

1. I Kevin Bearquiver serve as Deputy Regional Director – Trust Services of the Bureau of Indian Affairs, US Department of Interior (hereinafter BIA), Pacific Regional Office.
2. The Morongo Band of Mission Indians is under the purview of my office.
3. It is the policy of the United States of America to promote Indian Self-Determination and tribal Economic Development. This means that the BIA will assist tribes when they request assistance and that it will transfer federal programs and responsibilities to tribes upon their request. This is done pursuant to the Indian Self-Determination Act, P.L. 93-638 as amended, 25 U.S.C. Section 450 et seq. The BIA will also assist tribes in managing their natural resources in order to enhance their ability to advance Indian self-determination and achieve Tribal economic self-sufficiency.
4. One of the primary responsibilities of the United States with respect to Indian Tribes has always been to hold legal title to Indian Reservation lands in trust for the tribes. The tribes, of course, retain beneficial use of those lands. The United States also accepts legal title to lands which the tribes acquire within or adjacent to their existing reservations. An integral aspect of the United States holding title to Reservation lands is that, unless water rights are reserved in some fashion at the time the United States accepts legal title to lands held in trust for a tribe, the United States also holds legal title to the water rights that are appurtenant to lands that it holds in trust for the tribes.

5. When reservations are established, the waters appurtenant to those lands are impliedly set aside (“reserved”) to allow the tribes to carry out the purposes of the reservation. These water rights are paramount to water rights later perfected under state law. These principles were confirmed by the U.S. Supreme Court in the case of *Winters v. U.S.*, 207 U.S. 564, 576-577 (1908) and is known as the “Winters Doctrine.”
  
6. Specific to the instant situation, except where water rights may have been reserved, the United States, acting through the Secretary of Interior, holds legal title to all of the land comprising the Morongo Indian Reservation and the appurtenant water rights, in trust, for the beneficial use of the Morongo Band of Mission Indians. This includes lands which were included in the original Reservation that was established in 1876, federal lands that were added to the Reservation by subsequent Executive Orders and Acts of Congress, and lands which the Tribe has purchased and transferred to the United States in the past 20 years.
  
7. The Morongo Band has the legal ability and responsibility for developing its own water systems on the Morongo Indian Reservation, providing its own water, waste water treatment facilities, administering those systems and the rights associated with them, providing its own roads (except to the extent that they apply for and receive Federal Highways Act funding for them), and providing other basic municipal services for its members living on the Reservation. Responsibility for many of the federal programs such as environmental protection, housing, Indian child welfare, forestry, social services, land title and records responsibility, etc., have also been transferred to the Tribe and are no longer provided by the Federal Government.

8. Water is a critical necessity for the Tribe. Its members need a reliable and adequate water supply and water systems. The Morongo tribe has the responsibility for providing safe drinking water and agricultural and industrial water for the Tribe both at present and for the future, including the administration of these water rights.
  
9. Notwithstanding the Tribe's ability to administer those rights, as noted above, the United States has taken legal title to approximately 1,830 acres of land in Millard Canyon, in trust, for the beneficial use of the Morongo Band of Mission Indians. Along with the land, the BIA has taken legal title to any appurtenant water rights that are attached to the land as a matter of law. Included in the lands and waters which have been taken into trust are the Ahadpour property consisting of more than 715 acres of land and any appurtenant water rights.
  
10. Because it is the United States that holds legal title to the lands in Millard Canyon as well as water rights appurtenant to that land, there is a serious legal issue concerning whether any such water rights could be revoked in the absence of appropriate notice to the Bureau of Indian Affairs, which administers lands held in trust for Indian tribes.
  
11. There is no public road providing access to Millard Canyon so that no one but the Morongo Band may cross the sections of the Reservation which lead to that canyon. The BIA has not approved any rights-of-way crossing tribal lands and leading to Millard Canyon, and the BIA's approval would be required for any rights-of-way to be valid. Thus, no one but the Tribe has the opportunity to access any water in that Canyon.

12. In any event, and based upon all of the foregoing, the BIA urges the SWRCB, as a matter of good policy, to not revoke License 659 and to exercise its power in a manner that allows Morongo to consolidate License 659 with the other water rights to which it has a beneficial interest so that it can insure that these rights are put to reasonable beneficial uses in a manner that fosters continued Indian economic development and self-sufficiency.