

CR

County of Lassen  
**ADMINISTRATIVE SERVICES**



**ROBERT F. PYLE**  
District 1  
**JIM CHAPMAN**  
District 2  
**LARRY WOSICK**  
District 3  
**BRIAN D. DAHLE**  
District 4  
**JACK HANSON**  
District 5

2011 JUN -6 AM 9:46

**Tom C. Stone**  
County Administrative Officer  
email: [coadmin@co.lassen.ca.us](mailto:coadmin@co.lassen.ca.us)

DAY OF WATER RIGHTS

**Julie Morgan**  
Assistant to the CAO  
email: [jmorgan@co.lassen.ca.us](mailto:jmorgan@co.lassen.ca.us)

**Regina Schaap**  
Administrative Assistant  
email: [rschaap@co.lassen.ca.us](mailto:rschaap@co.lassen.ca.us)

County Administration Office  
221 S. Roop Street, Suite 4  
Susanville, CA 96130  
Phone: 530-251-8333  
Fax: 530-251-2663

May 19, 2011

Charles A. Rich, Chief  
Complaint Unit  
State Water Resources Control Board  
PO Box 2000  
Sacramento, CA 95812

RE: June 1, 2009 Letter to the Bureau of Land Management (BLM)

Dear Mr. Rich:

This letter is presented on behalf of the Lassen County Board of Supervisors. As you know, the County has long been concerned about Eagle Lake, its watershed and the preservation of existing water rights. The County seeks clarification of the State Water Resources Control Board's ("Water Board") position regarding existing water rights which apply to use of water flowing through the Bly Tunnel and into Willow Creek. The County has reviewed the Water Board's letter dated June 1, 2009 directed to Mr. Dayne Barron, Field Office Manager for the Bureau of Land Management ("BLM") regarding this issue, but find the Water Board's position (as stated therein) to be ambiguous and contradictory.

On page 3 of the Water Board's letter, there is an acknowledgement that pursuant to Decree 4573, water had "previously been diverted from Eagle Lake, through the Bly Tunnel, and deposited into Willow Creek *under appropriative right.*" Then, in the same paragraph, the Water Board's letter states: "however, the provisions [of Decree 4573] were only in effect to the extent that foreign water from Eagle Lake was being imported to Willow Creek under appropriative right. *As this no longer occurs,* the provisions are no longer effective and they have no bearing on the rights of decreed right holders to the water currently emanating from the Bly Tunnel." The source and character of the water flow adjudicated in Decree 4573 has not changed. The Water Board's letter does not describe any change in the water source, etc. which would render Decree 4573 inapplicable.

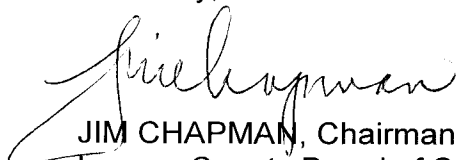
The Water Board's stated position on water rights appears grounded in the Water Board's recent unilateral characterization of the water as "foreign" rather than "natural." This characterization apparently assumes, without supporting evidence, that the flow or source of the water transmitted through the Bly Tunnel and into Willow Creek has somehow changed since the issuance of Decree 4575. However, the path

and source of the water currently flowing through the Bly Tunnel and into Willow Creek has not changed since the issuance of Decree 4573. It appears that the Water Board, without any due process or adjudicative hearing, has unilaterally dissolved the property and water rights of the decreed right holders to water currently emanating from the Bly Tunnel.

The June 1, 2009 letter also acknowledges that, "Accordingly to the definition of 'natural flow' in Paragraph 8, any water currently flowing from the Bly Tunnel that, absent the construction of the tunnel, would otherwise have discharged into the Willow Creek watershed could be considered 'natural flow' and *would be subject to the rights defined by Decree No. 4573*. However, there is no evidence to suggest that the tunnel is intercepting water that would naturally occur in Willow Creek." However, there have been no changes in the source of water flowing into the Bly Tunnel. For years, that water flow has been considered subject to the rights set forth in Decree No. 4573

Lassen County requests that the Water Board clarify its position regarding decreed appropriative rights to water currently flowing through the Bly Tunnel and into Willow Creek.

Sincerely,



JIM CHAPMAN, Chairman  
Lassen County Board of Supervisors