

State Water Resources Control Board

APR 26 2012

To: Enclosed Service List

PROPOSED REVOCATION OF LICENSE 659 (APPLICATION 553) OF THE MORONGO BAND OF MISSION INDIANS

This letter addresses a number of procedural issues concerning the upcoming hearing on the proposed revocation of water right License 659, held by the Morongo Band of Mission Indians (Morongo Band).

The Morongo Band's Request for a Settlement Conference and Pre-hearing Conference

By letter dated January 6, 2012, Stuart L. Somach, Special Counsel to the Morongo Band, requested a settlement conference with the hearing officer. Mr. Somach also requested a pre-hearing conference.

In an email dated January 10, 2012, Larry Lindsay, Chief of the Hearings Unit, informed Mr. Somach that, as the presiding hearing officer, I had declined to conduct a settlement conference. Mr. Lindsay's email explained that settlement conferences are not among the practices identified in the provisions that govern alternative dispute resolution (ADR) in adjudicative proceedings before the State Water Resources Control Board (State Water Board). (See Gov. Code, §§ 11420.10-11420.30; Cal. Code of Regs., tit. 23, § 648.6.) Mr. Lindsay allowed that, with all the parties' consent and waiver, there may be circumstances where having a Board Member facilitate a settlement conference would be lawful and appropriate. Mr. Lindsay stated, however, that such a showing had not been made in this case. Mr. Lindsay also stated that the State Water Board encourages settlements, and suggested that the Morongo Band meet with the Prosecution Team to negotiate a settlement agreement or stipulation of fact that could expedite the hearing.

With respect to Mr. Somach's request for a pre-hearing conference, Mr. Lindsay explained that a pre-hearing conference is not generally necessary for a hearing with a small number of parties and limited set of issues, but the hearing officer would consider the request, upon a showing of cause, after Notices of Intent (NOI) to appear had been received.

By letter dated January 24, 2012, Mr. Somach again requested a settlement conference. In his letter, Mr. Somach expressed the belief that a reasonable settlement of the current dispute over License 659 could be achieved with "appropriate non-biased attention to the issues" In response to Mr. Lindsay's email, Mr. Somach pointed out that, although the Government Code sections governing ADR in proceedings before the State Water Board do not provide for settlement conferences, none of those sections prohibit settlement conferences. Mr. Somach also stated that meeting with the Prosecution Team would be a fruitless endeavor because the Prosecution Team was unwilling to compromise on the issue of whether License 659 should be revoked.

To the extent possible, the State Water Board's practice has been to make reasonable accommodations to allow the parties in proceedings before the State Water Board to resolve their disputes in a mutually acceptable manner. As a general rule, however, the Board Members do not convene settlement conferences or otherwise participate in settlement negotiations because the Board Members need to preserve their impartiality as hearing officers and decision-makers. In civil litigation, the presiding judge in a case does not normally serve as a settlement conference judge, and the settlement conference judge is free to discuss with the parties the strengths and weaknesses of their legal positions in an attempt to persuade them to reach a settlement agreement. By contrast, the hearing officer in an administrative proceeding before the State Water Board could be subject to disqualification for bias, prejudice, or interest, if the hearing officer were to express an opinion about the merits of the case. (See Cal. Law Revision Com. com., 32D West's Ann. Gov. Code (2005 ed.) foll. § 11425.40, p. 297 [expressing a view concerning the particular proceeding before a hearing officer could be grounds for disqualification].) Similarly, the prohibition against ex parte communications precludes a hearing officer from meeting with the parties separately to discuss the strengths and weaknesses of their case. (See Gov. Code, § 11430.10.) For these reasons, the hearing officers in State Water Board proceedings do not normally hold settlement conferences. The Morongo Band has not given a compelling reason to depart from the State Water Board's practice in this regard, and therefore the Morongo Band's request for a settlement conference is denied.

In his letter dated January 24, 2012, Mr. Somach stated that he would renew his request for a prehearing conference after NOIs to appear were filed, but he hoped that his request would be granted without the need for another request. Mr. Somach has not renewed his request for a prehearing conference, or shown good cause for a prehearing conference, even though NOIs to appear have been filed. A pre-hearing conference does not appear to be necessary, given the limited number of parties and issues in this proceeding. Accordingly, a pre-hearing conference will not be scheduled.

The Morongo Band's Request for More Specificity

On March 2, 2012, the Morongo Band submitted a pleading entitled Request for SWRCB To Direct Prosecution Team To Provide More Specificity of Allegations Supporting Proposed Revocation and Request To Rescind Notice of Proposed Revocation. (The second part of this request is discussed later in this letter.)

In this pleading, the Morongo Band contends that its due process rights are being violated because the Prosecution Team has not provided the Morongo Band with enough information concerning the grounds for the proposed revocation to allow the Morongo Band to adequately prepare for the hearing. Similarly, the Morongo Band contends that the hearing notice is inadequate because it describes the key hearing issues in general terms, and does not specify, among other things, whether the grounds for the proposed revocation is the alleged failure to use water beneficially, the alleged use of water in violation of the California Water Code, or the alleged violation of license terms and conditions. In addition, the Morongo Band argues that the hearing notice is inadequate because it does not specify when during the last 95 years the non-use of water, the use of water in violation of the California Water Code, or the violation of license terms and conditions is alleged to have occurred.¹ As a consequence, the Morongo Band asserts that it cannot adequately prepare a

¹ The Morongo Band assumes that the relevant period during which the use or non-use of water under License 659 may be an issue is from 1917 to present because License 659 has a 1917 priority date. The use or non-use of water is unlikely to be an issue, however, before the license was issued in 1928 because the issuance of the license reflected a
(footnote continued on next page)

case-in-chief. In order to provide the Morongo Band with proper notice, the Morongo Band argues that the State Water Board should direct the Prosecution Team to file a document that details the facts that the Prosecution Team plans to prove at the hearing in support of revocation. The Morongo Band also argues that the State Water Board should issue a new hearing notice that includes greater specificity concerning the grounds for the proposed revocation.

On March 14, 2012, the Morongo Band timely filed a NOI to appear, together with another pleading, entitled Objections to Requirement To File Notice of Intent to Appear, To Identify Witnesses for Case-in-Chief, and to Notice of Proposed Revocation; Request for Dismissal on Due Process Grounds. In this pleading, the Morongo Band repeats its argument that it has not been afforded adequate notice of the grounds for revocation, and objects on this basis to having been required to file a NOI to appear and identify witnesses for its case-in-chief. The Morongo Band argues that it is being substantially prejudiced from having to try to anticipate the scope of the hearing, and contends that the proceeding should be dismissed altogether on due process grounds.

For the reasons explained below, the Morongo Band's request to issue a new hearing notice and to direct the Prosecution Team to provide greater specificity concerning the grounds for revocation is denied. The Morongo Band's request to dismiss this proceeding on the grounds of inadequate notice also is denied.

California Water Code section 1675.1 provides that a Notice of Proposed Revocation of a water right license must contain a statement of facts and information upon which the proposed revocation is based. As required by this section, the Notice of Proposed Revocation of License 659 (Notice) contains a statement of facts and information supporting revocation. The Notice alleges that cause exists for revocation because predecessors-in-interest to the Morongo Band did not apply water to beneficial use for five or more years, and the licensees did not use water in accordance with the terms of the license and the California Water Code. In support of these allegations, the Notice describes information contained in records maintained by the Division of Water Rights (Division), including license reports filed triennially from 1952 to 1960, the findings from an inspection conducted in 1964 and a reinspection conducted in 1968, reports of water use for the period from 1968 to 1990, a statement from the licensee's agent concerning water use between 1991 and 1995, and aerial photography for June 1996.

According to the Notice, the license reports filed from 1952 to 1960 indicate that some water had been used for purposes of irrigation (but presumably not the full amount of water authorized to be used), and the remaining records, which cover a period from about 1964 to 1996, indicate that no water had been used for purposes of irrigation (which is the only authorized purpose of use). The Notice also states that the license reports filed from 1952 to 1960 reported domestic use, which is not an authorized purpose of use, and the 1964 inspection found diversion facilities to a house to be intact. Finally, the Notice describes reports of licensee for the period of 1991 through 1994, which reported water use as irrigation of 200+ acres (which exceeds the 13-acre authorized place of use), and stockwatering (which is not an authorized purpose of use).

(footnote continued from previous page)

determination that the right had been perfected as of that date by applying water to beneficial use in accordance with the Water Code and the terms and conditions of the permit.

These details are not repeated in the hearing notice, but the background section of the hearing notice summarizes the allegations contained in the Notice. The hearing notice reiterates that the basis for the proposed revocation as set forth in the Notice was failure to apply water to beneficial use for at least five consecutive years and failure to comply with the terms and conditions of the license. Specifically, the hearing notice notes that the Notice described reports in which the licensee reported using water to irrigate more than the 13 acres authorized under the license and using water for purposes other than irrigation.

As described above, the reasons for the proposed revocation are set forth in both the Notice and the hearing notice, and the Notice describes the facts and information supporting revocation in sufficient detail to allow the Morongo Band to adequately prepare a case-in-chief. It also merits note that, to the extent that the Notice does not provide enough detail to enable the Morongo Band to anticipate and respond to all of the evidence presented by the Prosecution Team in the Morongo Band's case-in-chief, the Morongo Band will have another opportunity to respond to the Prosecution Team's evidence by cross-examining the Prosecution Team's witnesses and presenting rebuttal evidence.² As required by the hearing notice, the Prosecution Team will serve the Morongo Band with the Prosecution Team's written testimony and exhibits in advance of the hearing. Accordingly, the Morongo Band will have ample time to prepare for cross-examination and rebuttal.

The Morongo Band's Request to Rescind the Notice of Proposed Revocation

In its pleadings, the Morongo Band also contends that the Notice should be rescinded and this proceeding should be dismissed because statements contained in the Notice and the cover letter accompanying the Notice demonstrate that the State Water Board has predetermined the outcome of this proceeding in violation of the Morongo Band's due process rights. In support of this contention, the Morongo Band points to the last sentence in the Notice, which provides as follows: "Based on the above facts, conclusions, and statutory provisions, the Division will revoke License 659 after the passage of fifteen days after the Licensee receives this notice, unless by that date the Division has received a written request for a hearing signed by or on behalf of the Licensee." The Morongo Band also points to a statement in the cover letter, which provides that, if the State Water Board conducts a hearing, the licensee "will be expected to present evidence disproving the facts and conclusions set forth in the Notice of Proposed Revocation or provide other evidence showing that License 659 should not be revoked." The Morongo Band argues that these statements demonstrate that the State Water Board has already accepted as true the allegations contained in the Notice without having held a hearing.

The Morongo Band's request to rescind the Notice and dismiss this proceeding is denied because, contrary to the Morongo Band's contention, the Notice does not demonstrate that the State Water Board has prejudged any of the contested issues in this proceeding, as explained below.

The Notice and the accompanying cover letter were signed by Larry Attaway, Program Manager of the Application and Petition Section within the Division. The Notice reflected a preliminary

² In its March 2, 2012 pleading, the Morongo Band concedes that the Notice contains some specificity, but argues that the hearing notice does not impose any time or subject matter limitations for the hearing, leaving the Morongo Band in the position of having to prepare for potential allegations of deficient use over a 95-year period. This does not appear to be an issue, however, because, judging from the Prosecution Team's NOI to appear, the Prosecution Team does not plan to introduce evidence in support of factual allegations that are different from those described in the Notice.

determination by Mr. Attaway and staff within the Application and Petition Section that License 659 should be revoked based on the facts set forth in the Notice. This determination was not final, and it was not made by any of the Board Members, who will make the final decision concerning the proposed revocation of License 659 after holding a hearing and considering all the evidence in the record. The statements contained in the Notice and cover letter should not be interpreted to the contrary. The purpose of the statement contained in the Notice was to place the licensee on notice that the Division would assume that the facts set forth in the Notice were correct and revoke the license on that basis if the licensee did not timely request a hearing to challenge those facts. (At the time when the Notice was issued, the authority had been delegated to the Deputy Director for Water Rights to revoke a water right permit or license when a notice had been issued and the permittee or licensee had not requested a hearing.) The statement contained in the cover letter is best interpreted as an attempt to inform the licensee that, if the licensee were to request a hearing, the licensee would be expected to present evidence at the hearing to rebut or otherwise address any evidence presented by enforcement staff in support of revocation. Neither of these statements should be interpreted to mean that the Board Members have already accepted as true the allegations set forth in the Notice.

Disclosure of Ex Parte Communications

On January 25, 2012, Daniel Kelly with Somach, Simmons & Dunn, the law firm representing the Morongo Band in this case, filed a request with the State Water Board pursuant to the California Public Records Act, seeking records related to the proposed revocation of License 659. In the course of reviewing records responsive to this request, hearing team staff discovered and have brought to my attention the fact that two communications, to persons other than the presiding officers, that are arguably ex parte communications, have taken place between the Prosecution Team and advisors to the Board Members in this proceeding.

The communications in question concerned the Morongo Band's pending petition to change License 659. By way of background, the petition to change License 659 was one of three petitions to change three different rights filed by the Morongo Band in 2006, after the Notice had been issued. The change petition is not an issue in the pending revocation proceeding. (See Gov. Code, § 11430.10, subd. (a).) In November 2010, Mr. Somach and a number of other representatives of the Morongo Band met with me, the State Water Board's Executive Director, and the Deputy Director for Water Rights to discuss the lack of progress in processing the Morongo Band's change petitions. At the meeting, we agreed to process the change petitions if the Morongo Band would provide a draft notice of the petitions for change and documentation to satisfy California Environmental Quality Act (CEQA) requirements. At the time, we did not realize that one of the petitions was to change License 659, which is the subject of the pending revocation hearing. This issue was brought to the Executive Director's attention after the change petitions had been publically noticed, and the Prosecution Team sent Division management a "heads up" by email that the Prosecution Team intended to file a protest against the petition to change License 659. Subsequently, the Executive Director directed Division staff to hold the petition to change License 659 in abeyance until the revocation issue had been resolved, and to re-notice the petition accordingly. He also directed the Prosecution Team not to file a protest against the change petition.

Although the Prosecution Team's communication to Division management concerned the processing of the change petition, the Prosecution Team also forwarded a draft protest, which discussed the findings in the Notice. Accordingly, the communication arguably constituted an

ex parte communication. A second ex parte communication arguably took place when the Prosecution Team forwarded a copy of its draft protest to the Chief Counsel. As with the first communication, this communication was made for purposes of deliberating on the processing of the change petition, not for purposes of deliberating on the merits of the proposed revocation. This is evidenced by the fact that, in response to the communication from the Prosecution Team, the Chief Counsel relayed a recommendation concerning the change petition to the Executive Director and the Deputy Director for Water Rights. The Prosecution Team did not discuss the merits of the proposed revocation with anyone serving as an advisor to the Board Members in this proceeding, or with the Board Members themselves. Nonetheless, in an abundance of caution, the deliberative process and attorney client privileges are waived to the extent that they apply to the communications from the Prosecution Team described above and the Chief Counsel's response. These communications will be made a part of the record in this proceeding in accordance with Government Code section 11430.50. A copy of these communications is enclosed for the parties' information.

If you have any questions about this letter, you may contact Dana Heinrich, Staff Attorney IV, at (916) 341-5188 or dheinrich@waterboards.ca.gov.

Sincerely,



Charles R. Hoppin
Chairman

Enclosures

cc: Dana Heinrich
Senior Staff Counsel
Office of Chief Counsel

Kathleen Groody
Environmental Scientist
Division of Water Rights

**HEARING REGARDING PROPOSED REVOCATION OF LICENSE 659
(APPLICATION 553) OF THE MORONGO BAND OF MISSION INDIANS
MILLARD CANYON IN RIVERSIDE COUNTY
RESCHEDULED TO COMMENCE ON MAY 21, 2012**

SERVICE LIST

<p>MORONGO BAND OF MISSION INDIANS c/o Stuart L. Somach Somach, Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 ssomach@somachlaw.com dkelly@somachlaw.com</p>	<p>DIVISION OF WATER RIGHTS PROSECUTION TEAM c/o Samantha K. Olson State Water Resources Control Board 1001 I Street, 22nd Floor Sacramento, CA 95814 SOlson@waterboards.ca.gov</p>
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Barbara Evoy - Morongo

From: Michael Lauffer
To: Evoy, Barbara; Howard, Tom
Date: 3/7/2011 3:48 PM
Subject: Morongo

Looking at the notices of the petitions and the original revocation notice from 2003, it does appear that License 659 appears on both. I do not think we should be noticing up a change petition concerning a license that is the subject of the revocation proceeding. The cleanest way forward would be to remove License 659 from the notice of change petitions. License 659 involves .16 cfs. The other two licenses involve a total of 3 cfs.

-maml



Michael A.M. Lauffer, Chief Counsel
 State Water Resources Control Board
 1001 I Street, 22nd Floor
 Sacramento, CA 95814-2828
 Phone: 916.341.5183
 Facsimile: 916.341.5199
mlauffer@waterboards.ca.gov

From: Jim Kassel
To: Lauffer, Michael
Date: 3/7/2011 3:49 PM
Subject: Fwd: Re: Morongo Notice of Petition for Change

Thanks.

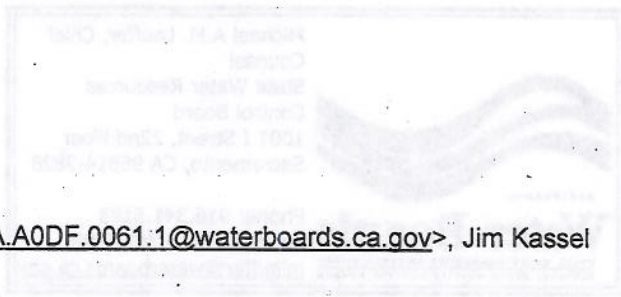
Jim

>>> Michael Lauffer 3/7/2011 3:48 PM >>>

Thanks. I've relayed a recommendation to Tom and Barbara.

-mami

Michael A.M. Lauffer, Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814-2828
Phone: 916.341.5183
Facsimile: 916.341.5199
mlauffer@waterboards.ca.gov



>>> On 3/7/2011 at 3:18 PM, in message <4D74F72A.A0DF.0061.1@waterboards.ca.gov>, Jim Kassel <JKassel@waterboards.ca.gov> wrote:

Michael,

Here is the proposed protest from the prosecution team.

The notice of the petitions is at the following link:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/petitions/2011.shtml.

Jim

>>> John O'Hagan 3/7/2011 11:25 AM >>>

Attached is a final version with Andy's and David's edits. I added an additional reason for dismissal of protest, (if Morongo requests revocation of the license). I also added a copy of the Notice to the protest form. Should I sign or counsel?

John O'Hagan, Manager
Enforcement Section
Division of Water Rights

Phone (916-) 341-5368
Cell (916) 956-9591
Fax (916) 341-5400
johagan@waterboards.ca.gov

Michael Lauffer - Fwd: Re: Morongo Notice of Petition for Change

From: Michael Lauffer
To: Kassel, Jim
Date: 3/7/2011 3:48 PM
Subject: Fwd: Re: Morongo Notice of Petition for Change

Thanks. I've relayed a recommendation to Tom and Barbara.

-maml



>>> On 3/7/2011 at 3:18 PM, in message <4D74F72A.A0DF.0061.1@waterboards.ca.gov>, Jim Kassel <JKassel@waterboards.ca.gov> wrote:

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 Cell (916) 956-9591
 Fax (916) 341-5400
johagan@waterboards.ca.gov

From: Jim Kassel
To: Lauffer, Michael
CC: Evoy, Barbara
Date: 3/7/2011 3:18 PM
Subject: Fwd: Re: Morongo Notice of Petition for Change
Attachments: Mallard Canyon Protest.pdf

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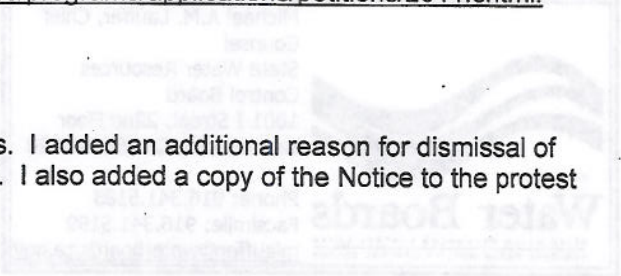
Jim

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johagan@waterboards.ca.gov



PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS
Protests based on Injury to Vested Rights should be completed on other side of this form

APPLICATION 553 PERMIT _____ LICENSE 659

(We,) Prosecution Team of the Division of Water Rights
Name of protestant

of 1001 I Street, Sacramento, CA 95814 have read carefully
Post Office address of protestant

a notice relative to a petition for change or extension of time.

under APPLICATION 553 of Morongo Band of Mission Indians
State name of petitioner

to appropriate water from Springs arising in Mallard Canyon in Riverside County
Name of source

It is desired to protest against the approval because to the best of our information and belief:
the proposed change/extension will

- 1) not be within the State Water Resources Control Board's (State Water Board) jurisdiction
- 2) not best serve the public interest
- 3) be contrary to law
- 4) have an adverse environmental impact

State facts, which support the foregoing allegations The Division of Water Rights issued a Notice of Proposed Revocation of License 659 on April 23, 2003. As discussed in greater detail in the Notice, the licensee had not applied water to beneficial use for at least five consecutive years, and the Licensee failed to comply with the terms and conditions of the license. Morongo Band of Missions Indians requested a hearing before the Board to contest this proposed revocation. To date, the State Water Board has not held a hearing on this matter. It does not best serve the public interest if the State Water Board considers a change petition on a license that is pending a determination of a potential revocation. It is also contrary to law for the State Water Board to actually grant a petition on a right that has been lost due to non-use.

Granting a change petition without reducing the amount authorized to be diverted consistent with the amount that has actually been diverted in accordance with the terms of the license and the right which has not been lost to non-use would have the effect of increasing diversions from the Whitewater River. This would either injure third party water right holders, adversely effect the environment, or both.

Under what conditions may this protest be disregarded and dismissed? The Prosecution Team agrees to dismiss its protest if Morongo requests revocation of License 659, or if the State Water Board defers its decision on the change petition for License 659 until after it holds a hearing and determines the facts relative to the proposed revocation. The Prosecution Team also requests to be included in any field investigation of the change petitions conducted pursuant to Water Code section 1704.1.

A true copy of this protest has been served upon the petitioner by Mail

Date March 7, 2011

[Signature] Manager
Protestant(s) or Authorized Representative sign here

California Environmental Protection Agency
Director of Water Rights
Recycled Paper

State of California
State Water Resources Control Board

DIVISION OF WATER RIGHTS

1001 I Street, 14th Floor

P.O. Box 2000, Sacramento, CA 95812-2000

Info: (916) 341-5300, FAX: (916) 341-5400, Website: <http://www.waterrights.swrcb.ca.gov>

In the Matter of License 659 (Application 553)

Great Spring Waters of America, Inc.

NOTICE OF PROPOSED REVOCATION

SOURCE: Millard Canyon

COUNTY: Riverside

You are hereby notified, pursuant to section 1675, et seq. of the California Water Code, that the State Water Resources Control Board (SWRCB) will revoke License 659 because the licensee has failed to use beneficially, all or part of the water for the purpose for which it was appropriated for an extended period of time, in violation of Water Code section 1241 and has failed to observe the terms and conditions in the license.

The facts and information upon which the proposed revocation is based are as follows:

A. Licensee Has Not Appropriated Water Under License 659 Within The Terms Of The License

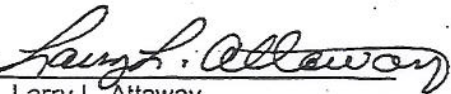
1. License 659 was issued to Southern Pacific Land Company on January 31, 1928, authorizing 0.16 cubic feet per second year around direct diversion for irrigation of 13 acres. On January 25, 1991, the license was assigned to the Steele Foundation Arizona Corporation, and then to Ferydoun Ahadpour and Doris Ahadpour on May 25, 1994. On July 9, 2001, the Division received notice of assignment of the sale of the Ahadpour property to Great Spring Waters of America, Inc.
2. Evidence in Division of Water Rights records indicates that the licensees have not made beneficial use of water for 5 or more years: License reports filed triennially from 1952 to 1960 reported domestic use (not an approved use), and some irrigation use. A 1964 inspection, by Division staff, found that the diversion facilities to a house to be intact however the irrigation system had been dismantled. A re-inspection in 1968 found that no use of water had been made for designated irrigation purposes during the previous three or four years. During the period from 1968 to 1990 water use is indicated in the files, however the numbers reported appear to be copied directly from one year to the next and lead one to question the extent of any real use. In June 1995, the agent for the Licensee claimed that the water had not been used since 1991 and was "completely wasted and runs down Millard Canyon." No irrigation activity could be identified within the prescribed place of use on aerial photography obtained for June 1996.

3. Because the Reports of Licensee for the period of 1991 through 1994 listed water usage as irrigation of 200+ acres and stockwatering, and no Reports of Licensee were received for the period from 1995 to the present, the Division wrote to the licensee on September 28, 2000, requesting submittal of the missing Reports of Licensee and evidence documenting the actual monthly usage and the place of use served by License 659. Although the Reports of Licensee were submitted showing usage of 9.6 acre feet for every month from 1988 through 2001, no explanation or documentation to substantiate actual beneficial use was submitted.
- B. By Failing To Use All or Part Of The Water For An Extended Period, Licensee Has Failed to Apply the Water Authorized by License 659 to Beneficial Use in Accordance With The Water Code;
1. Section 1241 of the Water Code provides: "When a person entitled to the use of water fails to use beneficially all or any part of the water claimed by him, for which a right has vested, for the purpose for which it was appropriated or adjudicated, for a period of five years, such unused water may revert to the public and shall, if reverted, be regarded as unappropriated public water."
- C. Based On The Above Facts And The Conclusions Set Forth Below, Cause Exists For The Revocation Of License 659 Pursuant To Water Code section 1675.
1. Licensee has not applied the water authorized under License 659 to beneficial use as contemplated in the license and in accordance with the Water Code.
 2. Licensee's water right should be deemed to have reverted to the public under section 1241 because Licensee has not applied the water to beneficial use for at least five consecutive years, and Licensee has provided no basis for determining that it should not revert.

As required by Water Code section 1675.1, you are notified that: Unless a written request for a hearing signed by or on behalf of the licensee is delivered or mailed to the board within 15 days after receipt of this notice, the SWRCB may act upon the proposed revocation of the license without a hearing. Any request for a hearing may be made by delivering or mailing the request to the board at the address given on the notice.

Based on the above facts, conclusions, and statutory provisions, the Division of Water Rights will revoke License 659 after the passage of fifteen days after the Licensee receives this notice, unless by that date the Division of Water Rights has received a written request for a hearing signed by or on behalf of the Licensee.

Dated: APR 28 2003

By: 
Larry L. Attaway
Program Manager
Application and Petition Section

Barbara Evoy - Fwd: Re: Morongo Notice of Petition for Change

From: Caren Trgovcich
To: Evoy, Barbara
Date: 3/7/2011 2:55 PM
Subject: Fwd: Re: Morongo Notice of Petition for Change

Barbara - it sounds like Tom has called both of us on this. Why don't you bring whoever you need to (if available) to our 3pm to figure out how to handle this. Thanks!

CT

>>> Barbara Evoy 3/7/2011 1:51 PM >>>

A heads up. I understand it is unusual for one part of the Division to protest the work of the other....but that is the case with this one. We are being denied the ability to inspect based upon sovereign immunity, but at the same time being asked to expedite change petitions.....fyi

>>> Jim Kassel 3/7/2011 10:11 AM >>>

Barbara,

Attached is a copy of the protest that the Morongo prosecution team intends to file today against the notice of its change petitions. The Division's prosecution staff has been working with OCC on this issue, and they recommend that we do file a protest. We may hear from Stuart Somach regarding this protest.

Jim

=====
 >>> John O'Hagan 03/04/11 1:32 PM >>>

As you know, a hearing on the proposed Revocation of License 659 (Application 553) owned by the Morongo Band of Mission Indians has been pending for years. Division staff that drafted the revocation are no longer with the Board. My section is now responsible for this case and our previous attempts to get access to the property to investigate have been denied by Morongo and its counsel, Stuart Somach, based on sovereign immunity. Morongo also filed petitions for change in purpose and place of use after the revocation notice. The Permitting Team has now advertised the change. The notice for the petitions state that protests must be received by 4:30 p.m. on March 7, 2011.

I recommend that we submit an protest, or at least submit a comment, to preserve standing as a party in the change process or to request that hearing on revocation be held before the Board considers the change order.

I have drafted the attached protest form. Let me know if you agree?

John O'Hagan, Manager
Enforcement Section
Division of Water Rights

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To: Evoj Barbara
Date: 3/1/2011 3:55 PM
Subject: Fwd: Re: Monrogo Notice of Petition for Change

Barbara - I would like to call both of us on the 1st of April to see if you would like to meet with us (available) to our 3pm to figure out how to handle this. Thank

>>> Barbara Evoj 3/1/2011 1:51 PM >>>
A heads up - I understand it is unusual for one part of the Division to contact the other... but that is the case with this one. We are being drafted the notice to report based upon sovereign immunity, but at the same time being asked to expedite change petition...

>>> Jim Kessel 3/1/2011 10:11 AM >>>
Barbara,

Attached is a copy of the protest that the Monrogo prosecution team intends to file today against the notice of its change petition. The Division's prosecution staff has been working with OGC on this issue, and they recommend that we do file a protest. We may hear from Stuart Somach regarding this protest.

Jim

>>> John O'Hagan 03/04/11 1:32 PM >>>

As you know, the proposed Revocation of License 059 (Application 053) owned by the Monrogo Corp of Nevada... Division staff that the revocation are no longer with the Board. My section is now responsible for this case and our previous attempts to get access to the property to investigate have been denied by Monrogo and its counsel, Stuart Somach, based on sovereign immunity. Monrogo also filed petitions for change in purpose and place of use after the revocation notice. The permitting Team has now advised the change. The notice for the petitions state that protests must be received by 4:30 p.m. on March 3, 2011.

I recommend that we submit an protest, or at least submit a comment, or prescriptive guidance as a party in the change process or to request that hearing on revocation be held before the board considers the change order.

I have drafted the attached protest form. Let me know if you agree.