



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5351
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.waterrights.ca.gov>



Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

NOTICE OF PUBLIC HEARING

**A Public Hearing will be held on
Proposed Revocation of License 659
(Application 553) of
Morongo Band of Mission Indians
Millard Canyon, Riverside County**

The Hearing will commence on Tuesday, October 14, 2003 at 10:00 a.m.

**at
Joe Serna Jr./Cal-EPA Headquarters Building
Sierra Hearing Room – Second Floor
1001 I Street, Sacramento**

SUBJECT OF THE HEARING

This hearing is scheduled to receive evidence which will assist the State Water Resources Control Board (SWRCB) in determining whether License 659 of Morongo Band of Mission Indians should be revoked for failure to apply the authorized water to beneficial use as contemplated in the license in accordance with the Water Code.

BACKGROUND

Southern Pacific Land Company filed Application 553 on January 3, 1917. The State Department of Public Works, Division of Water Rights, predecessor to the SWRCB, Division of Water Rights, issued License 659 to the company on January 31, 1928. The license authorizes the Licensee to directly divert 0.16 cubic feet of water per second (cfs) from springs arising in Millard Canyon, on a year-round basis, for the purpose of irrigation of 13 acres.

The Steele Foundation Arizona Corporation acquired the license in 1958 and then transferred it to Ferydoun Ahadpour and Doris Ahadpour. On July 9, 2001, the Division of Water Rights (Division) received notice of assignment of the license to Great Spring Waters of America, Inc. On May 15, 2003, the Division received notice of assignment of the license to the Morongo Band of Mission Indians.

Millard Creek is tributary to the Whitewater River. The rights of various claimants to use water from the Whitewater River and its tributaries have been adjudicated. The Riverside County Superior Court entered a decree, which determined the rights of the various claimants, on December 9, 1938. (*In the Matter of the Determination of the Relative Rights, Based upon Prior Appropriation, of the Various Claimants to the Waters of the Whitewater River and its Tributaries, in San Bernardino and Riverside Counties, California* (Super. Ct. Riverside County, 1938, No. 18035).) The decree confirmed Southern Pacific Land Company's right to divert under License 659, and its right to divert 0.12 cfs year-round from the same source under a right with a priority of January 1, 1877.

Water Code section 1675 provides that the SWRCB may revoke a license if the licensee has ceased to put water to beneficial use as required by the Water Code or if the licensee has not complied with any of the terms and conditions of the license. Under Water Code section 1241, a water right permit or license may be forfeited if water is not beneficially used for a five-year period under the permit or license. Until 1980, section 1241 provided for a statutory forfeiture period of three years. Section 1241 was amended in 1980 to provide for a five-year forfeiture period.

On April 28, 2003, the Division issued a Notice of Proposed Revocation for License 659. The Division proposed to revoke the license on the basis that the Licensee had not applied water to beneficial use for at least five consecutive years. The Notice of Proposed Revocation also alleged that the Licensee had failed to comply with the terms and conditions of the license. The notice described Reports of Licensee 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.

KEY ISSUES

1. Should License 659 (Application 553) be revoked, in whole or in part, in accordance with Water Code section 1675?
 - a. Did Licensee or its predecessors in interest fail to use beneficially and in accordance with the Water Code, in whole or in part, the water authorized to be used under License 659 for the applicable statutory period? If so, what amount of water was unused during what period or periods of time?
 - b. Did Licensee or its predecessors in interest fail to comply with any of the terms or conditions of License 659? If so, which terms or conditions did Licensee or its predecessors in interest violate?

SEPARATION OF FUNCTIONS

In this hearing, an SWRCB enforcement team will participate as a party. Mark Stretars, Senior Engineer, and Samantha Olson, Staff Counsel, will be members of the enforcement team. The enforcement team will be treated like any other party and all hearing requirements, including the *ex parte* rule discussed below, will apply to the enforcement team.

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THIS HEARING you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, parties intending to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be received by the SWRCB on or before noon, on **Thursday, September 11, 2003**. The Licensee is a party to the hearing. Failure of the Licensee to submit a timely Notice of Intent to Appear may result in cancellation of the hearing.

To facilitate exchange of testimony, exhibits and witness qualifications, on or about **Monday, September 15, 2003**, the SWRCB will mail out a list of those parties who have indicated an intent to participate in the hearing.

Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications must be received by the SWRCB and served upon each of the parties who have indicated their intent to appear no later than noon on **Thursday, September 25, 2003**.

PARKING, ACCESSIBILITY, AND SECURITY

The enclosed map shows the location of the Joe Serna, Jr./California Environmental Protection Agency (Cal-EPA) Headquarters Building in Sacramento. Public parking is available in metered spaces on area streets, and in the public garages shown on the enclosed map.

The Cal-EPA Headquarters Building second-floor hearing rooms are accessible to persons with disabilities. Individuals who require special accommodations are requested to contact Adrian Perez at (916) 341-5880 at least five working days prior to the hearing date. TTY users may contact the California Relay service at 1-800-735-2929 or voice line at 1-800-735-2922.

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security prior to attending any meeting. Visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance, to sign in and receive a visitor's badge. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current drivers license, military identification card, or state or federal identification cards. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

IF YOU HAVE ANY QUESTIONS

SWRCB member Peter S. Silva will be the hearing officer presiding over this proceeding. Some or all of the other Board members may be present during the hearing. SWRCB hearing team members will be Dana Differding, Staff Counsel and Jean McCue, Water Resources Engineer. During the pendency of this proceeding, commencing no later than the issuance of this notice, there will be no *ex parte* communications between SWRCB members or SWRCB

hearing staff and any of the participants regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding noncontroversial procedural matters are permissible, but ordinarily should be directed to the SWRCB hearing team, not SWRCB members. (Gov. Code, § 11430.20, subd. (b).) Communications between participants and the SWRCB enforcement team also are permissible.


Debbie Irvin
Clerk to the Board

Enclosures

Date: August 25, 2003

Enclosure 1

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced for purposes of the above-mentioned hearing.

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-649.6 and 760, as they currently exist or may be amended. Copies of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Resources Control Board (SWRCB) are available upon request or may be viewed at the SWRCB's web site: http://www.swrcb.ca.gov/water_laws/.

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Participants shall file their requests in writing when seeking exceptions to procedural requirements. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are the enforcement team and the Morongo Band of Mission Indians. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. A person or entity who appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file a **Notice of Intent to Appear and six copies thereof which must be received by the SWRCB no later than noon on Thursday, September 11, 2003.** Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

The Notice of Intent to Appear must state the name and address of the participant, and if the participant is a party or desires to be recognized as a party the Notice of Intent to Appear must also include: (1) the name of each witness who will testify on the participant's behalf; (2) a brief description of the proposed testimony; and (3) an estimate of the time, not to exceed 20 minutes, that the witness will take to present a brief oral summary of the witness's testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants should indicate how they intend to participate in the hearing by marking the appropriate box on the Notice of Intent to Appear. Participants who do not intend to present a case in chief but who may

wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case in chief after having submitted a Notice of Intent to Appear should notify the SWRCB and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the SWRCB encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and Exhibit Identification Indexes to the SWRCB in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to either submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. **If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.**

Following receipt of the Notices of Intent to Appear, the SWRCB will mail to each participant who has submitted a notice a service list of participants. The service list will indicate which participants agreed to accept electronic service. No later than **Thursday, September 25, 2003**, each participant shall serve a copy of its Notice of Intent to Appear on each of the participants identified on the service list and shall also serve on the SWRCB and the participants on the service list a statement of service that indicates the manner of service. If there is any change in the hearing schedule, only those persons or entities who have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.¹ Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the SWRCB either: (1) **six** paper copies of each of its exhibits or (2) two paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

With its exhibits, each participant must submit to the SWRCB and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the SWRCB and serve on the other participants an electronic copy, as

¹ The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

well as a paper copy of the Exhibit Identification Index. Please see Section 5 for details regarding electronic submissions.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. **The indexes and requisite number of exhibits for this hearing, and a statement of service, must be received by the SWRCB by noon on Thursday, September 25, 2003, and served on the other participants on or before that date.**

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
 - b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the SWRCB and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the SWRCB before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the SWRCB of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the SWRCB's files where the document may be found.
 - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
 - e. Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the SWRCB in electronic form: written opening statements, written policy statements, written testimony, exhibits, Exhibit Identification Indexes, and closing briefs. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the SWRCB and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel 97 (preferred), Word 97 or Word 2000. Electronic submittals to the SWRCB of documents less than 5 megabytes in size may be sent via electronic mail to: WrHearing@waterrights.swrcb.ca.gov with subject of “**Morongo Hearing**”. Electronic submittals to the SWRCB of documents greater than 5 megabytes in size should be sent by mail, in PDF format, on ZIP™, JAZ™, or compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the SWRCB, but should be submitted to the other participants by mail on CD.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the SWRCB. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The SWRCB will post a list of all exhibits submitted for the hearing and any exhibits submitted electronically on its website at <http://www.waterrights.ca.gov/hearings>.

6. **ORDER OF PROCEEDING:** The SWRCB member serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officer, at his discretion, as a result of the pre-hearing conference.
 - a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (c), the SWRCB will provide an opportunity for presentation of nonevidentiary policy statements or comments by interested persons who are not participating in the hearing. Policy statements will be heard at the start of the hearing, immediately after the hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
 - i. Policy statements are not subject to the prehearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
 - ii. The SWRCB requests that policy statements be provided in writing before they are presented. Please see Section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officer.
 - b. **Presentation of Cases in Chief:** Each participant may present a case in chief addressing the key issues identified in the hearing notice.² The case in chief will

² A participant is not required to present evidence as part of a case in chief. Participants not presenting evidence as part of a case in chief will be allowed to participate through cross-examination, proper rebuttal, and presentation of opening and closing statements or briefs.

consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officer may allow redirect examination and recross-examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case in chief has been completed.

- i. **Opening Statements:** At the beginning of a case in chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case in chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.
 - ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.³ Each participant will be allowed up to two hours total to present all of its direct testimony.⁴
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, the hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross-examination permitted by the hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but the hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. SWRCB members and the SWRCB's counsel may ask questions at any time, and the SWRCB members and staff may cross-examine any witness.
- c. **Rebuttal:** After all participants have presented their cases in chief and their witnesses have been cross-examined, the hearing officer will allow participants to

³ The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

⁴ The hearing officer may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case in chief.

present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case in chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case in chief, and it does not include evidence that should have been presented during the presenter's case in chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officer authorizes the participants to file briefs, **six** paper copies of each brief or two paper copies and one electronic copy shall be submitted to the SWRCB, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.
7. **AUDIO-VISUAL EQUIPMENT:** Participants who require Audio-Visual Equipment for their presentations should contact the Division one week prior to the first day of hearing to make arrangements with staff.
8. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no *ex parte* communications between SWRCB members or SWRCB hearing staff and any of the participants regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding noncontroversial procedural matters are permissible, but ordinarily should be directed to SWRCB staff, not SWRCB members. (Gov. Code, § 11430.20, subd. (b).) Communications between participants and the SWRCB enforcement team also are permissible.
9. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.
10. **SUBMITTALS TO THE SWRCB:** Notices of Intent to Appear, written testimony and other exhibits submitted to the SWRCB should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
Attn: Jean McCue
Phone: (916) 341-5351 Fax: (916) 341-5400
Email: WrHearing@waterrights.swrcb.ca.gov
With Subject of "Morongo Hearing"

Exhibit Identification Index

Participant _____

Exhibit No.	Description	Status as Evidence		
		Introduced	Accepted	By Official Notice