

In the matter of Proposed Revocation of License 659 Hearing, Morongo Band of Mission Indians, Millard Canyon in Riverside County

I, Mark Stretars, declare as follows:

1. I am a Professional Civil Engineer registered in California, and was a Senior Water Resources Control Engineer with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division). I have over 30 years of experience in California water rights, working within the Application, Petition, Complaints, and Compliance Units of the Division. Before my retirement in December 2011, my position was Chief of the Compliance Unit. When the Division issued the proposed revocation in 2003, my position was Chief of the Petition and Transfer Unit.
2. From 1997 to 2003, I was Petition and Transfer Unit Chief, under the supervision of Larry Attaway, who was the supervisor of the Application and Petition Section. (WR Exhibit 6.) At that time, the Petition and Transfer Unit was responsible for reviewing and processing all petitions, including petitions for time extensions, and petitions for changes of place of use, purpose of use and points of diversion. My Unit was also responsible for issuing notices of proposed revocation. I supervised five staff, including Alana Gibbs, staff engineer, who worked on License 659.
3. License 659 came to the attention of the Unit as the subject of a change petition. As my staff reviewed the file to process the petition, questions arose regarding whether the right had been lost for nonuse. As I explain in my testimony, evidence in the Division's records indicated that licensees of License 659 had not made beneficial use of water for five or more years. While it is likely that no use was made for a continued and extended period of time, specific evidence supported a finding of no use for at least three or more years in the 1960s and for five or more years in the 1990s.
4. 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." Under Water Code section 1675, cause exists to revoke a license if the licensee has not applied the water authorized under the license to beneficial use as contemplated in the license. In 2003, my Unit issued a Notice of Proposed Revocation pursuant to Water Code section 1675. (WR Exhibit 40.)
5. When my Unit issued the Notice of Proposed Revocation, subject to approval by Larry Attaway, the notice provided the opportunity for the licensee to request a hearing. After issuing a notice, the Petition and Transfer Unit staff does not communicate with Board members or staff in the Hearing Unit about the subject project. Under Water Code section 1675.1, unless a written request for a hearing is received, the Water Board may revoke the license. If a request for hearing is received, the Water Board separates functions and staff from the Hearing Unit is assigned to assist and advise the Water Board. I and my staff would serve as an enforcement

team subject to the prohibition against ex parte communications to the Water Board and advisory staff.

6. The State Water Board received a request for hearing on the proposed revocation from both Great Springs of America Inc. (Great Springs) and the Morongo Band of Mission Indians (Morongo) (WR Exhibits 41 & 42), and the procedure outlined above was followed. It was at that time that the Division learned that Morongo had acquired the license from Great Springs. (WR Exhibit 42 & 43.) In August, 2003, the Hearing Unit posted a Notice of Public Hearing. (WR Exhibit 44.) I had no further involvement and a hearing had not taken place before my retirement. As detailed below, my review of the file showed sufficient evidence to support a finding that the water under License 659 was not put to beneficial use for a period of five years or more. These facts led me to prepare the notice of proposed revocation in 2003 and I continue to support revocation of License 659 pursuant to Water Code section 1675.

Below is a detailed history of the owners and use of license 659.

7. Application 553 was filed by the Southern Pacific Land Company on January 3, 1917. (WR Exhibit 13.) The application requested the right to directly divert, on a year-round basis, 2.75 cubic-feet per second (cfs) of water from an Unnamed Spring in Millard Canyon, located near the center of section 32, T2S, R2E, S.B.B.M. (*Id.*) The water was intended to serve 550 acres of agriculture within subdivision 3. In 1928, after three extensions of time, the project was inspected and License 659 was issued for diversion of 0.16 cfs to irrigate 13 acres; 10 within the NE1/4 of SW1/4 of Section 32, and 3 acres within the SE1/4 of SW1/4 of Section 32, all within T2S, R2E, S.B.B.M. (License 659; see also map of Place of Use.) The season of diversion was defined as January 1 through December 31 of each year. (WR Exhibit 16.)

8. In 1930 water right License 659 and License 660 were assigned to the Southern Pacific Railroad Company.¹ (WR Exhibit 18.) The Reports of Licensee filed for License 659, and covering both rights for the years 1930 up until 1954 repetitively made almost the identical same statement of use. (WR Exhibit 19.) Because there were no yearly specifics associated with these tri-annual statements of use, a question of whether actual use was being made began to surface. Paraphrasing the reports, they read as follows:

Approximately 0.16 second feet (pre-1939), 0.12 second feet (post-1939), to irrigate 13 acres growing in alfalfa and vegetables in season in Section 32, T2S, R2E, S.B.B.M. (License 559). Irrigation use is at times is as high as 0.41 sec. ft. (pre-1939), No statement (post 1939).

Approximately 170,000 gallons per 24 hours (pre-1939), 216,000 gallons per 24 hours (post 1939) are used at Cabazon, averaging .33 second feet with a maximum of 0.40

¹ License 660 was also issued on or about the same time as License 659 to Southern Pacific Land Company, authorizing .50 cubic feet per second for industrial use in operation of the railroad and domestic use for houses used by railroad employees at the Cabazon Station. (WR Exhibit 45.) License 660 and 659 shared a common point of diversion but had different places and purposes of use. In 1961, Cabazon Water District acquired License 660 from Southern Pacific Company. (WR Exhibit 46.)

second feet to supply an average 35 people with domestic water, and locomotive use. No irrigation statement (pre-1939, Irrigation use is at times is as high as 0.38 sec. ft. (post-1939). (License 660).

Total flow of the springs is used in supplying the above

(WR Exhibit 19.)

9. In the 1954 Report of Licensee, the statement of use filed for the years 1952-53-1954, changed to:

Approximately 116,000 gallons is average use in 24 hours by locomotives, and domestic service to an average of 35 people is about 0.18 second feet, with a maximum, for one month of 0.50 second feet. Total flow of springs is used for above purposes. This report is a statement of the total quantities of water used under licenses 659 and 660 during the three year period. (Id.)

And for years 1955-56-1957 the statement read:

Domestic use, Section labor Quarters, Cabazon, California. Approximately 200 gallons of water a day per person for lawns and evaporative coolers. Approximately 30 persons. (Staff Exhibit WR 32-10)

10. Historically, the 1950s were a period of time when the railroads were replacing much of their steam locomotive rolling stock and the associated extensive water tank systems needed to replenish steam locomotive boiler water with diesel electric locomotives. For this period of years, there is no mention of irrigation use on the 13 acre parcel, reduced demand for locomotive use, and a small reduction in the labor force at the Cabazon train station is noted. (Id.)

11. An inspection of water use for License 659 was made on May 4, 1964. (WR Exhibit 20.) In the section titled "Use of Water" found on page 2 of the report, the inspector, Walt Pettit, stated that "[i]f there is any use, it consists of occasional stockwatering by the lessee. There were no cattle on the property at the time of inspection. No one knew when last cattle were on property, or of their number. Mr. White, the agent for Southern Pacific Railroad Company, stated that the house had not been occupied by the caretaker for the cattle for at least 2 years." In the section entitled "Remarks" Mr. Pettit concluded: "[q]uite likely there has been an extended period of non use, but considering the present activity it appears that action should be temporarily postponed." It appears that the "present activity" Mr. Pettit was referring to was the fact that the Cabazon County Water District had just been formed and had received the rights to License 660 (Application 554). (WR Exhibit 45, 46 & 47.) Presumably, it was Cabazon County Water District's hope that they might also be given the rights to License 659 (Application 553). (Id.)

12. The project was again inspected in April, 1968 by D. J. Leve. His report states: "[c]hanges in the diversion system by Cabazon County Water District (License 660) prevent use of water under the amounts and conditions of the License (Licensee 659). *** No use has been made of water under this license for 3 to 4 years other than some for non-licensed domestic and

stockwatering use.” (WR Exhibit 23.) The attached “Remarks” page indicates that Cabazon County Water District made extensive changes to the diversion system which sealed the system and increased the efficiency and flow of the springs. However, Cabazon also disconnected and removed all of the apparatus associated with diversions under license 659. The Remarks page indicates that discussions were under way to possibly reconnect water lines that would allow service of the 13 acre place of use under the license. Mr. Leve suggested a re-inspection in 1969 to see if water was being used under License 659. There is no indication in the file that a re-inspection occurred.

13. Based on the inspection reports in 1964 and 1968, it is reasonable to conclude that water was not used for at least three to five years, and likely longer. Walt Pettit inspected the property in May of 1964 noting there was likely an extended period of nonuse prior to 1964. Any indication of possible stock watering use would not change this assessment because stock watering is not an authorized use under the license. Four years later the property was inspected again and water use had not commenced. The infrastructure needed to irrigate the place of use had not been assembled.

14. The license reports indicate that for the years 1968 through 1987, 13 acres of pasture and forage were irrigated, along with domestic use and irrigation of one acre of garden. However, there is no additional evidence to suggest that such use was actually occurring. (See WR Exhibit 12 [aerial photos show no irrigation in place of use].)

15. On December 22, 1989 the property was sold to Coussoulis Development Company. (WR Exhibit 26.) Then in 1991 the property was transferred to The Steele Foundation Arizona Corporation. (WR Exhibit 27.) License reports during this period state that the water was used to serve 200 + acres of irrigation and 100 head of cattle and horses. (WR Exhibit 25.) However, the license amount of 0.16 cfs at 1cfs per 80 acres is only sufficient for 13 acres.

16. The property was transferred again in 1991 to Ferydoun and Doris Ahadpour, and the license re-assigned in 1994. (WR Exhibit 28.) Three Reports of Licensee were submitted by the Ahadpours for 1991-1995. (WR Exhibit 29.) In each, no quantity of water use was reported diverted and it was noted that water returned to the source via seepage. (*Id.* at 1991-1993 Report.) The Reports also indicated 200+ acreage irrigated and 100+ head of stock, identical to the reports submitted for 1989-1991.

17. On June 27, 1995, the Division received a petition from Ahadpours to change the purpose of use from “not used” to “commercial drinking water.” (WR Exhibit 30.) The accompanying transmittal letter stated “[a]s stated in our application, we have some water rights designated for agricultural use. The water is being completely wasted and runs down along Millard Canyon.” (*Id.*) Statements in the accompanying Environmental Information stated “[t]he request is mainly to change the use from agricultural designation to commercial designation. Commercial designation would provide the opportunity to use the water for drinking though a bottling system or other types of marketing the water. Part of the water is already used for drinking and commercial use by the community of Cabazon Water District. There has never been, nor presently is there any agricultural activities that this water can be used for.” (WR Exhibit 31 [emphasis added].)

18. During the petition notice process, staff of the Division contacted Mozafar Behzad, representative for the Ahadpours. Mr. Behzad stated that since 1991 (the year the Ahadpours purchased the property), the water had not been used and the proposed project to develop a drinking water facility was in the planning stages. (WR Exhibit 32.)

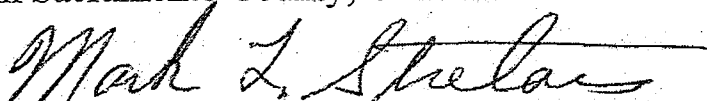
19. The Division noticed the petition in October 1995. (WR Exhibit 33.) In response to the notice of the proposed petition for change, a protest was received from Morongo. (WR Exhibit 34.) The protest indicated that the Ahadpours did not have an easement across the Morongo's land and as such lacked the right of ability to exercise the right in the manner sought by the petition. (*Id.*)

20. Any change in purpose, place of use, or point of diversion requires Water Board approval. The proposed change cannot initiate a new right or injure any other legal user of water. The record indicated nonuse of five or more years in the 1960s and in the 1990s. Under statute, the right should have been forfeited.

21. By letter of September 28, 2000, the Division informed the Ahadpours, through their agent, that the Division had concerns about the validity of the water right based on the identified periods of non-use and periods of excessive unauthorized use. (WR Exhibit 35.) The Division advised the Ahadpours that the right may have already been lost if documentation substantiating use could not be provided and requested submittal of the missing Reports of Licensee for the period from 1994 through 2000 and documentation of actual monthly beneficial use. (*Id.*)

22. Having received no documentation justifying the use of water the Division began development of a Notice of Proposed Revocation. On June 28, 2001, Hatch and Parent, attorneys for Great Springs contacted the Division, advising that Great Springs had purchased the property and would provide the requested information. (WR Exhibit 36; *see also* WR Exhibit 39.) On July 6, 2001, Mr. Saperstein submitted Reports of Licensee for the years 1988 through 1999. (WR Exhibit 37.) Every year was identical in nature, showing 9.6 acre-feet of use each month for an annual total of 115.2 acre-feet. (WR Exhibit 38.) Mr. Saperstein stated that a relatively constant flow of water was present from the source, but failed to explain how, if at all, that water was used. (WR Exhibit 37.) On the Reports, Mr. Saperstein listed 13 acres as irrigated and 500 for the number of stock. Some of the Reports directly contradict the statements by the actual owners of the property at the time.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 27th day of April, in Sacramento County, California.



Name Mark L. Stretars

MARK STRETARS

State Water Resources Control Board, Division of Water Rights
1001 I Street, 14th Floor, Sacramento, CA 95814
Telephone: (916) 341-5389 Email: mstretars@waterboards.ca.gov

Education

University of California, Davis
Bachelor of Science, Civil Engineering, June 1973

Professional Registration

California Professional Engineer in Civil Engineering
Certificate No. C28299, September 1977

Certificates of Professional Development:

- University of California Extension Service, Certificate in California Water Law
- Certificate in Hazardous Waste Operations and Emergency Response Training
- Certificate in SWRCB Contract Management
- Certificate in Labor Relations and Contract Administration
- Certificate of attendance, Best Practices for Owning and Operating a Winery

Employment and Experience

36 years of experience with the Division of Water Rights (Division) dealing with California water rights law and regulations, State Water Resources Control Board (SWRCB) water right policy, Division programs and procedures. I have handled individual project cases, as well as managed projects and programs in the Permitting Section dealing with Application processing, Permit issuance, change petition and extension of time processing and revocations of water rights for failure to make beneficial use of authorized water right allotments. I implemented and managed the Division's Water Code section 1725 Temporary Transfer Program. I have conducted onsite field inspections and have managed programs within the License Section relating to complaints, compliance and adjudication actions, wherein the evidence obtained from the parties by disclosure and onsite investigations is analyzed to determine if unauthorized diversions and/or violations of existing permit /license terms have occurred. During the last five years I have managed the formal staff enforcement actions where unauthorized diversions, violations of existing permit /license terms, or failure to comply with Water Code section 5100 et.seq. were found to be occurring within the Sacramento San Joaquin Delta. The above knowledge and experience was obtained while holding the following positions within the State Water Resources Control Board, Division of Water Rights:

Senior Water Resources Control Engineer

Chief of Compliance & Enforcement Unit (May 2003 to present)
Chief of Petition & Change Unit (Nov 1997 to April 2003)
Chief of Application Processing Unit (Oct 1994 to Oct 1997)
Chief of Complaint Unit (Jan 1989 to Sept 1994)
Chief of Complaint Unit (Aug 1981 to Jan 1986)

Special Assignments

Chief of the Delta Enforcement Unit (Dec 2007 to Dec 2011)
Chief of Statewide Water Transfer Unit (Nov 1997 to April 2003)
American River Court Reference (Jan 1986 to Dec 1988)

On December 16, 2011 I retired from the Division of Water Rights.