



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor • Sacramento, California 95814 • 916.341.5300
P.O. Box 2000 • Sacramento, California 95812-2000
Fax: 916.341.5400 • www.waterrights.ca.gov



Arnold Schwarzenegger
Governor

March 25, 2010

In Reply Refer to:
CAR:262.0(18-09)

TO: Attached Mailing List

SUBJECT: U.S. BUREAU OF LAND MANAGEMENT DECISION REGARDING FLOW VALVE
SETTING IN THE BLY TUNNEL COMING FROM EAGLE LAKE

I sent a letter dated June 1, 2009 to Dayne Baron, Field Manager of the Eagle Lake Field Office of the U.S. Bureau of Land Management (BLM). You should have received a copy of this letter. If not, please let me know and a copy will be provided. The June 1 letter addresses the issue of water rights associated with the discharge of water from the Bly Tunnel. Complaint Unit staff believe that the water coming from the tunnel at this time should be characterized as "percolating groundwater" pursuant to California water law.¹ As such, the BLM as the owner of the diversion structure (i.e., the Bly Tunnel) holds the water rights for this diversion and needs to determine whether the diversion should be continued or not. The letter further indicates:

If BLM chooses to leave the valve in the tunnel plug open, the Complaint Unit will continue to investigate the diversion and use of water pursuant to the outstanding water right complaints. If the available evidence indicates that the diversion and use of tunnel water in the Willow Creek or Susan River watersheds results in a waste of water or results in unreasonable adverse impacts to public trust resources, Complaint Unit staff would recommend that the Division take appropriate action to control the diversion accordingly. If BLM chooses to close the valve in the tunnel plug, Complaint Unit staff will probably take no further action with respect to the pending complaints unless closing the valve does not result in a substantial reduction of flow out of the tunnel.

Based on communication with BLM staff shortly after this letter was sent, Complaint Unit staff understood that the BLM would be conducting an environmental review of the situation before making a decision regarding the operation of the valve. Mr. Barron sent me a letter dated February 22, 2010 indicating that the BLM has completed an analysis of the situation and has decided to leave the valve in the Bly Tunnel open. Copies of this letter and related and/or supporting documents can be obtained from the BLM's website at:

News Release:

http://www.blm.gov/ca/st/en/info/newsroom/2010/february/NC1037_blytunnel_decision.html

Bly Complaint Response :

http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/eaglelake/bly_tunnel.Par.80191.File.dat/Bly%20Complaint%20Response.pdf

¹ The water coming from the tunnel at this time is not considered to be a direct diversion from Eagle Lake (and, therefore, not subject to the State Water Board's permitting authority, nor directly subject to Water Right Decision 1073) because the water travels through several hundred feet of earth strata before entering the tunnel.

California Environmental Protection Agency



Addendum to Eagle Lake Tunnel Analysis:

http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/eaglelake/bly_tunnel.Par.15244.File.dat/Addendum-to-EagleLake_Tunnel_Analysis.pdf

Eagle Lake Water Budget:

http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/eaglelake/bly_tunnel.Par.64909.File.dat/Eagle%20Lake%20water%20budget%20analysis021910.pdf

As indicated in my June 1, 2009 letter, Complaint Unit staff intends to continue investigating the complaint allegations regarding waste or unreasonable use of water and unreasonable adverse impacts to public trust resources in view of the BLM's decision to leave the tunnel valve open. If you are aware of **documented** evidence that would assist in this investigation, please provide me with copies of this evidence or a clear description of how I could access this evidence by the close of business (5 p.m.) on June 18, 2010. I am particularly interested in obtaining the following information:

1. A table of historical lake elevations (monthly) since 1900.
2. Numerical data regarding inflows to and outflows from Eagle Lake.
3. Numerical data of surface evaporation at Eagle Lake; especially as it varies from year to year.
4. Documented measurements of flow coming through the valve in the Bly Tunnel that are **NOT** based on visual estimates or other techniques with questionable accuracy².
5. Documentation of adverse impacts to public trust resources in Eagle Lake in relation to different lake elevations.
6. Numerical data of flows in Willow Creek downstream of the confluence with the canal from Bly Tunnel.
7. Documentation of public trust resources in or along Willow Creek below the confluence with the canal from Bly Tunnel³.

My intention, once sufficient evidence is accumulated, is to circulate a copy of a staff report of investigation regarding the allegations of (1) waste and/or unreasonable use or unreasonable method of diversion (collectively referred to as a "misuse"), and (2) unreasonable adverse impacts to public trust resources pursuant to the outstanding complaints against the BLM's operation of the valve in the Bly Tunnel. The complainants, respondent (BLM), and other interested parties will have an opportunity to review and comment on this report and staff

² - To be useful, the date of the measurement or the elevation of Eagle Lake at the time of the measurement must also be available.

³ - Gary Stacey, Regional Manager with the California Department of Fish and Game sent a letter dated September 8, 2009 to Dayne Barron of the BLM (copy enclosed) that provides a small amount of information regarding these resources.



findings before the Complaint Unit makes its final recommendations to Division of Water Rights management.

Based upon the evidence that is available, the Complaint Unit will make its findings on the allegations of misuse and unreasonable harm to public trust resources and recommend that the Division either dismiss the complaints or order BLM to correct such a misuse or harm as required by §857(a) of Title 23, California Code of Regulations.

Given the current low level of the lake and associated release from the tunnel of only about 1.25 cubic foot per second (approximately 550 gallons per minute) or less, I would not expect the tunnel discharge to have a significant impact on lake levels while completion of the investigation is pending. However, cumulative impacts due to tunnel discharge over a longer period of time, involving a full range of hydrologic conditions (i.e., above average, average, and below average periods of precipitation), might result in significant adverse impacts to public trust resources in Eagle Lake. On the other hand, as Department of Fish and Game staff has suggested, the reduction in flow from Bly Tunnel as a result of closing the valve might have a significant adverse impact on the public trust resources in Willow Creek. The Complaint Unit will consider these issues, in light of the available evidence, when making findings and recommendations in regard to these complaints.

Due to staff resource shortages and an abundance of work, completion of this investigation may take quite some time. Please note that Dave La Brie, who was originally assigned to this complaint, has been temporarily reassigned to a special project and is not working on complaints at this time. Consequently, I am currently responsible for dealing with the complaints against the BLM. Therefore, any assistance from the parties to provide appropriate information along with documentation will be greatly appreciated!

If there are any questions in the meantime or if you have important information to provide me, please let me know. I can be reached via e-mail at: CRich@waterboards.ca.gov or via telephone at (916) 341-5477.

Sincerely,

Charles A. Rich

Charles Rich, Chief
Complaint Unit
(916) 341-5377
CRich@waterboards.ca.gov

Enclosure: September 8, 2009 Letter from Gary Stacey, Regional Manager with the California Department of Fish and Game to Dayne Barron of the BLM

California Environmental Protection Agency



Recycled Paper