

BISHOP CREEK WATER ASSOCIATION

Post Office Box 1273
Bishop, California 93515

Background Document Regarding Alleged Violation of DFG Code 1602-(1)(a), Failing to Get a Streambed Alteration Permit

March 9, 2022

BISHOP CREEK WATER ASSOCIATION

The Bishop Creek Water Association (BCWA) which was originally formed in 1897 (exhibit 1) by the users and appropriators of the waters of Bishop Creek for use on lands located on the Bishop Cone in the County of Inyo, State of California. The BCWA Articles and By-Laws provide the following purposes for the water association: 1) protecting their rights to the waters of said Bishop Creek; and 2) apportion said waters among the several users. A copy of the 2016 BCWA Articles and By-Laws is attached. A copy can also be found on the BCWA website, www.BishopCreekWater.org.

Chandler Decree

In 1922 the court ordered Chandler Decree adjudicated the waters of Bishop Creek and the diversions by the Association of Bishop Creek waters from the main canals.

In the July 1, 1922, Opinion of the Arbitrator, Albert E. Chandler, on pages 1 and 2, stated that *“The association (added – the Bishop Creek Water Users Association) was formed in order to protect the rights of its members and likewise to provide a method of distributing the waters of Bishop Creek to the members of the Association. As stated, the irrigation supply needed protection mostly in the early season.”* (attached). Further, in the B-61 Equity Final Decree, i.e., Chandler Decree, dated January 27, 1922, it was

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recognized that each of the defendants *“own the prior right to appropriate, divert and use the waters of Bishop Creek in said Inyo County, for the purposes of irrigation, domestic use and watering livestock, on said lands...”* This caused the members of this Association to amend the Articles of the Association to conform to the changes. Following are specific applicable articles from the 2016 BCWA Articles and By-Laws (Attached)

“WHEREAS in 1905 the Bishop Creek Water Association was formed by the users and appropriators of the waters of Bishop Creek for use on lands located on the Bishop Cone in the County of Inyo, State of California, for the purpose of protecting their rights to the waters of said Bishop Creek and to apportion said waters among the several users; and

WHEREAS in order to determine the rights to said waters of Bishop Creek to which said Association members and said users and appropriators of said waters were entitled, an action was brought and determined thereof had, under a judgement commonly known and referred to as the Chandler Decree; and ...

WHEREAS since said Chandler Decree adjudicating the said waters of Bishop Creek and the said diversions by the Association of said waters from the main canals, the members of this Association believe that the best interests of all would be served by amending said Articles of the Association so as to conform to the changed conditions;

NOW, THEREFORE, the undersigned owners of over half of said lands on the Bishop Cone described in the said Chandler Decree and shown on Exhibit “A” attached hereto and entitled to over half of the said waters adjudicated to said lands, agree that said Articles of this Association shall be amended and adopted as follows:

We, the undersigned, users of water and appropriators of water in that certain stream known as Bishop Creek, and owners of lands defined in an instrument referred to herein as the Chandler Decree, and shown on Exhibit “A” hereof, which decree allots the waters of Bishop Creek to the owners of said lands, said lands being situated in the County of Inyo, State of California, do hereby associate ourselves under the name of “BISHOP CREEK WATER ASSOCIATION” and in consideration of the benefits to be derived from said association mutually agree to and adopt the following articles of association, by-laws and rules.

FIRST: *The Association shall in its associate capacity protect the joint and several rights of the members thereof in and to the use of the water of*

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the said Bishop Creek as said water is allocated by said Chandler Decree, including the diverted waters of Birch Creek and shall provide for the delivery of said waters of Bishop Creek, including the diverted waters of Birch Creek for the use of the members of this Association from the main canals shown on said Exhibit "A", through lateral canals and ditches in the manner and to the extent hereinafter provided.

SECOND: *To equitably apportion between and among the members of this Association the said waters of Bishop Creek, including the diverted waters of Birch Creek, as said flow is allotted under the aforementioned Chandler Decree and the report of referee upon which said decree is based. ...*

For the purpose of carrying out the foregoing objects of this Association, and in consideration of the benefits to be derived therefrom as individuals and collectively, we do hereby jointly and severally agree to and adopt the following rules and by-laws for the government thereof."

The SECOND object above makes the Bishop Creek Water Association the overseers and implementers of the Chandler Decree.

The BCWA is governed by an elected Board of Trustees (BCWA By-laws, Articles I through VII).

Provisions for membership are found in Article VIII, Sections 1-3 (pages 6-7) of the By-Laws. Following is a key applicable provision:

Section 2 – " Any owner of real property whose property is traversed by, borders on, or has access to any stream, canal, or ditch carrying the water of Bishop Creek, and located within the boundaries as shown on Exhibit A, shall automatically be a member of this Association and shall be entitled to the benefits and burdened by the duties imposed herein. Any question of membership shall be referred to the Arbitration Committee, shall be binding upon all parties. "

Management of water distribution, responsibilities, and practices regarding care of ditches and ponds is found in the BCWA By-Laws Articles IX through XIII.

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It should be noted that the Chandler Decree only requires specific flows for distribution in the BCWA during the irrigation season (April 1 to September 30). SCE releases water during the winter months as they deem prudent for their other obligations. Depending on several factors, this could result in inadequate water to keep ditches wet during the months outside the irrigation season.

Currently there are approximately 900 members, throughout the Bishop area.

INCIDENT Of November 2-3, 2021

The property owner to the south of the subject structure has encroached into the ditch by placing rocks, posts, wood, dirt, fencing and other debris to the extent that over half of the ditch is obstructed at the diversion structure forcing the water to the north instead of staying in the main ditch and flowing to the east and impacting the structural integrity of the diversion structures foundation (map – figure 1 and fig 2a & b). Water was discharging via a sink hole back into the Nelligan ditch downstream, further compromising the downstream support for the structure. The earliest pictures of the Nelligan Ditch were from 2013 and the most recent Nov 2021 (figures 3a, 3b, & 3c and 4a, 3b, & 3c). You will see encroachment already taking place in 2013 to over 50% of the structure opening being obstructed in 2021, causing or exasperating the problems with the structure (in addition to limiting the ability to deliver water downstream). Figures 5 show the sinkhole that developed immediately east of the diversion structure's north wing wall. As the hole was rapidly getting larger, the hole had to be sealed. The expectation was that by isolating the area around the north wingwall with sandbags, a concrete slurry could be packed in the hole to seal the leak. Upon excavating around the sinkhole, the hole collapsed and grew larger and larger and exposed several locations where ditch water was flowing underneath the north wingwall (figures 6 and 7), thus the need for a larger sandbag containment (figures 8a, 8b, & 8c). This

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resulted in the irrigation ditch to the north being isolated for about 12 hours. Upstream and downstream of the sinkhole were sandbagged to keep slurry out of the water flow (figure 9). The ditch to the north was mostly dried up for about 100 to 200 feet (to Ranch Rd.). Some water was flowing into the ditch approximately 50-75 feet downstream of the structure. This flow was very low due to the manipulation of flow on South Mountain View Rd. (figure 10). The combination of flow manipulation by BCWA water users created a situation where the ditch on the northside of North Mountain View Rd. was dried up. The first situation was the placement of a metal plate in front of the culvert in the street at 210 South Mtn. View Rd. to keep leaves from plugging the culvert. Included are pictures of what was happening with the blocked ditch water at 210 So Mtn. View (figures 11a & 11b). The result was only minimum tailwater flowing into the ditch going to No. Mtn. View Rd and minimum (only leakage) water flowing in the ditch on the south side of Ranch Rd. The second situation was on the NE corner of Ranch Rd. and No. Mtn. View Rd. A user, presumably on the north side of Ranch Road diverted the entire flow in the ditch towards the east, effectively shutting off flow to the north. Included is a picture of what was happening with the blocked ditch water at the NE corner of Ranch Rd. and No. Mtn. View Rd (figure 12). Without these two unauthorized manipulations of the ditch flow only approximately 50 feet would have been without water for a short period of time.

CAL DFG CODE SECTION 1602

The BCWA is being charged with violation of the CDFG Code Section 1602(a)(1), failure to notify of an alteration to a stream bed. If the law is applicable, the BCWA will comply, however it is not clear how the law applies. Section 1602(a) states that

“An entity may not **substantially** divert or obstruct the **natural** flow of, or **substantially** change or use any material from the **bed, channel, or bank** of, any **river, stream or lake** or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it

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may pass into any river, stream, or lake, unless all the following occur. (1)
The department receives written notification regarding the activity in the manner prescribed by the department. ...”

DISCUSSION

Board members are elected volunteers, laypersons and not attorneys that interpret the laws, and as such can only apply laws as a layperson would. Highway speed limits are clear that a laymen can interpret, the applicability of the language of the CA DFG code section 1600 is not. Rules for streets (i.e., lights, speed limits, vehicle equipment, etc.) are not applicable to dirt roads (motor bikes, bicycles, ORV, etc.) Likewise, the rules regulating streams, rivers and lakes do not apply to ditches. Nowhere in the CADFG code section 1600 is reference made to ditches. The language of CADFG Section 1602 is ambiguous and from a layperson’s view not applicable.

The BCWA was not substantially diverting or obstructing the natural flow from a river, stream, or lake. The waterways of the BCWA system are not natural streams, rivers or lakes but are man-dug ditches to distribute irrigation water. The subject ditch does not have a name but is referred to by its geographic location (it is referred to as the No. Mountain Diversion from the Nelligan Ditch to give a location reference point). If you look at the BCWA map, The Bishop Creek Water Association Articles and Bylaws Flow Diagram Sketch (figure 13). It doesn’t even warrant recognition, nor does it show up as a named ditch in the BCWA waterway/membership ditch map.

Several terms in the CADFG Code Section 1602 are clearly being interpreted differently, specifically:

Substantial - By definition it is something that is large in size, number, or amount. The Bishop Creek Water Association Articles and Bylaws Flow Diagram Sketch (figure 13) designates the major ditches with a range of flows intended to meet the water rights requirements. The range for the Nelligan Ditch is 0 to 5 cfs. The diversion to North Mountain View Rd. is

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not recognized because it is so small by comparison that it has no flow range. Note that zero flow is in the range of operating the ditch system for the equitable distribution of irrigation water and protection of the various water rights under the Chandler Decree.

Natural – By definition is “occurring in conformity with the ordinary course of nature, having a normal or usual character.” And “Existing in or by nature; not made or caused by humankind.” Oxford Languages. All flows manipulated by the BCWA Watermaster are manmade and subject to quite a flow range as can be seen in the Bishop Creek Water Association Articles and Bylaws Flow Diagram Sketch (figure 1).

In addition, the ditch bed was not changed because of the project (see figure 14). It is critical that the BCWA maintain slopes and ditch dimensions to maintain historic flows. The system is a gravity system that can easily be upset by disruptions to the flow system. A requirement of BCWA property owners is that the inflow and outflow locations cannot be manipulated because the entire ditch hydraulics can be hurt by changes.

“Stream” is not defined in the Fish and Game Code and CDFG has not, to BCWA’s knowledge, promulgated any regulation that defines “stream”. Warden Dishion uses 14CA Code of Regs 1.72 to define a ditch as a stream. In “Report on State Definitions, Jurisdiction and Mitigation Requirements in State Programs for Ephemeral, Intermittent and Perennial Streams” 4-2014, the writer notes under California Definition of Streams: Currently working on developing science-based definitions for all three stream types.

Currently, the Board of Trustees has no elected officers (President, Treasurer, etc.). In light of this CDFG citation and other ongoing issues, it is doubtful that any current Trustee of the Board would be willing to take on the responsibilities and liabilities of the Association, and BCWA will see resignations from the Board. Under the best of circumstances, it is very difficult to get members to step up to do this thankless job, only to deal with

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problems, for no compensation. For any member to be subject to this type of mistreatment, the liability, and threat of fine or jail time would make it further impossible to fill board positions. This will leave the future of the BCWA and the implementation of the provisions of the Chandler Decree in jeopardy, i.e., create chaos, conflict, disrupt operations, and possibly render the system inoperable. It is doubtful that CADFG would accept this responsibility or that LADWP would be willing to manage the irrigation flows on private lands throughout the Bishop area.

The BCWA only distributes water, it does not plant or control fish in the irrigation ditches. BCWA has been told that the complainant turned off the water and cleaned the pond before planting fish. Our understanding is that approval/permit must be obtained to legally plant fish and BCWA questions if this permit was obtained. If fish are planted in a historically ephemeral ditch does CADFG require a backup plan in the event water flow is inadequate or stopped?

The BCWA has continued its historic practice of operating the irrigation ditches that it has for the past 100 plus years, as well as for the last almost 20 years since CA DFG code 1600 was enacted, with no issues being raised by CADFG, despite numerous complaints.

In 2014-15 complaints to CADFG (Warden Shane Dishion) concerning ditches being dried up (because of limited available water and rotating what was available from one street to another, and one area to another area to equitably distribute what was available) were met with a "not our jurisdiction and what do you expect it's a drought" response. These complaints were the few that we heard about; BCWA is sure there were many more. Under the current allegation and interpretation, the BCWA should have at least been put on notice at that time that a permit was required to shut off the ditch water.

If the Code Section 1600 is applicable, then DFG is not doing its job and is one of the causes for the problem at this location. Warden Shane Dishion admitted that CADFG has been aware of the problem of debris being

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placed in the ditch immediately upstream of the diversion structure. Nothing has been done about it by CDFG or the ICDA's office. This has put the BCWA in the position of having to rectify the problem on its own or lose the diversion structure. If this law is applicable, CDFG should have been responsive and responsible for correcting the problem themselves by applying Code Section 1600 by citing the homeowner and requiring the removal of the debris. This is clearly selective application of the CDFG Code.

Ditches in the BCWA system routinely go dry. Members are always tampering with gates and/or complaining because others are using the ditch water and they are getting little or none. Signs are posted on water diversion gates throughout the system putting people on notice that tampering is a misdemeanor (figure 15a & 15b). Attached exhibits 2-20, are some of the typical communications that we receive complaining about no water and the Watermaster tries to deal with. There are many more situations of ditches going dry that can be identified, such as no flow on Highlands Dr. (end of the system), S/S of Sunset Rd. (constant criminal tampering with the diversion box), Inyo County Road Dept. (threatening fines if a culvert plugs and ditch water flows into the street), replacing numerous street culverts that have deteriorated, mud in 4X ditch in 2021 (not enough water), feeder ditch repairs (all streets in west Bishop had to be shut down), Vista Ditch repairs (flow had to be turned off – fear of embankment failure), Reinhackle Ditch rebuild (criminal tampering of flows by individual members), etc. One only needs to review the past BCWA meeting summaries on the BCWA website, www.bishopcreekwater.org and we are sure that there are plenty more that are not documented.

The CDFG and BCWA have different goals, but the effect is the same. CDFG wants to keep rivers, streams and lakes wet to protect the habitat while the BCWA wants to keep its ditches wet to provide water for distribution for irrigation, and stock use, i.e., both want to keep ditches wet. In an effort to insulate the Watermaster from the demands of members, the Board has developed a policy regarding ditch water turn off for members

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requesting the entire ditch be turned off to perform maintenance or projects (exhibit 21). The Board policy regarding shutting off ditch water is to not shut off up and downstream users. This has the side benefit of not detrimentally affecting fish in the ditches. In the BCWA annual letter report to the membership, the plea constantly goes out to membership to not shut off water flow totally when irrigating one's property, but to instead work with neighbors (see typical letter attached – exhibit 22).

CONCLUSION

This alleged violation of CDFG code 1602 is an unprecedented, inconsistent act of bullying and intimidation by CDFG impairing BCWA's ability to distribute water to its members and comply with the court ordered Chandler Decree. BCWA has consistently distributed water and maintained structures for 20 years since CDFG Code Section 1602 was enacted and never been advised of any infraction, even when issue was addressed to Warden Dishion. BCWA maintains that CDFG Code 1602 was not violated as the diversion was not "substantial" nor was any "natural" flow obstructed. No "substantial" change or use of material from the bed, channel, or bank where it may pass into any river... occurred. No unambiguous or science-based definition of a stream is provided. Warden Dishion and Inyo County District Attorney's office has inconsistently applied Code 1602 and neglected to cite other resident's infractions (including in this incident) when brought to their attention. (Adding fill material to extend property into ditch, dredging ponds, obstructing flow, etc.) It is BCWA's position that it is a violation of the court order judgement (Chandler Decree) to allow (illegally?) planted fish to dictate distribution of irrigated water.

CDFG Code 1602 is either not applicable or is being applied indiscriminately.

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ARTICLES

and

By–Laws

Bishop Creek Water Association

Of March 1969 and as Amended on: January 27, 1992;
January 31, 1994; January 26, 2015; March 4, 2015;
April 14, 2015; and March 1, 2016

April 2016

ARTICLES OF ASSOCIATION OF
BISHOP CREEK WATER ASSOCIATION
OF MARCH 23, 1962 AND AS AMENDED FEBRUARY 3, 1969,

WHEREAS in 1905 the Bishop Creek Water Association was formed by the users and appropriators of the waters of Bishop Creek for use on lands located on the Bishop Cone in the County of Inyo, State of California, for the purpose of protecting their rights to the waters of said Bishop Creek and to apportion said waters among the several users; and

WHEREAS in order to determine the rights to said waters of Bishop Creek to which said Association members and said users and appropriators of said waters were entitled, an action was brought and determined thereof had, under a judgement commonly known and referred to as the Chandler Decree; and

WHEREAS The City of Los Angeles, in order to provide a municipal water supply for use in The City of Los Angeles, purchased over 80% of said lands and water rights, together with the rights to the use of the main canals to transport said water and has since said purchase maintained said canals to transport said water for its own use and for the use of other landowners on the Bishop Cone entitled to their respective share of said waters of Bishop Creek; and

WHEREAS the Bishop Creek Association since the said purchase of said lands and water rights by the said City has for many years restricted its operations to regulating the equitable diversion of the said water from said main canals to the said lands of the members of the Association; and

WHEREAS since said Chandler Decree adjudicating the said waters of Bishop Creek and the said diversions by the Association of said waters from the main canals, the members of this Association believe that the best interests of all would be served by amending said Articles of the Association so as to conform to the changed conditions;

NOW, THEREFORE, the undersigned owners of over half of said lands on the Bishop Cone described in the said Chandler Decree and shown on Exhibit "A" attached hereto and entitled to over half of the said waters adjudicated to said lands, agree that said Articles of this Association shall be amended and adopted as follows:

We, the undersigned, users of water and appropriators of water in that certain stream known as Bishop Creek, and owners of lands defined in an instrument referred to herein as the Chandler Decree, and shown on Exhibit "A" hereof, which decree allots the waters of Bishop Creek to the owners of said lands, said lands being situated in the County of Inyo, State of California, do hereby associate ourselves under the name of "BISHOP CREEK WATER ASSOCIATION" and in consideration of the benefits to be derived from said association mutually agree to and adopt the following articles of association, by-laws and rules.

FIRST: The Association shall in its associate capacity protect the joint and several rights of the members thereof in and to the use of the water of the said Bishop Creek as said water is allocated by said

Chandler Decree, including the diverted waters of Birch Creek and shall provide for the delivery of said waters of Bishop Creek, including the diverted waters of Birch Creek for the use of the members of this Association from the main canals shown on said Exhibit "A", through lateral canals and ditches in the manner and to the extent hereinafter provided.

SECOND: To equitably apportion between and among the members of this Association the said waters of Bishop Creek, including the diverted waters of Birch Creek, as said flow is allotted under the aforementioned Chandler Decree and the report of referee upon which said decree is based.

THIRD: To levy assessments upon each member for such sums and at such times as may be required to carry out the purposes of the Association, and to enforce the collection of said assessments.

FOURTH: To determine the eligibility to membership in this Association, and adopt rules for the expulsion of members therefrom and the levying of fines and collection of same, for violation of any of the rules and agreements of this association.

FIFTH: To adopt by-laws and rules to govern the affairs of the Association, and to elect officers and prescribe their duties and terms of office.

SIXTH: The Trustees of this Association shall have power to exchange water, where such exchange will be of benefit to the members of the Association and will not injure any members of this Association. For the purpose of carrying out the foregoing objects of this Association, and in consideration of the benefits to be derived therefrom as individuals and collectively, we do hereby jointly and severally agree to and adopt the following rules and by-laws for the government thereof.

BISHOP CREEK WATER ASSOCIATION
BY-LAWS AND RULES

ARTICLE I

Section 1

The authority and power of this Association shall be vested (except as otherwise provided herein) in a board of five trustees who shall be members of this Association, or duly appointed and designated representatives of members of this Association, a majority of whom shall constitute a quorum for the transaction of all business.

Section 2

The trustees shall be elected by ballot immediately upon the adoption and signing of these articles of association, rules and by-laws, and thereafter two trustees shall be elected at the annual meeting of the members of the association to be held on the last Monday in January of each even-numbered year, and three trustees shall be elected at the annual meeting to be held on the last Monday in January of each odd numbered year; said meetings to be held at Bishop, California.

Each trustee shall serve for the term of two years or until a successor is elected, the term of office of each trustee shall commence immediately following his election.

Election of trustees shall be by ballot and each member of the Association shall have the right to cast at least one vote.

A member of the Association shall be a landowner (joint owners shall be entitled to one membership), and each such member shall have the right to cast at least one vote. Each landowner owning more than one (1) acre shall be entitled to one vote for each sum equal to the minimum annual assessment charge paid by such member, that is to say each member shall be entitled to one additional vote each time the acreage assessment equals the minimum annual charge, provided, however, that no one member, regardless of the acreage owned, shall have the right to cast more than two fifths (2/5) of the total vote of all members present at any such meeting, except as hereinafter provided in Article XII. The majority landowner, or the owner of the greatest acreage, may be represented by no more than one member on the five-member board of trustees, but shall be represented by at least one member.

Section 3

Vacancies on the board of trustees shall be filled by a special election to be held after five days' notice being given, by mailing to each member of the Association a notice of the time, place and purpose of said meeting.

ARTICLE II – POWERS OF TRUSTEES

Section 1

The trustees may call special meetings of the members of the Association when they deem it necessary, and they shall call a meeting at any time on the written request of ten members of the Association or on the written request of one member of the board of trustees.

Section 2

They may employ, appoint and remove at pleasure any officer, agent, or employee of the association; prescribe their duties, fix their compensation and require from them security for faithful service, should the same be deemed necessary and proper.

Section 3

They shall appoint all committees not otherwise provided for herein: shall have full charge, management and control of the business and affairs of the association, with power to enter into contracts for and on behalf and in the name of the association, and to receive and pay out money as provided herein; and have any and every power necessary to carry out the true intent and purposes of this association for the benefit of the membership thereof, individually and collectively.

ARTICLE III -OFFICERS OF THE ASSOCIATION

Section 1

The officers of this association shall consist of a President, a Secretary, and a Treasurer¹, to be elected by the Board of Trustees from among their number, at the first regular meeting of said board after the general election of said trustees.

Section 2

If at any time any officer shall be absent or unable to act, the Board may appoint some other member to act in his place and stead, in whom (for the time being) shall be vested all the duties, powers and functions of the office.

¹Amended 3/4/2015

ARTICLE IV- DUTIES OF OFFICERS

PRESIDENT

Section 1

The President shall serve without compensation and shall preside over all meetings of the member and trustees, and shall have the casting vote.

Section 2

He shall sign, as President, all contracts and other instruments of writing which have been first approved by the Board of Trustees, and draw all warrants on the Secretary- Treasurer for the payment of money.

Section 3

He shall call the trustees together whenever he shall deem it necessary, by giving each member thereof one day's personal notice, or by depositing in the post office, properly stamped and addressed, a notice of said meeting to each trustee at least three days before the date set for said meeting.

ARTICLE V- SECRETARY- TREASURER¹

Section 1

The Secretary shall keep a correct record of the proceedings of the board of trustees and of the meetings of the members. The Treasurer shall keep proper books of account of the business and financial affairs of the association; collect all assessments, and sign all checks and warrants.

Section 2

It shall be the Secretary's duty to preserve all records, maps, agreements and data placed in his charge by the Association, and render a statement of the affairs of the association at any regular meeting of the members or at any meeting of the board of trustees.

Section 3

The Secretary shall serve all notices required to be served in the management of this association, as provided in the by-laws and rules.

¹Amended 3/4/2015

Section 4

The Treasurer shall safely keep all funds of the association and pay them out only on an order of the President.

Section 5

The Treasurer shall furnish a statement of the financial affairs of the association at all regular meetings of the members, or at any meeting of the trustees, when requested so to do.

ARTICLE VI – MEETINGS

Section 1

The annual meetings of the members of this association shall be held on the last Monday of January of each year at Bishop, California and shall be called by the Secretary¹ mailing a notice thereof to each member at least ten days before said meeting.

Section 2

Special meetings of the members of the association shall be called by the President when authorized by the trustees, or upon written request of ten members. Said special meetings shall be called by the Secretary¹, under the direction of the President, mailing to each member of the association a notice thereof at least five days before the time of said meeting.

ARTICLE VII- QUORUM

Section 1

No meeting of the members of the Association shall be competent to transact business unless at least ten members are present, except to adjourn from day to day or until such time as may be deemed proper.

ARTICLE VIII- MEMBERSHIP

Section 1

Any owner of land included as defendant lands, shown on Exhibit A, described in Paragraph 1 of the Chandler Decree, same being an Instrument filed for record on January 27, 1922, as B- 61 Equity, a decree signed by Judge Benjamin F. Bledsoe, may become a member of this Association by application to the Bishop Creek Water Association, or by ratifying and signing the Articles of Association and these by-laws and rules and conforming to the requirements thereof

¹Amended 3/4/2015

Section 2

Any owner of real property whose property is traversed by, borders on, or has access to any stream, canal, or ditch carrying the water of Bishop Creek, and located within the boundaries as shown on Exhibit A, shall automatically be a member of this Association and shall be entitled to the benefits and burdened by the duties imposed herein. Any question of membership shall be referred to the Arbitration Committee,⁶ shall be binding upon all parties.

Section 3

Any member of this association not complying with the provisions contained in the by-laws and rules, may be denied the services of this organization.

ARTICLE IX- DIVISION AND USE OF WATER

Section 1

Immediately upon the adoption, signing and ratification of the By-Laws and Rules by the members of this association, a committee of at least three (3) members and not more than five (5) members, to be known as the "Committee on Water and Arbitration" shall be appointed by the board of trustees to serve a term of one year. Vacancies on said committee shall be filled by appointment by the Board of Trustees.

Section 2

It shall be the duty of said Committee on Water and Arbitration to ascertain as nearly as possible the names of all individuals claiming to be entitled to the use of water from Bishop Creek and the diverted waters from Birch Creek to Bishop Creek for domestic or irrigation purposes, together with such further information as can be obtained that will assist said committee in apportioning to each member of this association a fair, equitable and proportionate amount of water of said Bishop Creek and the diverted waters of and from Birch Creek.

Section 3

Said committee shall, based on said Chandler Decree, estimate the proportionate amount of water from Bishop Creek to which each member of the association is entitled, and the length of time during the season (March 16 through October 15 inclusive) to which he is entitled to use the same. The seven month season of March 16 to October 15 inclusive is the season wherein the association in its associate capacity has the responsibility for water management.

⁶Amended 3/1/2016

Section 4

Each member shall keep his ditches free and clear of debris (sand, silt, rocks, grass, weeds, and trash) so that water, including waste water, may move for the beneficial use of members below.

Section 5

In the event the equitable distribution of water is impeded or interfered with causing flooding, wastage or other detriment to the flow of water to occur by reason of the refusal, inability or neglect of any member or members to remedy the same, the association may, after due notice, have the remedial work performed and the responsible member or members shall be billed therefor, at the cost of the work.

ARTICLE X- TURNING WATER OUT OF CREEK

Section 1

The trustees of this association are empowered and authorized to employ one or more men as needed to divert from the main canals said waters for the use of the members of this association and to divide the same between the members hereof as nearly as may be in the proportion set forth in the report of the Committee on Water and Arbitration.

Section 2

No Member shall divert any water from the said main channels or in any way interfere with the boxes or headgates placed therein; but if water is needed for irrigating purposes, the member so needing the water shall give the man employed by trustees to divide said water at least three days' notice of the time and place of using same. The man in charge shall thereupon provide for the required amount of water, if possible, at the proper time.

Section 3

All boxes, headgates or diversion works diverting water from any main ditch or channel, regardless of by whom installed, shall for all water control purposes be deemed and considered the property of the association. The association reserves the right to exclusively control and regulate water at all boxes, regardless of by whom the same may have been installed, except for the control devices used exclusively by the City of Los Angeles or other users on ditches, channels, etc. not regulated for the benefit of the general membership.

Article XI – PONDS AND STREAM FLOWS²

1. All new ponds must be approved by the BCWA board.
2. All new ponds must be: made to reasonable size; no more than 5 ft deep; and lined with clay, a shale/clay mix, or another impermeable barrier material.
3. All new ponds must have a bypass capable of carrying the full flow of the feeding ditch when ponds need to be shut off.
4. All existing ponds, when drained or being cleaned, are to be lined with clay, a shale/clay mix, or another impermeable barrier material; shall not have a depth more than 5 feet; and a bypass constructed if one does not already exist.

ARTICLE XII- RESPONSIBILITIES AND PRACTICES³

Section 1- General

These RESPONSIBILITIES AND PRACTICES are guidelines adopted by the Bishop Creek Water Association (BCWA) to implement the BCWA Bylaws. Whereas the Bylaws are a sort of constitution of the BCWA, these RESPONSIBILITIES AND PRACTICES are intended to be guidelines under which the BCWA and its members can operate day-to-day.

Section 2- Responsibilities and Practices

The responsibilities and practices to be followed by the BCWA and its members are listed below. When possible, the applicable part of the Bylaws is noted in parenthesis.

1. If your property is on the “Bishop Cone” (defined in part in the 1922 Chandler Decree) and is traversed by, or borders on, Bishop Creek or a ditch that carries water from Bishop Creek (Article VIII, Section 2), then you are automatically a member of the BCWA. An exception to this is if your property is in Section 36, T6S, R32E and receiving water from the Girard Ditch (land formerly irrigated with water from Birch Creek).
2. The BCWA is responsible for: a) the distribution of water to the main ditches carrying Bishop Creek Water; and b) the protection of water rights on Bishop Creek.
3. As a homeowner and member of the BCWA you are responsible for the impact of your own action or lack of action in managing water flowing on your property.

³Amended 1/31/1994

²Amended 4/14/2015

4. As a member of the BCWA you are responsible to maintain the ditches and pipes on your property. This maintenance includes the removal of weeds, leaves, and trash (Article IX, Section 4)
5. If you do not properly maintain the ditches and pipes on your property, the BCWA may arrange to have the work done at your expense (Article IX, Section 5)
6. Be aware that many factors, including runoff, freezing, irrigation patterns, and fall leaves, can significantly affect the amount of water flowing to your property. You should expect the flow in your ditches to vary, and your ditches and pipes should be sized, designed, and maintained to carry the maximum possible flows without flooding.
7. All boxes, headgates, or diversion works diverting water from main streams, canals, and ditches on the Bishop Cone that carry Bishop Creek Water are the property of and are managed by the BCWA (Article X, Section 3), except those used exclusively by the City of Los Angeles.
8. Only the Watermaster is authorized to change settings of BCWA headgates and diversion boxes (Article X, Section 2). Requests for adjustments in water diverted should be made to the Watermaster with advance notice (Article X, Section 2).
9. It is easy to disrupt other BCWA members use or enjoyment of the water when you irrigate your property. Coordinate with the BCWA Watermaster before you change your irrigation practices. Allow as much water as you can to continue down the ditch to other members. Definitely allow enough water to keep fish alive in downstream ponds and ditches.
10. Before you re-route an existing ditch, construct a pond, or divert water into a newly constructed ditch on your property, the BCWA Trustees need to review the plans to ensure that they are consistent with the BCWA Articles and Bylaws.
11. After you re-route a ditch or construct a new ditch, the water needs to be discharged at your property line at the same place and elevation, and with the same flow characteristics it had prior to the re-routing or diversion.
12. A newly constructed pond needs to be lined to reduce percolation loss.

13. Any re-routed primary ditch on your property needs to have a 10- foot wide easement dedicated to the BCWA.
14. In general, open ditches are preferred over pipes and other closed conduits because they are easier to maintain.
15. Ditches require less maintenance if they are designed to pass rather than trap debris sand and leaves.
16. The preferred configuration for ponds include a ditch that bypasses the pond so that all of the water in the primary ditch does not go through the pond. This configuration provides better flow characteristics in the ditch system and can reduce the amount of debris that enters the pond.
17. Water conflicts between neighbors should be resolved between the neighbors. If it becomes clear that you are unable to resolve a water conflict with a neighbor on your own, the conflict can be brought before the BCWA Board of Trustees for mediation and resolution.

ARTICLE XIII- ARBITRATION

Section 1

If at any time any question or dispute arises between any members of this association as to their respective rights to use of said water, under the By-Laws and Rules herein, such question or dispute shall be submitted to the Committee on Water and Arbitration for the purpose of deciding and adjusting the same. A decision of the Committee on Water and Arbitration may be appealed to the Board of Trustees.⁴ The decision of said committee, or Board of Trustees (If appealed),⁴ shall be final and binding upon the respective parties, provided that the maximum use shall not exceed a quantity of water in excess of three (3) acre feet per acre.

Section 2

This Association shall not be or become responsible for the costs and expenses of any litigation over the right to use water in Bishop Creek and the diverted waters of Birch Creek.

⁴Amended 4/14/2015

ARTICLE XIV- ASSESSMENTS

Section 1

The necessary funds to pay all expenses incurred by the association shall be raised as follows: The President, after his election, shall appoint a committee of five (5) members to be known as the Financial Committee, whose duty it shall be, soon after appointment and before the first Monday of January of each year, to make an estimate of the amount of money required to pay the expenses of the association for the ensuing fiscal year, and to the apportion said total amount as follows:

1. A minimum annual charge of not less than \$6.00 shall be assessed to each member of the Association: and

2. The balance of the amount necessary to pay said expenses of the association, which balance shall not exceed 60% of the estimate, shall be prorated on an acreage bases and the said amount per acre shall be assessed to members owning ten or more acres.

Said estimate shall be reported to the association by the committee and, if said estimate does not exceed \$6,000, a majority vote of all members present at any regular or special meeting may adopt the report, provided, however, if said estimate exceeds \$6,000, its adoption will require the vote of members owning 50% or more of said lands shown on Exhibit A.

Any single expenditure of more than \$ 1000 ***for purposes other than normal operation expenses, must be approved at the general meeting in January, or at a special meeting wherein the proposed expenditure is listed in the call of the special meeting, at which time there must also be presented the plans, specifications and cost estimates for the work to be performed in connection with said expenditure.

Section 2

The Secretary

shall notify by the mail each member of the association for the minimum charge and of his pro rata share of said assessment, and the sum so due shall be paid to the Secretary within thirty days from the date of notice. The Secretary or such other person as the Board may select, shall be and is authorized to take such legal or other action as may be required to collect any sums due and unpaid.

Section 3

In case

the said minimum charge and said annual assessment levied, as in this article provided, should not furnish sufficient funds to meet the expenses of the Association, a special assessment may be levied at any time and collected in the same manner as provided for the annual assessment, provided that if the total of any special assessment or assessments when added to the annual assessment, including the minimum assessment, exceeds \$6,000 the adoption of such special assessment shall require the vote of members owning 50% or more of said lands shown on Exhibit A.

Section 4 ****

The

association is to maintain a monetary reserve equal to the following years budgeted operating costs.

ARTICLE XV- RULES FOR CONDUCTING MEETING

Section 1

The President, with the approval of the trustees, shall appoint, as required, a nominating committee, which said nominating committee shall submit the names of nominees for Trustees at all meetings called for this purpose. Other nominations of Trustees may be made by members from the floor.

Section 2

All

meetings of the membership shall be conducted according to Robert's Rules of Order, as revised, except as the same may be in conflict with the special rules set forth in these By-Laws.

ARTICLE XVI- AMENDMENT OF BY-LAWS AND RULES

Section 1

These by- laws and rules may be altered or amended at any regular or special meeting of the association by a majority vote of members present, except as to those provisions in these by-laws regarding the minimum charge and maximum assessment, which provisions can only be amended by vote of members owning 50% or more of said lands as shown on Exhibit A.



**BILL AND MAGGIE EGAN,
AT THE GARDEN OF EGAN
3613 RANCH ROAD, BISHOP, CALIFORNIA 93514**

TO: Board of Directors
Bishop Creek Water Association
Post Office Box 1273, Bishop, California 93515

FROM: Bill & Maggie Egan

DATE: April 12, 2021

Hello.

Per the BCWD Bylaws, we are writing to inform you of our intended use of ditch water for this spring, summer and fall.

As you likely are aware, we are one of the properties in the system that still flood irrigates; we do not have a sprinkler system. It has been our practice to flood irrigate on Mondays and/or Thursdays. Depending on water supply and climate, we plan to continue with that practice. If that schedule needs to be amended, we will notify the Watermaster.

It is our intention to minimize the impact on water users downstream, and greater flow means that diversion of the main ditch will be for a shorter period of time. As such, we ask that the Watermaster assure that properties upstream are not diverting flow while we are flooding. In the event we suspect that upstream diversions are reducing flow in the main ditch, we will first check the ditch above us. If the ditch appears to be clear of debris, we will contact the Watermaster for a remedy, as stated in the BCWD Bylaws.

We are copying this letter to the residents of the properties we know to be on the same branch of the system with us, which are the 2 properties directly upstream and 2 properties directly downstream from us.

Thank you.

William "Bill" Egan

Margaret "Maggie" Egan

Bishop Creek Water Association

Annual Meeting Agenda

January 27, 2020

7:00 pm

Meeting to be held at LADWP Administration Building at 300 Mandich Street

1. Opening and Introduction
2. Approval of the January 14, 2020 Meeting Summary
3. Annual Report
4. Snowpack, Precipitation, and Bishop Creek Flow and Storage Report
5. 2019 Financial Report
6. New Business
 - a) Approval of 2020 Budget
 - b) Election of Trustees (Merry Armstrong and Henry Means terms have expired)
 - c) Other (Members in Good Standing)
7. Next Meetings: Monthly – Tuesday, March 10, 2020, at 7:00 p.m. at LADWP, 300 Mandich St.
Annual – Monday, January 25, 2021
8. Adjournment

**Bishop Creek Water Association
Monthly Meeting Summary
January 14, 2019**

1) Opening and Introduction

BWCA meeting called to order. Trustees in attendance: Gene Coufal, Don Kunze, Henry Means, Merry Armstrong and Adam Perez. Watermaster Matt Durkee was present.

2) Acceptance of the December 10, 2019 Monthly Meeting Summary

The December 10th, 2019 monthly meeting summary was accepted as written.

3) Approval of the December 2019 Financial Report

The financial report for December 2019 was unanimously approved.

4) Bishop Creek Precipitation, Flow, and Storage Report

Precipitation conditions are at 77% of average/normal to-date (chart attached). SCE has dropped flows to approximately 50 cfs (see attached chart).

5) Old Business

- a) Matlick Ditch flow obstruction @ Rousek Toy Co: Gene talked to Kevin Grevenkamp and he is looking at an approximately Feb. 2020 start date.

A letter was drafted and will go out this week to Rousek Toy Co. requesting that they remove the tree root obstruction and squashed culvert (i.e., pipe replacements) as members of association. By virtue of having Bishop Creek water traverse the property the owner is subject to the BCWA Articles & By-Laws. In the past, Rousek Toy Co. has been granted a variance (as have others) from paying an assessment because they do not use the water.

- b) Plugged Culvert in Sierra Vista Way w/o Barlow Ln: Pumpkin inside pipe was unplugged. The culvert had to be replaced. The agency agreement was as follows: BCWA pays for labor, DWP provided culvert pipe, and Inyo County provided County Equipment for the work. The project is complete.

Also, the upstream property owner, Ray Warburton, requested that the association pay a \$1080 bill he received from Eastern Sierra plumbing for trying to remove the obstruction. There was much discussion regarding where responsibility lies for this. The issue was tabled, and the homeowner will submit the request for reimbursement to Inyo County.

- c) S/s Sunset Rd. diversion replacement: A rebuilt structure will be constructed on Dr. Carter's property as part of Phase II/III.
- d) Restriction in Nelligan Ditch at Norberg/Scott: A rebuilt structure will be constructed as part of Phase II/III.
- e) Restriction in 4X Ditch @ East end of Sunrise Dr.: Gene asked Don to talk to owner and see what can get done to fix the problem.
- f) Water shut-off at property at 2769 Sunset Rd: Gene to field check and draft a letter. Comments for the letter were provided by the downstream (effected) owners, James Barnett and Debra Kratz.
- g) Bishop Plaza maintenance and cleaning responsibility: Gene to talk with an attorney.
- h) Bishop Tribe BCWA Membership: Nothing new. LADWP reviewing/evaluating.

- i) Collection of Past Due Assessments: Plan is to go another round in small claims court to collect assessments from delinquent members.
- j) Ditch Diversion Box Repair/Rebuild Work – Phase II/III: Design plans are being prepared.
- k) Yaney Ditch Diversion Structures Repair/Replacement: Diversion at dog Park part of Phase II/III work, SW corner of Yaney & Hanby to be rebuilt by LADWP.

6) Water & Arbitration Committee Report

Nothing new to report.

7) Watermaster Report:

Matt reported that he received 34-calls & 22-text messages. Four of the calls were from board members. Majority of contacts were for low water/no flow.

8) New Business

- a) Budget Report: Mary reported on the Financial Committees draft proposed budget for 2020. The draft was discussed with no changes. The proposed 2020 budget will be considered for approval at the January 27, 2020 Annual Meeting.
- b) Policy on shutting ditches: An issue came up regarding shutting off water in a ditch so that work could be done by a property owner. Gene reminded the Board and Watermaster that the Board took an action in 2017 regarding this (see BCWA meeting summary from April 11, 2017). At that time the Board unanimously approved a policy “that except in times of emergency, all requests for ditch shutoffs are to be made to and approved by the BCWA Board.” Otherwise, the Watermaster can work with property owners, lower flows when possible to help facilitate the work.
- c) Nominating Committee: The terms of Merry and Henry are coming to an end and an election to fill the positions will take place at the Annual Meeting. Per the BCWA By-Laws Gene recommended that Steve Stevens be appointed to chair a nominating committee. This was unanimously approved by the Board.
- d) Flow Manipulation on Property on SW corner of Ranch Rd. and So. Mountain View Rd.: Merry and Henry to follow up with JoAnn Parsons complaints regarding manipulation of flows on the subject property.

9) Next Meeting: January 27, 2020, 7:00 p.m. at LADWP, 300 Mandich Street

10) Adjournment

Meeting adjourned at 8:23 p.m.

Respectfully Submitted,

Adam Perez

Secretary

Bishop Creek Water Association

BISHOP CREEK WATER ASSOCIATION

Post Office Box 1273
Bishop, California 93515

Dear Member:

April 2021

It has been an all-around very dry winter. Short of a good storm at the end of January, which left a nice accumulation of snow on the valley floor, precipitation felt pretty much non-existent. Precipitation in Bishop is currently a paltry 12% of the average yearly amount. As of April 1, the snowpack in the Bishop area mountains looks to be just under 50% of the average April 1 seasonal high. It is estimated that runoff to the Bishop area will be around 68% of normal this year. While not the best runoff, there should be adequate flows in Bishop Creek to meet Chandler Decree flow requirements for most of the irrigation season. Meeting the required flows may be problematic at the end of the irrigation season. The Board will continue to work with Southern California Edison (SCE) and the Los Angeles Department of Water and Power (LADWP) to meet the needs of membership during the 2021 irrigation season and keep ditches wet during the 2021-22 winter.

Managing this year's low runoff is going to require the cooperation of all entities involved, especially our members. At times, the low runoff could cause frustration among members. Not everyone on the same ditch can irrigate at the same time; the ditches cannot hold the volume of water that would be required. The solution is to communicate with your neighbors up and down the street when irrigating. Neighbors must work together, talking with each other and rotating when they use water.

Tampering with headgates creates a multitude of problems. When individuals take it upon themselves to operate headgates, block diversions, or pull boards, it creates numerous issues and affects many people. The Watermaster has sole authority and responsibility to divert water and make flow changes. All ditch diversion boxes and headgates are considered the property of the Bishop Creek Water Association (BCWA) and are to be operated only by the Watermaster (See BCWA Articles and By-Laws Article X; a copy is available at www.BishopCreekWater.org). If you have a problem with your water, please check with your neighbors for obstructions or if irrigating. If a reason is not obvious, please call the Watermaster. He will help in any way he can.

This year has brought extra challenges due to issues associated with COVID-19. Progress on projects have been slowed and the Board had to resort to telephone and "ZOOM" meetings to conduct business. Fortunately, the Watermaster has been able to continue his duties during this time of covid restrictions. Issues of ongoing interest that have consumed much of the Board's time this past year are:

1. An issue with the Inyo County Road Department regarding responsibility for maintaining/replacing of street culverts remains to be resolved. In the past the BCWA has been able to work cooperatively with Inyo County Road Department in dealing with plugged or deteriorated culverts. The Inyo County Road Department is no longer willing to provide that assistance. The Board is still hopeful that this can be resolved in a mutually beneficial way. It is important that membership be diligent in keeping ditches clear and free of debris. This is especially true for properties where water leaving the property enters a street crossing culvert. These discharge points need to be screened to prevent debris from entering the street culverts.
2. In the process of trying to recover past assessments from non-payers' inconsistencies have been identified in the BCWA membership records. The Board recognized that the records have not been rectified by the BCWA in over 20 years. In order to deal with non-payers, the BCWA must have an accurate database. As a result the Board has had the BCWA ditch map updated to identify member parcels and is now in the process of matching the membership data base with

BISHOP CREEK WATER ASSOCIATION

Post Office Box 1273
Bishop, California 93515

the mapped properties. Once this is complete the process of trying to recover past assessments from non-payers will resume. Also, once this work is completed, work on replacement of old deteriorated main diversion structures, which has been delayed by this effort, will get back on track.

3. Problems with low flow in the Matlick Ditch were resolved. The culvert in Rocking W Dr. was plugged with a root wad. A section of the culvert was replaced.
4. The deteriorated Nelligan Ditch Structure at the North Mountain View Rd. Diversion was mostly rebuilt. Completion of the project (construction of a south wingwall) is pending as negotiations with the adjoining property owner moves toward a resolution.

At the BCWA Annual Meeting in January membership approved a budget that called for no change to the annual assessment. The current yearly assessment rate of \$40 per parcel for single parcels and \$2.90 per acre for large landowners remains unchanged. Remember that the BCWA cannot maintain the necessary distribution facilities and provide for equitable distribution of water to all its members unless members utilizing and enjoying these waters pay his/her assessment. The assessments cumulatively pay the Watermaster's salary, BCWA bookkeeping, maintaining adequate insurance and maintenance of an aging distribution system.

Additional information on the above and other Association activities can be found in the monthly meeting summaries posted on the BCWA's website. You can also find on the website upcoming meeting agendas, and information/announcements on operations.

Lastly, we want to thank LADWP, SCE, Inyo County, the Bishop Tribe and all the BCWA members for their continued help and support. And we want to especially thank LADWP staff for acting as and performing the secretary functions for the BCWA.

The BCWA Board will continue to meet via ZOOM until Inyo County guidelines permit the Board to meet in person. Instructions for joining the meetings are posted on the BCWA website. The Board meets on the second Tuesday of each month at 7:00 pm. All members are invited. If you have any questions about the above or any other BCWA matter, please don't hesitate to contact one of your Board members listed below. Again, thank you for your support.

Sincerely,

BCWA BOARD OF TRUSTEES

Gene Coufal, President (760) 873-6209

Merry Armstrong (760) 873-6519

Don Kunze (760) 873-3375

Mark Frumkin (818) 590-0554

Eric Tillemans (LADWP) (760) 920-8989

Matt Durkee, Watermaster (760) 920-7981



Direction of Law

**NO
TRESPASSING**

Violators Will Be Prosecuted

Keep Out 24/7

Inyo
County
Sheriff
Notified

April 8, 2018







































A wooden structure, possibly a bridge or a walkway, spans a small creek. A warning sign is attached to the structure. The sign is white with a red border and red text. The background shows a creek with water flowing over rocks, surrounded by trees and vegetation. A brick wall is visible on the left side of the structure.

WARNING
IT IS A MISDEMEANOR TO
TAMPER WITH OR DAMAGE
THESE FACILITIES.
VIOLATORS WILL BE PROSECUTED
Blickup Creek Water Assoc.
WYO COUNTY 2006 D.A. 264

WARNING

IT IS A MISDEMEANOR TO
TAMPER WITH OR DAMAGE
THESE FACILITIES.

VIOLATORS WILL BE PROSECUTED
Bishop Creek Water ASSC.
INYO COUNTY CODE p.c. 594







