramento, rather than peak flow which is at Black Butte some 25 miles upstream and
13 below which Stony Creek becomes a losing stream, losing 40 to 50% during normal winter flows, and all
14 flow at times of low flow.

15 3. The Angle Decree limits as shown on Exhibit C at this time amount to about 97.940.35 a-f for the
16 entire watershed, GCID's limits being effectively taken by USA by the combination of its contract 855A
17 plus Judge Levi's curious decision in USDC ED Cal 91-1128 wherein he opined, among other things, that
18 storage of water is not a proper reasonable and beneficial use of Angle Decreed water even though it is for
19 USA and nothing in the Decree seems to state otherwise. Presumably he got that from vigorous
20 arguments by the USA plus unsupported opinions from the Water Master, see USA arguments at 91-1128
21 Doc. #64 filed 07/01/1992 for instance, that case file being on a cart in the Court Clerk's office at this
22 moment along with the Angle archive files. The Water Master cannot point to wording in the Angle
23 Decree that prevents such storage because it does not exist. A copy of contract #855A, or more
24 specifically Contract 04-06-200-855A, or at least a draft of it dated 04/06/1964 is in Ap 18115
25 correspondence file VOL. 4 OF 12, fourth document from the back of the file. In any event, as paragraph
26 4.A. of Exhibit C shows, for irrigation years 10/01 - 09/30, 1903-1955 in only 5 years was there less flow
27 than the current Angle limit. I am working on fleshing out that schedule clear to 2009 but various Federal
28 Agencies are dragging their feet on answering my Freedom of Information Act Requests. In the
meantime, for the maximum year shown, 1940-41, the Angle limit was under 7% of the total flow. As to
how the SWRCB could decide a 7% level of diversion constitutes Fully Allocated defies all reason.
When added to that, SWRCB Regulation 1062 subdivision (a)(1)C)(2) "If a water right application is
accompanied by a petition to revise a declaration of fully appropriated stream systems, then \$10,000 shall
be added to the fee.", the declaration of "fully appropriated" becomes totally outrageous and fatally
punitive.

20 B. COUNTIES OF ORIGIN/AREAS OF ORIGIN

21 1. The Angle Decree, the overall Project, and the management and control of the Stony Creek and all
22 its tributaries by USA has been devastating to the environment upstream from Black Butte. As I
23 understand it, Newville was at one time the largest town in Colusa County, which is what it was called
24 before Glenn County was split off. It was founded at a "water gap" on North Fork where water ran all
25 year and the land was fertile and productive. But after the railroad was routed through Orland, and a
26 disasterous fire levelled most of the town, Newville waned. Loss of the water rights in the Angle case
27 finished it off.

28 2. Elk Creek is in much better shape than Newville (at least it is still there), but it is still hot, dry,
dusty, and seems to have an air of hopelessness about it. Grindstone Rancheria has a U.S. Government
(BIA?) sign on the road entrance saying "no trespassing" so it is an enigma, although the Google satellite
photos suggest a tidy little town. Stonyford is similar to Elk Creek although the road leading in from the

1 North is shaded by a truly wonderful stand of Valley Oaks. The maps submitted for Ap 27382 show 10%
2 of the houses in Stonyford abandoned, see October 1966 Map, County of Colusa, Stonyford Service Area,
3 loose in back of correspondence folder Vol. 1 of 2. Homesteads throughout these upper valleys are
4 abandoned or gone, although this is much the way with agriculture throughout the country so it cannot be
5 necessarily laid at the feet of USA. On the Century Ranch website is a page about Stonyford, see
6 http://www.crrainc.com/about_stonyford.htm , note how the population has stagnated. Without the Angle
7 Decree and USA's control of the watershed it is arguable that as with similar California towns, the
8 population now would be ten times what it is.

9
10 3. The hotel and resort at Fouts Springs is gone, replaced by a youth (prison?) camp of some sort - I
11 believe, but do not yet know for certain that Fouts Springs began waning when USA dammed out the
12 chinook runs.

13
14 4. South of Stonyford is a failed development, Century Ranch, which was subdivided during a time
15 there was no water master by a developer without adequate knowledge of the stranglehold USA has on
16 upstream water rights - even so, the few people who live there on widely scattered lots next to
17 well-maintained roads do not deserve the hand USA has dealt them. It is outrageous for USA to divert
18 water far in excess of what the Decree allows it in the way it has while people upstream suffer the way the
19 people of Century Ranch have suffered; houses there are allowed but further building forbidden, lake
20 access lost, airstrip lost, homeowners' association holding on - see generally their web page with all this at
21 http://www.crrainc.com/about_century_ranch.htm - note the struggle described therein for water while
22 USA takes, without authority, all it wants. Despite the fairly upbeat tone of that Century Ranch web page
23 (for some unstated reason, perhaps unsupported hope, a part of human nature, the Century Ranch people
24 seem to still believe in the future of their community), there is an air of desolation about the development,
25 punctuated by an occasional tidy home. It has not helped that the the current Water Master was a
26 Reclamation employee before accepting the task of water master (see "Notice of Invitations to Bid for
27 Establishment as a Watermaster Program" - Freeman or George Wilson [Mr. Wilson is the Water Master]
28 of Reclamation in Sacramento are the contacts, attached to 03/26/1979 Draft Letter, Freeman/OUWUA in
Stonyford adjudication referral file 263.01 Regular Functional Activities - Supervision of Water Rights:
Correspondence) and that he apparently applies a different standard to upstream underflow users vs.
downstream underflow users . Yes, the Angle Court is aware of it, but does nothing.

1
2 5. The "Fouts Springs Youth Facility Environmental Assessment", March 2000, by the United States
3 Forest Service, viewed in 2001 at <http://www.r5.fs.fed.us/mendocino/fouts.pdf> , and since disappeared, so
4 see web archive at
5 <http://web.archive.org/web/20000830083155/http://www.r5.fs.fed.us/mendocino/fouts.pdf>
6 states at p. 3-38, or pdf p. 81 in the web archive page)). "[because of the Angle Decree] Opportunities to
7 acquire water for domestic purposes are very limited in the entire Stony Creek watershed. This has
8 contributed to the slow development and low population densities in the watershed" (Exhibit D attached).
9 This is an "admission" by USA regarding the degree to which they have looted the upper watershed, the
10 hardship they have imposed upon its people, and the damage they have caused the region.

11
12 6. What USA has done with its management of Stony Creek is inconsistent with California's
13 watershed protection, and county of origin, and area of origin statutes. It also seems to be inconsistent
14 with an evolving SWRCB "common-law" style area of origin preference: "Term 13 is consistent with
15 policy evident in a number of SWRCB decisions to the effect that water originating in a watershed
16 or county should first be available for use within its county or watershed of origin."
17 (http://www.waterboards.ca.gov/board_info/agendas/1999/august/0804-06.htm) Despite Term number 7
18 in D 1100, USA continues to loot the watershed of its water resources in amounts far in excess of what the
19 Angle Decree allows. It is against public policy and against the public interest and USA's stream
20 management philosophy should be corrected before USA is allowed to do any further damage to the the
21 Upper Stony Creek Watershed.

1 C. "AS AGAINST" & SWRCB REGULATION 749

2 1. The strongest prohibition against claiming water in addition to that allowed the parties in the
3 Decree appears in the text quoted in II.D.6 above. It would appear to have a loophole, the "as against
4 other parties" language, an argument being that as long as a party didn't claim it "as against any other" they
5 could get more water than the Decreed right. As commented above in paragraph I.H. the prohibition
6 against protests in SWRCB Regulation 749 should not be allowed in the case of Stony Creek because of
7 the special circumstances resulting from USA's misbehavior. The following iterations of "as against"
8 takings of water by USA are also the reason they are able to interfere with upstream uses; "as against"
9 makes USA's excess diversions violative of the Angle Decree:

10 2. The Water Masters have over the years, with the cooperation of USA, applied pressure against and
11 sought prosecution of upstream diverters while turning a blind eye to far greater excessive diverters by
12 downstream users ; see my Angle Decree index at <http://www.mjbarkl.com/Aindex.htm> for location
13 of these papers in the specific Angle archive files which, at this moment, are on a cart in the Clerk's office
14 at the United States District Court, Eastern District, 3 blocks west of the SWRCB; these prosecutions have
15 had a chilling effect on the upstream users, leaving USA free to do what it wished downstream; these
16 prosecutions and similar "as against events" from the Angle Archives include:

17 a. 12/29/1930 Report of Water Master (E.T. Eriksen) 1930; attached blank, is a Decree Notice to
18 ditch owners, "install a reliable and readily operated headgate and a measuring box or flume or other
19 device which may be locked and set in position--same to be approved by Water Master--so that the water
20 may be regulated and measured." penalties, 06/15/1930 deadline, extensions for good cause

21 b. 03/09/1931 In Re Geo. W. Lewis and Frank W. Lewis Charged with the Contempt of the above
22 Entitled Court, Order for issuance of Rule to Show Cause (nonpayment) box 5 file 25/39; there were a
23 number of these for nonpayment over the years; this was a regular type of enforcement, those awarded
24 rights were required to pay to a fund for the Water Master which I understand is common, but the Decree
25 being for USA, with upstream users severely limited in their usage, with USA routinely taking more than
26 allowed, and with USA's deep pocket, somehow assessing the victims does not seem right.

27 c. 09/12/1932 Order for Warrant of Arrest, Henry Werth and Mrs. Mary [sic] E. Werth Judge A.F.
28 St. Sure b5 23/39; this one went on for awhile, Henry was arrested and taken apparently to Sacramento.
When he was finally released he arrived in Colusa County by train too late to make the stage and had to
walk home to Stonyford. In talking with Matt Graham, a descendant, it is apparently still a family legend.
People talk, exchange stories. One arrest is enough to halt excess diversions upstream, while USA takes
what it wants.

d. 12/21/1932 Report of Water Master Season of 1932, paraphrased, a number of violators, mostly
petty: those left out of the decree but seeking to use the water, those opening head gates at night &
shutting them at dawn, those mis-reporting times, principal violators Werth, Knight, Soeth, notices served
not proper, season too late to retry;

e. 01/20/1934 Report of Water Master, Season of 1933, only difficulty was with Ben F. Provence
making an adverse use, settled in Open Court 09/11/1933;

f. 01/07/1943 Report of Water Master, Season of 1942; found Schmidt ranch on Goat Mountain
diverting illegally from Little Stony, ordered to appear before Assistant U.S. Attorney in Sacramento but
they haven't done so;

g. 02/09/1944 Report of Water Master, Season of 1943; Schmidt Ranch illegal diversion from Little
Stony ceased;

1 h. 03/05/1946 Report of Water Master, Season of 1945; problems with E.A. Wright who acquired the
2 Paine property [not Johannsen?], begrudgingly cooperating; last Water Master Garland Report;
3 Reclamation started picking on him over the way he was "administering the Decree" so he apparently
4 stopped telling the Court USA was wasting water or reporting anything else except for submitting bills
5 and the occasional petition

6 i. 11/20/1947 Order to Show; that E.A. Wright appear 12/01/1947 and show cause why he hasn't
7 installed certain equipment in his pumping plant, and that the marshal serve it Order on Mr. Wright) box 4
8 file 29/39; Mr. Wright had been using a tiny portion of his irrigation water to operate his indoor toilet and
9 refused to add a new gage to his irrigation works to measure that re-diversion; got quite angry and sent a
10 nasty letter to the judge impugning Mr. Garland's sanity, probably not a good idea.... All this, of course,
11 while USA continued to divert massive excesses over what is allowed in the Decree

12 j. 03/05/1954 Letter Water Master to Gilman ordering construction of a measuring device in Brown
13 Ditch #1 before any diversions in 1954, with envelope, sent registered box 6 file B1M/12M. went to full
14 fledged petition & hearing 03/29/1954, 04/02, 05/03, letters back and forth into 04/21/1955

15 k. 091460 Jane E. Buckley, L.F. Buckley, & U.M. Buckley, Petition to be allowed to use transfer
16 water from Gilman, since Buckley ran out early and Water Master cut her off. Despite Decree Clause
17 giving Gilman the right (quoted at II.D.5 above), Water Master forced Buckley to go to Court to get the
18 judge's approval. All this while USA continues to divert in excess of what the Decree allows.
19 09/16/1960 Judge issues order requiring that no future hearings occur unless all interested persons are first
20 notified box 6 file 2M/12M thus adding a massive cost to the right (II.D.5 above) that the Decree gave to
21 all the parties without such a cost. Since USA and GCID were the only ones really abusing the Decree,
22 they should be the only ones who have to notify everybody.

23 l. 09/11/1961 Letter Reclamation to Water Master demanding enforcement against 54 members of
24 Stony Creek Water Users Association to abate their combined 176 stock ponds with 4,184 acre feet of
25 capacity in retaliation for their protests filed in SWRCB Ap 18115, box 6 4M/12M; apparently nothing
26 came of it, but this is about as "as against" as it can get: the owners of the ponds claimed "as against"
27 USA's Ap 18115, and USA claimed against the ponds, ergo, both squarely violate the Angle Decree, not
28 in the "as against" but in the claim for water, except for ponds supplied with Angle rights; the unwritten
truce since 1961 doesn't change the fact that both sides were violating the Decree

1 m. 120663 Letter Water Master Garland to Judge Halbert, "...considerable hard feelings against the
Orland Project among many of the Defendant Water Uners [sic], they seem to have the feeling that the
Orland Project is forever trying to take away from them the water allowed them in the Decree....",

2 n. 07/16/1965 Notice of Hearing of Motion for Order Permitting Certain parties to Change Points of
Diversion on Big Stony Creek (Daniel F. Gallery of Martin McDonough); 17 users of Kesselring &
Morris-Welton aka Morris-Walkup Ditches; again the Decree does not require this but someone is making
them do it.

3 o. 07/11/1966 Order Fixing Notices to be Given on Applications to Change or Add Points of
Diversion b3 un-numbered file ; cranking back on the notice requirements to require notice only to those
diverting between old and new place of diversion, plus to OUWUA & the Watermaster

4 p. 11/04/1980 OUWUA intervene in Angle citing Andreotti? 11/28/1980 letter to judge regarding
Andreotti & water master? USA & OUWUA nail Andreotti to the wall in Ap 24758, D 1558, WR 80-13,
80-18, 82-10, in Colusa County Superior Court, to direct SWRCB to amend D 1558 11/14/1980 , and
11/14/1980 USDC ED Cal #80-900 == USA v. SWRCB, protesting non-USA storage, all while USA &
OUWUA are diverting much more water than the Angle Decree allows.

1 q. 09/02/81 letter from short-termed Moldenhauer/Water Master to Jessie Westcamp; complaints re
2 joint use of water on their ditch, urging them to cooperate.

3 r. 02/03/84 Angle Doc. #37 Notice of Petition and Petition to Confirm Changes in Point of
4 Diversion, Place of Use and Purpose of Use of Certain Decreed Rights and to Transfer Certain Decreed
5 Rights , start of Angle Court consideration of Colusa/Stonyford water system which became a pretty
6 nasty scrum over a relatively tiny amount of water, all the while USA was diverting hundreds of times as
7 much in excess of the diversions the Decree allowed; 01/10/86 Doc. #94, settled;
8 04/02/84 Angle Doc #45 OUWUA Points and Authorities on Colusa/Stonyford: "The water right
9 proposed to be transferred is presently being unutilized. As a result, other holders of rights under the
10 Angle Decree, including the Orland Unit, are provided a more dependable and greater amount of water.
11 To permit the transfer of this water right would be to deprive those parties of the benefits which they have
12 received over the years...." "...other right holders, like the Orland Unit Water Users will have no
13 opportunity to utilize their legal share of the unused portion of the water right. . . ." ; despite the Orland
14 Project not being allowed to divert rights unused upstream and despite the Project diverting excesses
15 over the amount allowed in the Decree for years, here is OUWUA claiming against legitimate rights of
16 Colusa that for Colusa to use their legitimate right it would take away from unlawful uses by the Project.
17 What gall!

18 10/02/1984 Angle Doc #73 Response to Petitioners' 1st set of discovery requests to OUWUA, Request for
19 Admission #42 "Admitted in part, denied in part. The effect upon the Orland Unit to the extent of waters
20 which would otherwise have been available to the Orland Unit for use, is a reduced ability on the part of
21 the Orland Unit to sell and distribute those waters to lands within the boundaries of the Orland Unit
22 Waters Users' Association"; even if not Project lands? more effrontery

23 s. 03/12/1985 Doc. #77 Petition for Order to Show Cause Why the Defendant Should Not be
24 Punished for Contempt; diverting before season starts; Gary Gregory successor to James Harmon & Abe
25 L. Triplett, etc. 04/18/1985 Judge Wilkins threw it out, possibly because of explanation in Doc #96
26 regarding side contract (one not allowed by the Decree) with Reclamation

27 t. 12/15/1987 Letter, Water Master to Mcdonough, water supply for Hall & Scarce ranches (Albert
28 Wackerman and Holly Reimers' Black Butte Ranch); Water Master does not accept any of the
stipulations for Hall and Scarce and apparently missed in the record the sworn affidavit by Special
Assistant to the Attorney General Harold Baxter recognizing 2,396 acre feet per year entitlement of the
two ranches, half each; start of protracted struggle by Wackerman & Reimers to protect their rights, at one
time OUWUA and Reclamation cut off her water in the middle of the irrigation season and yes, SWRCB,
she is geographically upstream from the Orland Project which means the assumptions in SWRCB
Regulation 749 as to protests by upstream rights holders on Stony Creek are simply not valid because of
the presence of the Decree and the Water Master. Stuart Somach won for Reimers in the Court of
Appeals, following which OUWUA and Reclamation again cut off her water apparently to force her to
give up claim for an eighth of a million dollars in legal fees; it worked, she gave up and settled. During
all this time USA is diverting thousands of acre-feet more than the Decree allows. First part of settlement
08/21/1991 Angle Doc #211 & 212, after which OUWUA began efforts to stick them with Costs
08/29/1991 Angle Doc. #213; Second part of settlement after winning on appeal 04/14/1995 Doc. #245

u. 08/31/1987 No Doc. #, in Angle file between #99 & #100 Water Master Report for 1986,
reports to the Court that Century Ranch is pumping from underflow, warnings to Century Ranch go on for
years; same report, Glenn County Public Works wanted Stony Creek water for Road Construction,
Reclamation agreed to provide exchange water from Black Butte, again, USA is selling water it had no
right to in the first place because it is from water that exceeded the limits in the Angle Decree;

v. 12/20/1989 Angle Doc. #143 Report of Water Master for 1988 (paraphrased): Century Ranch
Water Company continues unauthorized pumping from Little Stony, this year both wells & Little Stony
inadequate so they trucked in water; (Water Master Supervision) Committee (which is not authorized by

1 the Decree) would not approve Colusa Century permit applications because of unauthorized diversions
2 from Little Stony; asked by Letter to U.S. Attorney for "petition to seek declaration of water rights and an
3 injunction to stop diversions by Century Ranch Water Company from Little Stony Creek.", met with many
4 powerful people (including Senator Feinstein, and county officials) regarding this, Century agreed to enter
5 into Reclamation contract (which Reclamation had no right to do since it was transferring water which it
6 obtained in violation of the Angle Decree);

7 w. 08/03/1990 Angle Doc. #171 Petitioner Garlin's notice of petition and petition to confirm change
8 of place of use of certain decreed rights; successor in interest to Alex Brown; erosion left rocky soil, so he
9 leveled other close-by land, installed underground pipeline; under the Decree, this motion was not
10 required. Water Master force him to?

11 x. 09/17/1990 Angle Doc. #195 Letters sent to Court, from Letter Water Master Wilson to Joseph M.
12 Castro, Jr., 09/12/1990 regarding Mr. Castro's interference with the Water Master locking off his water
13 until he improves his irrigation works, all this while USA is diverting hundreds or thousands of times the
14 water allededly wasted by Mr. Castro in violation of the Decree, padlocked his ditch Doc. #225

15 y. 04/21/1992 Angle Doc. #223 REPORT of Water Master for 1990: as part of the plan review for
16 Colusa County, on 03/26/1990 mailed Colusa County that there may not be an adequate water supply for
17 proposed subdivision Rancho Ladoga, 89 homes next to East Park; Frank Baker may have been diverting
18 by pump found just down from Rainbow to a small stock pond, confronted him, irate, called trespassers,
19 said he had a water right; at request of Greb Trebor, Manager, MNC & K Ranch near Ladoga, got a
20 Reclamation groundwater geologist to inspect and evaluate whether their wells affect Indian Creek flow,
21 concerns from Ladoga residents that more wells will reduce Indian Creek and further hurt their inadequate
22 wells, but no evidence of this yet (more on how 27382 inclusion of underflow has interfered) ; again
23 allowed movement of diversion point from Brown Ditch #1 because of erosion (how can he "allow" it? it
24 a matter of right in the Decree);

25 z. 10/08/1992 Doc. 71 in USDC ED Cal Case # 91-1128, judgment stripping GCID of all meaningful
26 use of its Stony Creek Decreed rights; a ruling that makes no sense

27 aa. 07/02/1998 Angle Doc. #247 REPORT OF WATER MASTER 1997 by George Wilson Colusa
28 County diversions continue to exceed allowed, County ignored water master & DOJ warnings (this
appeared in most water master reports for years);

bb. 06/11/2001 Angle Doc #254 REPORT by [Water] Master George Wilson year 2000; Stonyford
diverting in excess of Court Order, David Kelly Director County Planning & Building letter 04/13/2001
does not agree with water master interpretation of Order, contends County acquired additional water;
(well, yes, they did, but not from that well)

cc. 07/24/2002 Angle Doc #258 REPORT of Water Master George Wilson for 2001; received
informal call 04/17/2001 on complaint filed with Inspector General's Office [which inspector general?]
about Reclamation delivering water to lands outside the Project boundaries and Water Master lax on
project water uses; (this appeared in every report for most of the decade, and on 09/05/2008 Angle Doc
#277 USA moved to include these out-of-project areas, including one that leapfrogged 7 miles away from
the Project boundary

dd. 05/04/2004 Angle Doc. #261 REPORT of Water Master to US District Court for 2002; Stonyford
diverting in excess of 01/1986 Order, water master & DOJ wrote Board of Supervisors, which did not
respond, 03/14/2000 asked Maria Iuzuka, DOJ, to start action to compel Colusa County to comply; new
Director of Planning acknowledged and attempting to comply;

ee. 05/04/2004 Angle Doc #262 REPORT of Water Master to US District Court for 2003 -

1 commented that he doubts it is the water master's duty to police the Orland Project; that certainly
2 contradicts the Decree, a one-sided water master? Surprise, surprise.

3 ff. 01/23/2006 Angle Doc. #267 REPORT of Water Master 2004 by George Wilson; may have talked
4 developer out of 1,000 5-acre lots on Little Stony;

5 gg. 08/03/2006 Angle Doc. #270 REPORT of Water Master to the USDC 2005; New investment
6 group from China makes periodic inquiries on subdividing Little Stony lands;

7 hh. 09/05/2008 Angle Doc. #277 USA moves the court to allow Orland Project to annex land not
8 previously in the project, leading ultimately to this Ap. 18115 protest.

9 ii. Some other interferences appear in the Angle Transcripts relating to incidents before the Angle
10 suit was filed in 1918 (Towle, Green, Kirkpatrick, Little Stony below the dam, et al. and etc.). In this
11 recitation, I may have missed a few; with Water Master Garland's records missing there's no telling what
12 else he did, such as stopping those Stonyford wells as mentioned in paragraph II.O.4 above

13 2. The Angle Decree, written by USA to its own benefit, does not make for a level playing field in
14 the watershed; some of its terms are subtly shaded in favor of USA, others are more blatant

15 3. The prosecuting of upstream diverters by the court while allowing USA and other downstream
16 diverters to divert what they want has effectively chilled upstream protests and left a population afraid of
17 USA's power

18 4. USA routinely takes more water than it is allowed by the Decree, and SWRCB allows it to despite
19 full jurisdiction to prevent take of water in excess of Decreed

20 5. USA and its surrogate OUWUA, plus from time to time GCID (note the excessive diversions by
21 GCID in Exhibit C paragraph 3), regularly throw protests against upstream diverters all while they are
22 diverting far more than allowed by the Decree

23 6. The "Fully Appropriated" designation plus the outrageously punitive \$10,000 fee in the SWRCB
24 regulations for challenging it means only USA or GCID or USA's surrogate, OUWUA can afford to make
25 applications. If anyone wanted to give USA a gift of all the water they wanted while deliberately cutting
26 out the little people, that finding and that fee is a splendid way to do it.

27 7. The recitations in this paragraph III.C well show the back and forth "as against" claiming that has
28 gone on as prohibited by the language from the Decree quoted in paragraph II.D.6 and all water so
claimed has been claimed in violation of the Decree.

21 D. WASTE

22 1. In many places in the California Water Code are requirements that the SWRCB act to prevent
23 waste (such as Section 275), all in accordance with Article 10 Section 2 of the California Constitution:

24 "...general welfare [public interest] requires that the water resources of the State be put to beneficial use to
25 the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable
26 method of use of water be prevented, and that the conservation of such waters is to be exercised with a
27 view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.
The right to water or to the use or flow of water in or from any natural stream or water course in this State
is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and
such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use
or unreasonable method of diversion of water."

1 As noted in paragraph II.J. above pointing to the tallies taken from the Water Master's reports in Exhibit C
2 paragraph 2.B., USA engaged in massive spillage and waste until his reports abruptly stop after 1946
3 (along about the time Reclamation took him to task for his water mastering), but thereafter the overall
4 totals did not diminish, so presumably the spillage and waste continues. Explanation, followed by
5 appropriate disciplinary action is in order and I ask the SWRCB to pursue that course.

6 2. For a decade or two the Orland Project has been turning into a bunch of hobby farmers, with
7 urbanization severing parcels from access to water even while the owners are still required to pay full fees
8 to OUWUA or huge fees to withdraw, Some references:

9 a. (April 1992, Glenn County General Plan, Volume 2, "Community Development Issue Paper",
10 Section 2.1.5, p. 11): "The apparent trend toward conversion of water users from large-scale farming
11 operations to five-acre 'hobby farms' marks a change in the Association's original mission, and may raise
12 dilemmas within the Association should issues arise which divide their diverse clientele. Although the
13 Association does not provide drinking water to its users, by providing irrigation water to small parcels (5
14 acres or less), it can be argued that the Association encourages, or at least does not discourage, the
15 creation of parcels of a size not viable for commercial agriculture, and may thwart County land use
16 policies. It can also be argued that water delivery to non-viable agricultural parcels represents a waste of a
17 public investment intended to support agricultural operations."

18 b. In a slide show presentation by Rick Massa, Manager, OUWUA apparently prepared October 2003
19 (<http://waterlab.colostate.edu/logan/Rick%20Massa.pdf> viewed 11/2008) he outlines growing problems
20 for OUWUA: "Subdivided Lands: 747 Shareholders in 1960; 1122 Shareholders in 2003 on 1,514 Parcels
21 (13.24 acres per landowner); Subdivided Lands That Don't or Can't Take Water." and "OUWUA's '79
22 Resolution: Affects Subdivisions of Land Resulting in Parcels of 5 or Less Acres; Imposes Severance of
23 Water Rights from the Land; Charge of \$300 per Acre or Any Portion Thereof; Loss of 413 Acres Since
24 1987; Financial Burden to Remaining Landowner's (sic)" Reading between the lines of this presentation,
25 the OUWUA has been severing Project water from lands as they subdivide to 5 acres or less? Held at bay
26 by severance charges?

27 c. Charges for withdrawal have provoked at least one complaint on the internet at
28 <http://local.yahoo.com/info-21806926-orland-unit-water-users-association-orland>

"by paying for nothing!! 06/21/2008 EXTORTION PAYMENTS!! This is one of the highest forms of
EXTORTION I have come accross in my lifetime. To be forced to pay annually for water one does NOT
use and can NOT even get is ridiculus [sic]. If you want "out" of the Orland Water Users, and IF they will
let you out, you must pay in excess of \$7000.00 ...but most folks just suck up and pay the annual fee that
starts out at about \$250.00 and up based on lot/land size. It doesn't matter that there are no ag canals on
your property or even near your prpoerty [sic]. This is a class action law suit waiting to happen. Maybe if
we all put our annual fees into the pot instead of their pockets, we could afford to begin the fight in court.
This is an outdated system."

d. These days, Reclamation contracts define farm land as being more than 5 acres, see for instance
paragraph 1b of 08/02/1989 Angle Doc. #108, so they certainly recognize the problem. As part of this Ap
18115 process, USA should be required to provide a listing of parcels in the Project sorted by size and
indicate thereon which parcels are no longer receiving water and the reason if known, and then the Project
and its Angle allocation should be reduced, including by petition with the Court based on the prohibition
against waste if necessary.

IV. ENVIRONMENT AND PUBLIC TRUST:

A . CEQA, Guidelines, Discussions, NEPA, ESA, CESA:

1
2 1. I am only casually familiar with the nuances of CEQA, NEPA, ESA, CESA, and the Water Code,
3 and the regulations, guidelines, and discussions behind each of these, and the short fuse on filing this
4 protest will not allow me to dig further into them and the cases and articles that interpret them. Thus what
5 I present here is only an outline of the environmental review warranted by this vast cumulative project
6 culminating in Ap 18115 I do know that the more I dig, the worse the damage inflicted by USA on this
7 watershed appears.

8 2. And unfortunately, the short fuse on the time for this protest will not afford me the opportunity to
9 "keep looking" for anadromous fish references so whoever prepares the environmental assessment will
10 need to make sure they do the looking instead. As indicated above, I would suggest fishing stories
11 orbiting around the Fouts Springs resort, in personal letters from patrons and in local newspapers dating
12 from the 1880s into the 1920s after which USA dams rendered the salmon runs extinct.

13 3. The Angle Decree may seem to have divested the State of its public trustee status for the Stony
14 Creek Watershed, but that divestiture would only apply to surface flow and to those flows up to the Angle
15 limits as set forth in paragraph 1 of Exhibit C. Beyond that the state, as trustee, still has the duty "to
16 protect public trust uses such as recreational and ecological values for the public, the beneficiaries of the
17 trust." (from "The Public Trust Doctrine: Exploring Application on the Yuba and Bear Rivers" By Megan
18 Anderson, Environmental Advocates On behalf of the Foothills Water Network April 26, 2006 at
19 <http://www.foothillswaternetwork.org/rights/PublicTrust%20Doctrine%20122106.pdf>
20). Most of what I have presented in this Protest relates to the State's duty to live up to that public trust, to
21 assert its authority and correct the environmental damage, to allocate waters fairly but with an appropriate
22 watchful eye towards environmental effects, and to reign in the USA that has plundered this watershed
23 regardless of consequences.

24 4. Section 21083 of the California Public Resources Code states, in part:

25 "(a) The Office of Planning and Research shall prepare and develop proposed guidelines for the
26 implementation of this division by public agencies. The guidelines shall include objectives and criteria
27 for the orderly evaluation of projects and the preparation of environmental impact reports and negative
28 declarations in a manner consistent with this division.

(b) The guidelines shall specifically include criteria for public agencies to follow in determining whether
or not a proposed project may have a "significant effect on the environment." The criteria shall require a
finding that a project may have a "significant effect on the environment" if one or more of the following
conditions exist:

(1) A proposed project has the potential to degrade the quality of the environment, curtail the range of
the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in
this paragraph, "cumulatively considerable" means that the incremental effects of an individual project are
considerable when viewed in connection with the effects of past projects, the effects of other current
projects, and the effects of probable future projects.

(3) The environmental effects of a project will cause substantial adverse effects on human beings, either
directly or indirectly."

29 5. These requirements appear in Section 15065 of the guidelines.

30 6. Section 21002 of the California Public Resources Code states in part:

"The Legislature finds and declares that it is the policy of the state that public agencies should not approve
projects as proposed if there are feasible alternatives or feasible mitigation measures available which
would substantially lessen the significant environmental effects of such projects, and that the procedures
required by this division are intended to assist public agencies in systematically identifying both the

1 significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which
2 will avoid or substantially lessen such significant effects...."

3 7. All of this means that if a project produces or will produce substantial adverse effects on human
4 beings, including cumulative impacts, directly or indirectly, for which feasible mitigations exist, the
5 project is not to be approved unless those mitigations are adopted. The same goes for impacts on fish,
6 wildlife, birds, plants, and any other aspect of the environment. I present this Protest as a chronicle of the
7 massive cumulative environmental damage inflicted by USA on both the people and the environment
8 of this Upper Stony Creek Watershed, and I present Settlement Terms 1 through 16 below that are also
9 feasible mitigations, and I insist that regardless of what sort of environmental document is produced in
10 this process (and an EIS/EIR is the most appropriate document) each and every one of these mitigations be
11 adopted and required.

12 I also understand that NEPA requires that federal agencies must consider the environmental
13 effects of, and any alternatives to, all proposals for major federal actions that significantly affect the
14 quality of the human environment, which, cumulatively, certainly is this project, although I have
15 temporarily misplaced the cite.

16 B. ANADROMOUS FISH

17 1. In digging through the Angle archives, one day I came across testimony by Judge Purkitt, whom I
18 mentioned above in paragraphs II.N.5 and II.N.7 . I have retranscribed the entirety of that testimony on
19 my web page at <http://www.mjbarkl.com/fish.htm> . Until finding it and then following up on it I was
20 unaware, as so many people are, that Stony Creek was one of the finest salmon tributaries to the
21 Sacramento River. As a boy, he recounts:

22 "A. Well, now, the first I
23 [Tx. p. 484]

24 remember of that ditch-- We had a cottage at Fouts Springs, and every year, in those days, my folks went
25 to Fouts Springs, along in June and remained there until September. Now, I don't recall so much about it
26 in '80, but in '81 we camped there and took our lunch at the gravel near the big rocks, and my sister Edna
27 was just a baby--just crawling around--she was born in August, and she was just sitting up--I fix it in that
28 way--she was just sitting up--and at that time there were a lot of Indians diving into the hole there, and we
29 camped there for dinner and fed the horses. We had a four-horse team, going to the mountains here--there
30 were no automobiles in those days--and we camped there at a little gravel bar right below the rocks, and
31 fed the team--and there were a number of Indians right there where we were camped--and, oh, 50 or 100
32 young Indians were diving into that hole and catching fish. They were catching them by hand, too--they
33 didn't have any fish hooks--they were diving in and getting them by hand."

34 From the context, I believe this was a what I've seen referred to in the trascripts as "Rock City" on Big
35 Stony just above the confluence with Little Stony.

36 2. In Correspondence File Vol. 7 of 12 for Ap. 18115, in the 06/29/1995 Baiocchi Protest for
37 California Sportfishing Protection Alliance is the comment and cite [paraphrased} prior to Stony Gorge
38 (RM 45) Stony Creek supported 'very good' populations of chinook Salmon (Clark 1929), native runs now
39 extinct,

40 3. Clark 1929 turns out to be California Division of Fish and Game Fish Bulletins No. 17.
41 Sacramento-San Joaquin Salmon (*Oncorhynchus tshawytscha*) Fishery of California. By G. H. Clark.
42 1929; 73 pp., 32 figs., in which Stony Creek is discussed at pages p. 44 & 45, see
43 <http://content.cdlib.org/view?docId=kt8j49n9k8&query=&brand=calisphere>
44 and from that page click on "Part II SURVEY OF SALMON SPAWNING GROUND SOF
45 SACRAMENTO AND SAN JOAQUIN RIVER SYSTEMS" in the left hand window, which

1 leads to
2 <http://content.cdlib.org/view?docId=kt8j49n9k8&doc.view=frames&chunk.id=d0e465&toc.depth=1&toc.id=d0e465&brand=calisphere>

3 4. Clark led me to a very fine Biological Opinion from the National Marine Fisheries Service, draft at
4 http://swr.nmfs.noaa.gov/sac/myweb8/BiOpFiles/2002/LowerStoneyCk_0311.pdf
5 and final at
6 http://swr.nmfs.noaa.gov/sac/myweb8/BiOpFiles/2008/final_revised_Stony_Creek_BO-GC_edits_FINAL_Tucker.pdf.

7 5. Although GCIDs annual dam had an effect, now gone since they've installed a siphon across Stony
8 Creek, the inescapable conclusion from that BiOp and other sources is that USA has dammed to
9 extinction all salmon on Stony Creek which was one of the finest salmon tributaries to the Sacramento. In
10 recent months I have driven through much of the upper watershed. I've visited the merge of the 3 forks of
11 Big Stony (and Mill Creek) at Fouts Springs several times marvelling at how, even in September, ample
12 rushing mountain water flows there, from deep pool to deep pool over low waterfalls reciting its own
13 delightfully noisy rushing water music. The fishing must have been wonderful. email exchanged with
14 one fishery expert had him concluding that Judge Purkitt's fish were probably chinook, although when I
15 mentioned this protest the expert went and hid. Hopefully a subpoena won't be necessary.

16 6. The BiOp cited above mentions studies that show salmon regularly enter the lower end of Stony
17 Creek as does the study in Vol. 7 of 12 of the Ap 18115 file, 08/11/1995 "Tributary Rearing by
18 Sacramento River Salmon and Steelhead", interim report 10/30/1994 Paul E. Maslin and William R.
19 McKinney, Dept. of Biol, CSU; These salmon encounter barriers that exist in Stony Creek because of
20 USA's management of the stream and are eventually turned back.

21 7. As I understand CEQA, this denial of 700 square miles of spawning grounds to any native fish is a
22 sufficient cumulative adverse effect to require mitigation. But, of course chinook are not just any fish.
23 Winter-run are endangered, Spring-run are threatened, Fall-run suffered a population collapse last year
24 (and were they classified as a Federal Species of Concern on April 15, 2004?). Late-Fall-run I don't know
25 about. I do not know which run of chinook called Stony Creek its own, but it shouldn't be hard to figure
26 out.

27 8. Assuming the Stony Creek chinook run was, and would again be if allowed, one of the listed runs,
28 then USA has a problem with the Endangered Species Act. At 16 USC 1532(19) is the definition of
29 "take":

30 "(a) Generally

31 (1) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered
32 species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject
33 to the jurisdiction of the United States to -

34 (B) take any such species within the United States or the territorial sea of the United States;"

35 with 16 U.S.C. § 1538 defining take:

36 "(19) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or
37 to attempt to engage in any such conduct."

38 The West Hornbook "Natural Resources Law", by Jan G. Laitos, West, 2002 (copy at the Sacramento
39 County Law Library 3 blocks west of SWRCB) at p. 200 states: "FWS has further interpreted 'harass' and
40 'harm' to include indirect injury through habitat alteration or destruction. The FWS has further interpreted
41 'harass' as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by

1 annoying it to such an extent as to significantly disrupt normal behavioral patterns including breeding,
2 feeding or sheltering."

3 This assertion in that West text is unsupported by a cite, but I am looking for it. Meanwhile assuming that
4 statement is correct, it would seem to "significantly disrupt normal behavioral patterns including breeding,
5 feeding or sheltering" to completely bar listed chinook from 740 miles of its historic watershed. If the run
6 seeking access to Stony Creek is one of the listed runs, then USA must fix these barriers. Fortunately, and
7 apparently overlooked in the past, each of the three major reservoirs is paralleled by a low valley down
8 which a fish bypass canal may be directed and thus USA's barriers may be circumvented by the fish.
9 Settlement & mitigation terms #3 and 4 (below) require that feasible mitigation.

10 C. BALD EAGLES:

11 If by some circumstance it turns out that the run of chinook seeking renewed access to Stony Creek is not
12 one of the listed ones, that's not the end of it. I understand Bald Eagles have been de-listed. It is a
13 wonderful thing their their populations have recovered. But even if they are no longer listed under the
14 ESA, they still have protection under the Bald and Golden Eagle Protection Act of 1940, 16 USC 668.
15 Salmon are an important food source for Bald Eagles and thus an important link in their habitat. "Take"
16 of Bald Eagles is also prohibited by this act. If it may be found that take of Bald Eagles under this Act is
17 similar to take of Bald Eagles under the ESA back when it was listed, then chinook still must be restored
18 to the Stony Creek Watershed. If it is not so found, then the substantial adverse cumulative environmental
19 effects described in CEQA for both chinook and for Bald Eagles still come into play: settlement &
20 mitigation terms #3 and #4 are mandatory.

21 D. OTHER PROTECTED SPECIES

22 As I noted above in paragraph II.O.5.e cumulative actions by both USA and SWRCB as relates to USA's
23 cumulative project and thus to this Ap. 18115 extension are having a chilling effect on our own habitat
24 restoration project, for which either settlement & mitigation term #1 & #2, or some suitable mitigation to
25 protect and encourage our efforts is required.

26 E. INVASIVE PLANT SPECIES

27 Over the past two years I have noticed the invasive plant species tamarisk marching relentlessly up North
28 Fork Stony Creek. Upon driving east on Morrison-Bryan road to the Black Butte Reservoir footprint and
later around to the south arm of Black Butte Reservoir I find it obvious where this infestation is coming
from. Despite the requirement of provision #8 in D 1100 it appears USA's management of Black Butte
has produced a tamarisk infestation covering hundreds of acres, which is then taking off in all directions.
If #8 is a one-time-only requirement it should be made an annual requirement. If it is a continuing
requirement it should be enforced. The infestation of tamarisk, plus the infestation below Black Butte of
"Giant Reed" or Arundo are both the direct result of USA's control of the watershed, are a product of
its cumulative project, and are environmentally substantially damaging for which the appropriate cure is
for USA to remove it and keep it removed, which is why settlement term & mitigation #5, below is
mandatory.

29 F. SUBSTANTIAL ADVERSE EFFECTS ON HUMAN BEINGS FOR WHICH FEASIBLE 30 MITIGATIONS ESIST:

31 1. Throughout this Protest I have described the substantial adverse effects on human beings that the
32 cumulative project has produced, and will continue to produce. These effects must be halted and reversed.
33 Most of the settlement and mitigation terms listed below are for that purpose, and are thus required.

34 2. With USA already admitting the substantial adverse effect on human beings of USA's cumulative

1 project in the Forest Service EA cited in paragraph III.B.5 above, what remains is to assess the scope of
2 these effects and adopt mitigations. In the environmental study for this project it will be up to whoever
3 prepares the EA to assess fully the damage inflicted upon the people of the upper watershed by the
4 cumulative project, as well as the injury past, present, and future to various species of wildlife. In the
5 quest for data on the effect on human beings attention in the study should be paid to unemployment,
6 incomes, degree of the spread between rich or poor, percentage of absentee ownership and the effect that
7 has on local commerce and social and civic life, numbers and reasons why homes and homesteads have
8 been abandoned. Attention should be paid to infrastructure effects: as noted water, sewer, roads, streets,
9 sidewalks, lighting, drainage, schools, public meeting halls, groceries, medical care, and so on.

6 3. I have driven all of the county roads into and out of the Upper Stony Creek Watershed. SR 162
7 west from Willows and the link from there south to Stonyford is generally excellent. The road west from
8 Maxwell to Stonyford is adequate, but there is a long tough grade over Grapevine Pass (yes, another
9 Grapevine). Most of the other roads are inadequate, and the other roads in western Colusa County are
10 particularly wretched and will significantly shorten the life of any vehicle that uses them regularly unless
11 the user retightens all the vehicle's nuts and bolts from time to time. The neglected infrastructure in the
12 Upper Stony Creek Watershed lends to the feeling that the entire area is a third-world country. USA's
13 hand is apparent in all of this. It must mitigate and reverse the effects.

11 G. SEISMIC WARNING

12 Within recent years there has been broadcast and print publicity regarding the possible threats to Eugene
13 Oregon from possible failure of U.S. Army Corps of Engineers' "Hills Creek Dam", an earth-fill dams of
14 the same vintage as Black Butte. These reports include comments by USACE spokesmen that reinforce
15 the concerns, not dispel them. Black Butte Dam is built near one or more faults that have been active in
16 relatively recent geologic time. I do not know if this is a risk for those downstream from Black Butte, but
17 ask, if these issues have not been explored, that they be explored as a requirement for this Ap 18115
18 extension and, if appropriate, a seismic evacuation plan for people downstream be crafted and published.

16 V. SETTLEMENT TERMS:

17 A. 1. One of the big features of the last "go-around" on Ap 18115 was the "Lower Stony Creek
18 Fish, Wildlife and Water Use Management Plan" which resulted from a California Sportfishing Protection
19 Alliance settlement term. The crucial settlement term with the CSPA was the establishment of a
20 multi-disciplined Task Force to put together a plan to propose and program solutions for perceived
21 environmental problems. Once the settlement was agreed to and the permit issued, environmental review
22 was minimized and inadequately circulated, and it appears that Task Force meetings grew more sporadic,
23 and eventually ceased altogether as the Task Force was shoved out of the loop, the plan passed off to
24 CH2M Hill (whose name is not obvious on the report), and the plan was issued and thereafter went into
25 the Great Archives along with Indiana Jones' Lost Ark, never to be seen again. Rather than a plan, it
26 became "a list of things we are not going to do." That is unacceptable. With that in mind, I have
27 presented a list of 16 items that are both settlement terms and mitigations.

23 2. The problem with USA (or at least Reclamation) and settlement terms is that negotiating
24 settlement with Reclamation is a bit like negotiating with the North Korean government. There's this
25 great solemn ceremony of passing terms back and forth, an agreement is met and sign, cheers go up,
26 everyone goes home satisfied only to find out later that Reclamation goes ahead and does what it wants
27 anyway and no salmon have been returned to the San Joaquin River (for instance). Such negotiations are
28 behind the story of how GCID, once the dominant water rights holder on Stony Creek, completely lost
its Stony Creek entitlement. They are also behind the loss of Hall and Scarce rights to Wackerman and
Reimers. In each case there was about a dozen different "settlements" (agreements, stipulations, orders,
etc.), each one nibbling away at the defendant's rights, until nothing was left. That is unacceptable, and
that is the history USA brings to the table in this Ap 18115 controversy. USA has no credibility in Stony

1 Creek negotiations. Mitigative action by USA must first be seen to be believed, and thereafter settlement
2 will be appropriate.

3 B. Settlement Terms/Mitigations

4 1. That the USA take the Fraud on the Court content from the portion of my
5 <http://www.mjbarkl.com/wars.htm> web page entitled "Fraud on the Court" and sift through all records of
6 Reclamation and the Department of Justice for anything that may refute that Fraud on the Court, and if
7 nothing is found to refute it, based thereon move the Court to set aside the Angle Decree and dismiss the
8 Angle case, with prejudice, and that USA succeed in this. A promise is not adequate.

9 2. Alternatively, that if USA refuses to so move, that the SWRCB in cooperation with the Attorney
10 General of the State of California launch appropriate inquiries to ascertain whether or not the State is by
11 virtue of acquisition of or condemnation of any rights-of-way or other parcels within the Stony Creek
12 Watershed thereby a successor or assign to any holder of a decreed right under the Angle Decree, and if
13 the State is, or if not then by motion to intervene, move the Angle Court to set aside the Angle Decree and
14 dismiss the Angle case, with prejudice, and that the State succeed in this.

15 3. Restore the anadromous fish runs and the Bald Eagle habitat that once depended on these runs, on
16 Stony Creek and tributaries except for Little Stony Creek (where there is insufficient water): fund,
17 engineer, construct and operate lined fish migration bypass canals of sufficient width, depth and flow:

18 1) from the confluence of Little Stony and Big Stony around Stony Gorge down through Briscoe
19 Creek watershed and back to Stony Creek,

20 2) from Julian Rocks through an excavated notch in the hill between Stony and the Hambright Creek
21 watershed and thence to the South Diversion Dam forebay.

22 Add chillers, feeders, oxygenators, and temperature and chemical testers at strategic locations on the
23 canals and streams; add fish ladders around the Tehama-Colusa Canal CHO dam or dams, the North
24 Diversion Dam, the South Diversion Dam, and Rainbow Diversion Dam; properly screen all diversions;
25 replace private diversions in the watershed with fish-friendly diversions; add public access monitoring
26 roadways to all fish facility locations and for the length of the bypass canals; annually restore a discrete
27 channel between Black Butte and the Sacramento River; any water saved by this mitigation will not
28 reduce Reclamation's allocation(s).

4. That in recognition of the damage siltation causes to redds, USA halts condoned off-road vehicle
use and logging within the Stony Creek Watershed except for within the Little Stony Creek Watershed.

5. That in recognition of USA's dereliction of requirements of Paragraph 8 of D 1100 and the adverse
environmental damage it has caused with the invasion of non-native plant species into the upper
watershed, USA clears the tamarisk infestation from the entirety of the Black Butte Reservoir footprint,
and clear it from both North Fork and the main stem of Stony Creek above the reservoir as far as the
infestation reaches, as well as from the creek bed and banks from Black Butte Dam clear to the
Sacramento River. and that USA also clear "Giant Reed" or Arundo from the creek and banks from Black
Butte Dam clear to the river, and properly destroy all this cleared vegetation, and thereafter clear the
channels and banks of these invasive species within, above and below Black Butte Reservoir no less than
once every calendar year.

6. That USA recognize that a direct effect of USA's & the Angle Court's management of Stony Creek
is that infrastructure upstream from Black Butte has been sorely neglected and that roads in and to western
Colusa County are particularly neglected and inadequate and fund (including funding environmental
review for) the extension of State Highway 16 from State Route 20 at Bear Creek, through Lodoga,

1 Stonyford, Elk Creek & Paskenta to Corning should the California State Legislature choose to accept the
2 funding and the State Route Designation.

3 7. That should the State Legislature not accept the extension of SR 16 described in Term &
4 Mitigation #6, that USA offer to each of the 3 counties to fund (including funding environmental review
5 for) the segments of that route to State Highway standards the portions of that route within each county
6 with the exception of the portion between the intersection of SR 162 and Stonyford and between Paskenta
7 and Corning which sections already appear adequate.

8 8. That USA establish, for management by the applicable County Board of Supervisors, a
9 \$50,000.000 redevelopment fund for Grindstone Rancheria (in cooperation with the Bureau of Indian
10 Affairs), Elk Creek, Stonyford, Century Ranch and Lodoga, half for each county.

11 9. That USA and SWRCB cooperatively recognize that errors were made in the process of the
12 referral subject of WR 79-6, WR 80-11 and the subsequent Ap. 27382 and invite County of Colusa to
13 submit a new application to develop the Stonyford aquifer to supply domestic water to Stonyford, Century
14 Ranch, and Lodoga should the County choose to do so, and that the application precede in right any USA
15 diversion that exceeds the USA's Angle limits.

16 10. That USA write, and instruct OUWUA to accept, a letter to Reimers and Wackerman and/or their
17 heirs and assigns if applicable, stating to them that USA recognizes without reservation the finding sworn
18 to under oath by USA's designated representative, Harold Baxter, Special Assistant to the Attorney
19 General, filed with the Angle Court on 10/13/1925 admitting that Hall & Scarce were entitled to 2,396
20 acre-feet per year, or 1,198 acre-feet for each of them and their successors Wackerman for Hall and
21 Reimers for Scarce, other stipulations, orders, or rulings before or since not to limit these quantities, and
22 that they may accept conditions as they are now or modify them for these higher quantities as they wish.

23 11. That USA write and instruct GCID that despite Judge Levi's decision in USDC ED Cal Case
24 #91-1128 USA finds nothing in the Angle Decree that limits storage as a reasonable and beneficial use of
25 any Decreed right, and thus should GCID wish it USA will store such portion of GCID's Decreed right
26 in Black Butte for use by GCID at any time GCID wishes, notwithstanding any language in Contract 855A
27 or any other contract that would purport to limit that GCID right.

28 12. That USA contact owners of all parcels in the Little Stony Creek Valley between East Park Dam
and the confluence of Little Stony with Big Stony Creek and admit to those parcel holders that East Park
severed the substantial year-round underflow that previously watered that stretch of properties and offer
them compensating water equivalent to that loss, and that this especially be done for the successors and
assigns of Henry and May Werth (including Matt Graham who is admitted to practice with the USDC ED
Cal) who were prosecuted in the Angle Court in 1932 for taking such water to which they should have had
a right in the first place had USA not improperly cut off their supply.

13. That if it turns out that the Angle Decree is not overturned and that SWRCB does not admit that
underflow or underground flow is completely omitted from the Angle Decree, that the SWRCB act to halt
and prosecute all diversions from underflow below Black Butte within the Stony Creek Fan, including
those diversions by parties specifically named in the Findings and in the Decree such as James Mills
Orchards Corporation and their successors and assigns.

14. That USA develop a seismic event evacuation plan for locations downstream from Black Butte,
should it prove warranted by further examination.

15. That should anything less than all of these terms be accepted, a full EIS/EIR be prepared for the
overall cumulative project, including for all of the effects described in and mitigations requested in this
Protest and Supplement and that full hearings be held at each appropriate stage of the environmental and

1 application process.

2 16. That until such time as the Angle Decree is set aside, every USA (including Bureau of
3 Reclamation, U.S. Forest Service, Bureau of Land Management, and any other) SWRCB permit or license
4 or filing for anywhere within the Stony Creek Watershed be suspended for violation of the Angle Decree
5 and Water Code Section 1052 (presumably most or all of the list in Exhibit A-2), and every application
6 from them be rejected for any location anywhere within the Stony Creek Watershed, and that SWRCB
begin proceedings to prosecute USA for the violations of Water Code Section 1052 and other relevant
State Code Sections, ascertain the total volume of water taken unlawfully by USA since 1930 and refer the
matter to the Attorney General of the State of California to recover from USA the value of that total
volume at Los Angeles Metropolitan Water District wholesale rates, plus interest from time of diversion.

7 VI. CONCLUSION

8 Lest anyone misinterpret the tone of this protest, I have far greater faith in the SWRCB as being the
9 appropriate agency to manage water for the Upper Stony Creek Watershed than I do the USA. I ask that
10 the SWRCB become precisely familiar with the Angle Decree and the issues presented herein and step up
to this duty. The Watershed has had enough abuse by USA, and SWRCB is the appropriate savior. Please
step up to the task.

11 VII. VERIFICATION

12 I am the protestant in this proceeding and I researched, compiled and wrote this Protest. I declare under
13 penalty of perjury that the allegations and factual contentions in this Protest are true and correct, except
for those submitted on information and belief and as for those I believe them to be true and correct.

14

15 _____
Michael J. Barkley

16 Dated: October 1, 2009

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