

1 SOMACH, SIMMONS & DUNN
A Professional Corporation
2 STUART L. SOMACH, ESQ. (SBN 090959)
DANIEL KELLY, ESQ. (SBN 215051)
3 500 Capitol Mall, Suite 1000
Sacramento, CA 95814
4 Telephone: (916) 446-7979
Facsimile: (916) 446-8199

5 Attorneys for Petitioner
6 MORONGO BAND OF MISSION INDIANS

7
8 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

9
10 In Re Matter of License No. 659,
Morongo Band of Mission Indians

**MOTION TO DISMISS OR, IN THE
ALTERNATIVE, TO DECLINE TO
REVOKE LICENSE 659**

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STATE WATER RESOURCES
CONTROL BOARD
2012 MAY 10 PM 3:43
DIV OF WATER RIGHTS
SACRAMENTO

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1 The Morongo Band of Mission Indians (“Morongo”) hereby moves the State Water
2 Resources Control Board (“SWRCB”) to dismiss the instant revocation proceedings or, in the
3 alternative, to exercise its discretion and not revoke License 659.

4 Morongo has, on numerous occasions, requested that the SWRCB hold both a
5 Settlement Conference and/or a Pre-Hearing Conference. Morongo has asserted that doing so
6 could avoid the additional time and expense associated with the hearing on this matter.
7 Morongo also believed that a Pre-Hearing Conference could have guided its efforts with respect
8 to a number of issues associated with this matter, including how best to address the issues raised
9 in this motion. Each of these requests has been denied by the SWRCB. (See, e.g., April 26,
10 2012 letter from Charles R. Hoppin Re: Proposed Revocation of License 659 (Application 553)
11 of the Morongo Band of Mission Indians.)

12 Unless this motion is granted prior to the May 21, 2012 hearing scheduled in this matter,
13 Morongo intends to appear and present testimony and evidence. Because of the costs involved
14 in preparing for and attending the hearing, Morongo would, of course, like its motion to be
15 granted before the hearing. However, it will be prepared during the hearing to respond to any
16 issues or questions raised by the Hearing Officer or the Prosecution Team with respect to the
17 motion.

18 **I. INTRODUCTION AND BACKGROUND**

19 The SWRCB issued a Notice of Proposed Revocation of Water Right License No. 659
20 (“License 659”), to Great Spring Water of America, Inc. (“Great Spring”) on April 28, 2003.
21 On May 9, 2003, legal counsel for Great Spring requested a hearing to contest the proposed
22 revocation of License 659 and also notified the SWRCB that the water right for License 659 had
23 been assigned to Morongo. Morongo purchased the property to which License 659 is
24 appurtenant (“Millard Canyon Property” or “Property”) from Great Spring on June 12, 2001.
25 Morongo opposes the proposed revocation on both legal and policy grounds and believes that
26 the SWRCB should dismiss the proposed revocation.
27
28

1 License 659 was originally issued based on findings made by the Riverside County
2 Superior Court in the White Water River Adjudication, whereby the Superior Court confirmed
3 the right of the Southern Pacific Land Company to divert, among other things, 0.16 cubic feet
4 per second (“cfs”) of water from springs arising in Millard Canyon in Riverside County, with a
5 priority date of January 3, 1917. As a result of the adjudication, the predecessor to the SWRCB
6 issued what is now License 659.

7 While originally issued to Southern Pacific Land Company/Southern Pacific Railroad
8 Company, License 659 was ultimately assigned to Ferydoun Ahadpour and Doris Ahadpour on
9 May 25, 1994; to Great Spring on or about July 9, 2001; and to Morongo on November 4, 2002.
10 The Millard Canyon Property is located entirely within the exterior boundaries of the Morongo
11 Reservation. Morongo purchased the Property to help fulfill Morongo’s goal of self-
12 governance and self-determination. When Morongo purchased the Millard Canyon Property
13 there was no “record” notice¹ or actual notice of the pendency of a Revocation proceeding for
14 License 659.

15 Shortly after acquisition of the Millard Canyon Property, Morongo made application to
16 the United States Department of the Interior, Bureau of Indian Affairs (“BIA”) to place the
17 Millard Canyon Property and all appurtenances in trust status for the benefit of Morongo.² (See
18 Request for Non-Gaming Acquisition of Trust Land, from Morongo to BIA, dated March 4,
19 2004, attached hereto as Exh. A.) As explained in Morongo’s application to the BIA, Morongo
20 sought trust status for the Millard Canyon Property and associated water rights to “enhance its
21 sovereignty interests and governmental ability to protect and promote the health, safety, and
22 welfare of its members and Reservation residents.” (Exh. A, p.1.) The policy of tribal self-
23

24 ¹ While the SWRCB is required to record a license, all orders modifying a license and orders revoking all or
25 part of a right, nothing is recorded to indicate an alleged defect with the license. (Wat. Code, §§ 1650,
1651; *Fremont Indemnity Co. v. Du Alba* (1986) 187 Cal.App.3d 474, 477.)

26 ² 25 U.S.C. § 465 authorizes the Secretary of the Interior to acquire land in trust for Indian Tribes. Federal
27 regulations further authorize the BIA, acting on behalf of the Secretary of the Interior, to accept fee simple lands in
28 trust status. (See 25 C.F.R. §§ 151.1, 151.3, and 151.10.)

1 governance and self-determination through acceptance of lands in trust is expressly recognized
2 by federal law governing acceptance of lands in trust. The BIA accepts:

3 title to land into trust . . . if [it] facilitates tribal self-determination, economic
4 development, Indian housing, land consolidation or natural resource protection.
5 (36 Fed.Reg. 3454 (Jan. 16, 2001).)

6 In its application to the BIA, Morongo expressly stated that the acquisition of the Millard
7 Canyon Property and placement in trust was necessary to “facilitate tribal self-determination and
8 self-governance” and explained the nature and use of the reservation water supplies and the need
9 to “consolidate and integrate” the real property “and the water resources located thereon, with
10 the other tribal trust lands and resources of the Reservation.” (Exh. A, p. 2.)

11 BIA issued its Notice of Decision, accepting the Millard Canyon Property into trust, on
12 January 26, 2005. (See Notice of Decision, dated January 26, 2005 (“Decision”), attached hereto
13 as Exh. B.) In its Decision, the BIA found that acquisition of the Millard Canyon Property was
14 necessary for Morongo’s tribal self-determination. (Decision, p. 3.) The Decision recognized
15 the use of the property and water resources that justified acceptance of the Property in trust.
16 (*Ibid.*) The Decision also noted the tribe’s diversified economy, including agriculture and
17 commercial activities, which include, among other things, the use of tribal water and water
18 rights. (Decision, pp. 3-4.) Based upon these and other findings, the United States noticed its
19 intent to accept the Millard Canyon Property in trust, in accordance with the Indian Land
20 Consolidation Act. (25 U.S.C. § 2202.) The BIA’s Decision is final and by deed dated June 29,
21 2005, Morongo transferred title to the Property to the United States in trust for Morongo. (See
22 Exh. C, attached hereto.) The BIA accepted the Property on that same date. (See Exh. D,
23 attached hereto.) Since at least June 29, 2005, title to the Millard Canyon Property has been held
24 by the United States in trust for Morongo.³

25 Through its application, Morongo confirmed its intent to place Millard Canyon Property
26 and all associated rights, including water rights, in trust. Even without such an affirmative

27 ³ The original grant deed and acceptance were ultimately “lost” and new copies were later resigned.

1 statement of intent, the water rights appurtenant to the Property were transferred, as a matter of
2 law, to the United States with the deed conveying the real property. (See *Stanislaus Water Co. v.*
3 *Bachman* (1908) 152 Cal. 716, 724; *Trask v. Moore* (1944) 24 Cal.2d 365, 371; *Harper v.*
4 *Buckles* (1937) 19 Cal.App.2d 481, 484-485; *Witherill v. Brehm* (1925) 74 Cal.App. 286, 295;
5 and *Nicoll v. Rudnick* (2008) 160 Cal.App.4th 550, 559-560.) Accordingly, the Millard Canyon
6 Property and all water rights appurtenant to the Property, including License 659, are now held by
7 the United States in trust for Morongo.

8
9 **II. UNITED STATES IS AN INDISPENSABLE PARTY TO THIS REVOCATION
PROCEEDING**

10 As explained above, the United States holds title to the Millard Canyon Property and all
11 water rights appurtenant to the Property, including License 659. In any proceeding against
12 property in which the United States “has an interest is a suit against the United States.”
13 (*Minnesota v. United States* (1939) 305 U.S. 382, 386 (“*Minnesota*”).) Unless specifically
14 waived by treaty or statute, the United States has sovereign immunity from suits by the states or
15 their citizens. (*Arizona v. California* (1936) 298 U.S. 558, 568.) Congress has waived sovereign
16 immunity for some suits against the United States relating to title to real property and water, but
17 has chosen to retain sovereign immunity for matters related to lands held by the United States in
18 trust for Indian tribes and, with two exceptions not relevant here, water rights.⁴

19 The SWRCB’s proposed revocation proceeding is a quasi-adjudicatory proceeding
20 whereby the SWRCB seeks to revoke License 659, which is appurtenant to the Millard Canyon
21 Property. The proposed revocation is an action against property held by the United States and, as
22 such, this quasi-adjudicatory proceeding could adversely affect the property rights held by the
23 United States in trust for Morongo. As such, the United States is an indispensable party in this

24
25 ⁴ Congress has waived sovereign immunity for matters related to the United States obtaining state water rights to
26 divert and store water for federal reclamation water projects. (See *California v. United States* (1978) 438 U.S. 645,
27 662.) Congress has also waived sovereign immunity for stream-wide water adjudications, but not for suits involving
28 individual water rights such as those associated with the existing revocation action. (43 U.S.C. § 666; *Dugan v.*
Rank (1963) 372 U.S. 609, 618-619 (“*Dugan*”).) It is of note that the White Water Adjudication was undertaken
before the waiver contained in title 43 United States Code section 666 was provided.

1 proceeding, and the matter must be dismissed because the United States cannot be joined due to
2 its sovereign immunity. (*Minnesota, supra*, 305 U.S. at pp. 386-387; *Carlson v. Tulalip Tribes*
3 *of Washington* (9th Cir. 1975) 510 F.2d 1337, 1339 (“*Carlson*”); *Nichols v. Rysavy* (8th Cir. 1987)
4 809 F.2d 1317, 1332-1334 (“*Nichols*”); see also *Nicodemus v. Washington Water Power Co.* (9th
5 Cir. 1959) 264 F.2d 614, 615 (“*Nicodemus*”).)

6 **III. PUBLIC POLICY DISFAVORS REVOKING THE TRIBE’S WATER RIGHT**

7 As explained above, License 659 is currently held, as a matter of law, by the United
8 States in trust for Morongo, and the SWRCB cannot move forward with the proposed revocation
9 because the United States is an indispensable party which cannot be joined in these proceedings.
10 Even if the SWRCB could move forward without the United States, public policy disfavors
11 revoking the water rights held by the United States in trust for Morongo.

12 **A. Revocation Is Permissive; It Is Neither Automatic Nor Mandatory**

13 Water Code section 1241 declares,

14 If the person entitled to the use of water fails to use beneficially all or any
15 part of the water claimed by him or her, for which a right of use has vested,
16 for the purpose for which it was appropriated or adjudicated, for a period of
17 five years, that unused water *may* revert to the public and shall, if reverted,
18 be regarded as unappropriated public water. That reversion shall occur
upon a finding by the [SWRCB] following notice to the permittee ... and a
public hearing if requested by the permittee.... (Emphasis added.)

19 Section 1241 provides the SWRCB’s statutory authority to revoke a water right for
20 nonuse. Originally requiring a statutory forfeiture period of only three years, this section
21 changed in 1980, now requiring the five-year period. Under section 1241, forfeiture is not
22 automatic, even after five continuous years of nonuse. (See Wat. Code, § 1241 [such “unused
23 water *may* revert” (emphasis added)].) There appear to be two situations in which reversion will
24 occur. First, an appropriator with a conflicting claim to the unused water may bring a quiet title
25 or declaratory judgment action. (*North Kern Water Storage Dist. v. Kern Delta Water Dist.*
26 (2007) 147 Cal.App.4th 555, 560 (“*North Kern Water Storage Dist.*”).) Second, the SWRCB
27 itself may institute the procedure by issuing a notice of revocation. (Wat. Code, § 1675.) In
28

1 either case, revocation will only occur “upon a finding by the [SWRCB] following notice to the
2 permittee and a public hearing if requested by the permittee....” (Wat. Code, § 1241.)

3 Water Code section 1675 provides the authority for revoking water right licenses.⁵

4 Section 1675 provides,

5 (a) If, at any time after a license is issued, the [SWRCB] finds that the
6 licensee has not put the water granted under the license to a useful or
7 beneficial purpose in conformity with this division or that the licensee has
8 ceased to put the water to that useful or beneficial purpose, or that the
9 licensee has failed to observe any of the terms and conditions in the
10 license, the [SWRCB] *may* revoke the license and declare the water to be
11 subject to appropriation in accordance with this part.

12 (b) The [SWRCB] may revoke the license upon request of the licensee or
13 after due notice to the licensee and after a hearing, when a hearing is
14 requested by the licensee pursuant to Section 1675.1. (Emphasis added.)

15 Like section 1241, section 1675 is permissive and neither operates to automatically
16 revoke a water right nor requires the SWRCB to revoke the water right. Thus, when considering
17 whether to revoke a water right pursuant to Water Code section 1241 or 1675, the SWRCB can
18 exercise its discretion and decline revocation.

19 **B. Revocation Is Disfavored**

20 Forfeiture is generally disfavored in the law. (*North Kern Water Storage Dist., supra*,
21 147 Cal.App.4th at p. 572.) An appellate court has recently held:

22 In the water rights context, the rights holder is subject to forfeiture for not
23 using water, a practice generally thought to be socially responsible and
24 usually called “conservation.” Thus, forfeiture occurs not because the
25 rights holder is misusing the resource but, instead, so the state can assign
26 the water right to someone who will use it. As a result of these
27 considerations, we agree with the trial court’s conclusion that, since no
28 measure of forfeiture is exact, minimization of forfeiture is preferable to
maximization. If there must be an error, it should occur in the direction of

29 ⁵ California Code of Regulations, title 23, section 850 includes a similar provision concerning revocation of a water
30 right: “When it appears to the SWRCB that a permittee may have failed to commence or complete construction
31 work or beneficial use of water with due diligence in accordance with terms of the permit, the regulations of the
32 SWRCB and the law, or that a permittee or licensee may have ceased beneficial use of water, or that he may have
33 failed to observe any of the terms or conditions of the permit or license, the SWRCB may consider revocation of the
34 permit or license. The SWRCB will notify the permittee or licensee of the proposed revocation. The notice will
35 state the reasons for the proposed revocation and provide an opportunity for hearing upon request of the permittee or
36 licensee.”

1 preserving to the senior appropriator a sufficient water entitlement to
2 accomplish the purpose for which the appropriator continues to beneficially
use the water. (*Ibid.*, original emphasis omitted.)

3 The policy disfavoring forfeiture is, or should be, especially strong where, as here, the
4 circumstances leading up to the proposed revocation occurred prior to Morongo's (and the
5 United State's) ownership of the Millard Canyon Property and appurtenant water rights and
6 where Morongo has demonstrated a strong desire and need to put the water in question to
7 reasonable beneficial use to the fullest extent possible.

8 **C. Public Policy Favors Tribal Self-Reliance and Self-Determination**

9 Governor Edmund G. Brown, Jr.'s recent Executive Order B-10-11 ("EO B-10-11")
10 establishing a new Governor's Tribal Advisor confirmed long-standing State policy to support
11 tribal self-governance and self-determination, finding that "the State of California recognizes and
12 reaffirms the inherent right of ... Tribes to exercise sovereign authority over their members and
13 territory" Through EO B 10-11, the Governor directed the Governor's Tribal Advisor to
14 oversee and implement effective government-to-government consultation between the
15 Administration and Tribes on policies that affect California tribal communities, and directed all
16 State agencies and departments to permit elected officials and other representatives of tribal
17 governments to provide meaningful input into the development of legislation, regulations, rules,
18 and policies on matters that may affect tribal communities. This restatement of long-standing
19 policy is reaffirmation of language contained in many State statutes, to wit:

20 • The people of the State of California find that, historically, Indian
21 tribes within the state have long suffered from high rates of unemployment
22 and inadequate educational, housing, elderly care, and health care
opportunities, while typically being located on lands that are not conducive
to economic development in order to meet those needs. (Gov. Code,
§ 98001(a).)

23 • The financial and legal records of California Indian tribes and tribal
24 business enterprises are records of a sovereign nation and are not subject to
disclosure by private citizens or the state. (Gov. Code, § 63048.63(a)(1).)

25 • All state agencies, as defined in Section 11000, are encouraged and
26 authorized to cooperate with federally recognized California Indian tribes
27 on matters of economic development and improvement for the tribes.
(Gov. Code, § 11019.8(a).)

1
2 • Cooperation by state agencies with federally recognized California
3 Indian tribes may include, but need not be limited to, all of the following:

4 Providing information on programs available to assist Indian tribes.

5 Providing technical assistance on the preparation of grants and
6 applications for public and private funds, and conducting meetings
7 and workshops.

8 Any other steps that may reasonably be expected to assist tribes to
9 become economically self-sufficient. (Gov. Code,
10 §§ 11019.8(b)(1)-(3).)

11 Thus, in addition to the very clear expression of federal support for tribal self-reliance
12 and self-determination, California has a well-developed history of working with and assisting
13 tribes, as sovereign nations, to ensure the same.

14 As revocation under Water Code sections 1241 and 1675 are only permissive, the law
15 disfavors revocation, Morongo is not the party responsible for nonuse, and both federal and State
16 law express clear direction to ensure tribal self-reliance and self-determination, the SWRCB
17 should simply decline to revoke License 659, held by the United States in trust for Morongo.

18 **IV. THE DOCTRINE OF LACHES BARS REVOCATION**

19 The doctrine of Laches bars the SWRCB from revoking License 659. The SWRCB's
20 Prosecution Team is arguing that alleged nonuse more than a decade ago and as far back as the
21 1960s supports revocation. Since that time, the property and appurtenant water rights have
22 changed place many times, with the knowledge and consent of the SWRCB, and the SWRCB
23 has accepted Petitions for Change, and imposed and collected fees for License 659. In all of that
24 time the SWRCB has never provided any record Notice that there was a cloud on these water
25 rights.

26 Courts have dismissed quasi-adjudicative administrative proceedings where an
27 unreasonable delay in the proceeding has caused a licensee prejudice. (See, e.g., *Gates v. Dept.*
28 *of Motor Vehicles* (1979) 94 Cal.App.3d 921, 925 ("*Gates*"); *Steen v. City of Los Angeles* (1948)
31 Cal.2d 542, 546.) Indeed, "a proceeding before [an administrative] board should be dismissed
where an unreasonable time has elapsed—where the proceeding is not diligently prosecuted."

1 (Steen v. City of Los Angeles at pp. 546-547.) “When the government is a party, invocation of
2 either doctrine – laches or estoppel – rests upon the belief that government should be held to a
3 standard of ‘rectangular rectitude’ in dealing with its citizens.” (People v. Dept. of Housing and
4 Community Development (1975) 45 Cal.App.3d 185, 196 (“Dept. of Housing”).) The equitable
5 doctrine of laches is designed to “promote justice by preventing surprises through the revival of
6 claims that have been allowed to slumber until evidence has been lost, memories have faded, and
7 witnesses have disappeared.” (Brown v. State Personnel Bd. (1985) 166 Cal.App.3d 1151, 1161
8 (internal quotes and citations omitted).) The circumstances in the present proceeding are
9 precisely why courts do not allow administrative agencies to wait more than a decade, let alone
10 approximately 40 years before acting on evidence known to it.

11 Laches applies here for three reasons: (1) unreasonable delay by the SWRCB in acting
12 on alleged forfeiture from more than a decade to approximately 40 years ago; (2) acquiescence
13 by the SWRCB in the nonuse and continued processing of various proposed changes of the water
14 right; and (3) prejudice to Morongo resulting from the delay. (See Brown v. State Personnel Bd.,
15 supra, 166 Cal.App.3d at p. 1159; Conti v. Bd. of Civil Service Commissioners (1969) 1 Cal.3d
16 351, 359.)

17 **A. The SWRCB’s Delay Is Unreasonable**

18 The SWRCB’s delay is unreasonable because the SWRCB knew of the alleged nonuse
19 yet took no action in the 1960s or in the 1990s to revoke License 659. To the contrary, the
20 SWRCB continued to receive and accept regular reports of License 659 and even began
21 processing a petition for change for License 659. The delay has prejudiced Morongo because
22 Morongo lacks the ability to obtain the testimony of witnesses who may have knowledge of the
23 facts of the diversion and use of water on the Property. (See Brown v. State Personnel Bd.,
24 supra, 166 Cal.App.3d at p. 1159.)

25 In Gates, a court barred the revocation of a license based on an unexplained 15-month
26 delay in prosecution. There, the court found that the delay resulted in the memories of witnesses
27 being diminished to a point where the plaintiff could not engage in effective cross-examination,
28

1 preventing the plaintiff from receiving a fair hearing. The trial court concluded, and the
2 appellate court upheld, that the 15-month delay was unreasonable and prejudiced plaintiff.
3 (*Gates, supra*, 94 Cal.App.3d at pp. 925-926.) Of course, the circumstances here are much more
4 troubling, with more than a decade and up to an approximately 40-year delay in prosecution.
5 Indeed, even the delay from the mid-1990s until mid-2003 presents real difficulties for and
6 prejudice to Morongo. The Millard Canyon Property and appurtenant water rights changed
7 hands twice since the alleged nonuse to the significant prejudice of Morongo.

8 **B. The SWRCB's Delay Prejudiced Morongo**

9 In measuring the quantum of injustice done by a particular delay, courts take into account
10 "the continuing course of conduct by which the governmental agency had induced reliance."
11 (*Dept. of Housing, supra*, 45 Cal.App.3d at p. 199.) Indeed, prejudice may be established by
12 detrimental reliance by the affected person on the status quo. (*Brown v. State Personnel Bd.,*
13 *supra*, 166 Cal.App.3d at p. 1162.)

14 In *Dept. of Housing*, the court barred an agency from rescinding a permit six months after
15 issuance because during the six-month delay, the permittee spent approximately \$40,000 to begin
16 construction on a project. The court sustained a laches defense, holding that \$40,000 was an
17 "undeniable quantum of prejudice," and such a loss outweighed any adverse effect of the state's
18 failure to make timely environmental inquiries. (45 Cal.3d at pp. 197, 200.) Here, there is an
19 undeniable quantum of prejudice because of the detrimental reliance on the SWRCB's inaction
20 over the approximately 40 years since the alleged nonuse. Later landowners spent significant
21 funds not only on the increased value of purchasing the Millard Canyon Property as a result of
22 the appurtenant water rights, but also on the work associated with various petitions filed with the
23 SWRCB and fees collected by the SWRCB.

24 **C. The SWRCB Initiated This Proceeding Beyond an Analogous Statute
25 of Limitations**

26 On occasion, an agency's action is barred as a matter of law. In some circumstances a
27 court looks to an analogous statute of limitations that acts as a bar to an agency's action. (*Brown*
28

1 v. *State Personnel Bd.*, *supra*, 166 Cal.App.3d at p. 1159.) Courts look to these analogous
2 periods as a “measure of the outer limit of reasonable delay in determining laches.” (*Id.* at p.
3 1160.) Where an analogous statute of limitations exists, courts shift the burden to the
4 administrative agency to prove that its delay was excusable and that the defendant was not
5 prejudiced thereby. Indeed, “the element of prejudice may be ‘presumed’ if there exists a statute
6 of limitations that is sufficiently analogous to the facts of the case, and the period of such statute
7 of limitations has been exceeded by the public administrative agency in making its claim.”
8 (*Fountain Valley Regional Hospital & Medical Center v. Bonta* (1999) 75 Cal.App.4th 316, 324.)

9 Actions involving the recovery of real property are governed by section 318 of the Code
10 of Civil Procedure, which provides:

11 No action for the recovery of real property, or for the recovery of the
12 possession thereof, can be maintained, unless it appear that the plaintiff, his
13 ancestor, predecessor, or grantor, was seised or possessed of the property in
14 question, within five years before the commencement of the action. (Code Civ.
15 Proc., § 318.)

16 As water rights are considered real property, the five-year statute of limitations contained
17 in section 318 provides an appropriate time within which the SWRCB must initiate a revocation
18 proceeding. Given the 40-year interval between the SWRCB’s discovery of the alleged nonuse
19 under the license, and the present revocation action, many if not all of the relevant witnesses with
20 knowledge of the circumstances of the nonuse of water may be deceased or have forgotten
21 important details, preventing Morongo from receiving a fair hearing on the matter. Moreover,
22 Morongo invested significantly in the property and its associated water rights during the interim
23 period. Revoking the license now would significantly prejudice Morongo. Finally, there are
24 several analogous statutes of limitations that, if applied, would shift the burden to the SWRCB to
25 show why its delay was excusable and how Morongo is not prejudiced by such delay.

26 Applying the five-year statute of limitations in section 318 is on all fours with the
27 immediately preceding five-year period adopted by California’s Fifth Appellate District in *North*
28

1 *Kern Water Storage Dist., supra*, 147 Cal.App.4th at pp. 566-567. At a minimum, the SWRCB
2 cannot look back what is now nearly 50 years to support statutory forfeiture. The SWRCB is
3 prohibited, based on the doctrine of laches, from revoking License 659.

4 **V. MORONGO'S DUE PROCESS RIGHTS HAVE BEEN REPEATEDLY**
5 **VIOLATED**

6 Morongo has requested the SWRCB dismiss this proceeding, and the Notice of
7 Revocation, on several grounds. The SWRCB has responded briefly to those requests, by letter
8 dated April 26, 2012, and certain of those responses conflict with well-established caselaw
9 involving due process rights. In this regard, Morongo incorporates objections previously raised
10 in its Request for SWRCB to Direct Prosecution Team to Provide More Specificity of
11 Allegations Supporting Proposed Revocation and Request to Rescind Notice of Proposed
12 Revocation, dated March 2, 2012, and Objections to Requirement to File Notice of Intent to
13 Appear, to Identify Witnesses for Case in Chief, and to Notice of Proposed Revocation; Request
14 for Dismissal on Due Process Grounds, dated March 14, 2012.

15
16 In addition to simply shrugging off these significant due process issues⁶, the SWRCB
17 belatedly revealed that there have been *ex parte* contacts between Prosecution Team staff and/or
18 supervisors and others at the SWRCB regarding License 659 and the proposed revocation. This
19 is troubling in several respects.
20
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22

23 ⁶ For example, the SWRCB, in dismissing Morongo's March 2, 2012 request for more specificity regarding the
24 scope of the adjudicatory proceedings, simply stated that Morongo, after receiving the Prosecution Team's case in
25 chief, "will have ample time to prepare for cross examination and rebuttal." (April 26, 2012 letter at p. 4.)
26 However, and as provided in Morongo's prior filing, adequate notice requires, among others things, clear and
27 sufficient information regarding the scope of the hearing *prior to the time a party has to make an election of whether*
28 *to even request a hearing.* (*Tafti v. County of Tulare* (2011) 198 Cal.App.4th 891, 900.) Due process defects are not
cured where a party later learns of the specific matters to be heard at the hearing and where that party actually
participates in the hearing. (*Ibid.*) The SWRCB simply refuses to acknowledge Morongo's due process right to
specificity in the notice.

1 As set forth in the SWRCB's April 26, 2012 letter, the SWRCB's hearing team
2 "discovered" what appear to be improper internal ex parte communications regarding License
3 659 and the revocation proceeding during a review of records that were the subject of a Public
4 Records Act request by Morongo's counsel in this proceeding. While these documents were
5 responsive to the request it is troubling that neither the Prosecution Team nor the Hearing Team
6 disclosed these documents pursuant to the Public Records Act request. The April 26, 2012 letter
7 purports to waive the "deliberative process and attorney client privileges" to the extent they
8 apply to the disclosed communications. (April 26, 2012 letter, at p. 6.)
9

10 First, it is unclear how any attorney-client or deliberative process privilege can be
11 asserted at all regarding any communications between anyone on the Prosecution Team and the
12 Hearing Team.⁷ Unless the representations made before the Superior Court, and the Appellate
13 and California Supreme Court, regarding the ethical walls that completely and adequately
14 separate functions at the SWRCB⁸ were simply a convenient story to tell the Court, then any
15 communications between the two are not protected by *any* privilege. Moreover, the SWRCB
16 should not only produce the substance of these distinct communications, it needs to disclose the
17 entirety of what was discussed and identify those that participated in those discussions. For
18 example, the newly disclosed emails reveal that Jim Kassel, who Morongo understands is an
19 Enforcement Team supervisor, exchanged emails with Tom Howard, Barbara Evoy, and
20 Michael Lauffer; John O'Hagan was involved with "Andy" and "David," SWRCB personnel
21
22

23
24 ⁷ This would include anyone supervising or assisting either "Team."

25 ⁸ From the SWRCB's Opening Brief on the Merits in *Morongo Band of Mission Indians v. State Water Resources*
26 *Control Board*, California Supreme Court Case No. S155589, dated January 22, 2008, at p.8: "In addition, the
27 [SWRCB] bans all parties, including the enforcement team, from ex parte communications with the hearing team
28 about significant issues within the scope of the proceeding. [Citations.] The enforcement team and hearing team are
assigned different supervisors for that matter to further guard against ex parte communications and to ensure that
functions do not overlap in that proceeding."

1 who also have not been disclosed as being on the Prosecution Team; and an email from
2 Caren Trgovcich to Barbara Evoy notes that the Prosecution Team's proposed protest of
3 Morongo's Petition will be discussed "at our 3pm." (See email from Caren Trgovcich to
4 Barbara Evoy, dated March 7, 2011, attached to April 26, 2012 letter.) Neither Ms. Evoy nor
5 Ms. Trgovcich has been disclosed as members or supervisors of the Prosecution Team. Morongo
6 is entitled to know the substance of all of these communications.
7

8 In addition to the above, Morongo is also aware of an email between Larry Lindsay, in
9 the SWRCB's hearing section, and Andy Sawyer, who Morongo understands is supervising the
10 Prosecution Team. That email, dated November 16, 2011, dealt with the revocation proceeding
11 and several SWRCB staff were copied on the email, including Barbara Evoy, Les Grober,
12 Michael Lauffer, and Ernie Mona. If there are *real ethical walls* at the SWRCB, these
13 communications would not happen. In any event, these communications violate Morongo's due
14 process rights. All communications between the Prosecution Team and others, regarding the
15 Prosecution Team's protest, must be disclosed pursuant to the Public Records Act request.
16

17 The various representations made by the SWRCB regarding an "ethical wall" appear to
18 be entirely illusory. In any event, what is clear is that improper substantive communications
19 continue to occur and these have also resulted in a deprivation of due process.⁹
20

21 VI. CONCLUSION

22 Based on the foregoing, Morongo again requests that the SWRCB dismiss this
23 proceeding due to the United States being an indispensable party that cannot be joined in this
24 proceeding, the stale nature of the claimed periods of nonuse, the doctrine of laches and obvious
25 due process issues surrounding the entire proceeding. In the alternative, the SWRCB can avoid
26

27 ⁹ Given the casual nature of the email exchanges, it is evident that these types of discussions occur regularly.
28

1 addressing the legal issues that are raised by determining, as a matter of policy, including the
2 furtherance of State and Federal policy regarding support for tribal self-reliance and self-
3 determination, that revocation, under the circumstances that exist here, is not in the public
4 interest.

5
6 Respectfully submitted,

7 SOMACH SIMMONS & DUNN

8
9 DATED: May 10, 2012

By 

Daniel Kelly

10 Attorneys for Morongo Band of Mission Indians
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EXHIBIT A

March 4, 2004

Jim Fletcher, Superintendent
Bureau of Indian Affairs
Southern California Agency
2038 Iowa Ave., Suite 101
Riverside, CA 92507

MORONGO
BAND OF
MISSION
INDIANS



A SOVEREIGN NATION

Re: Request for non-gaming acquisition of trust land
Morongo Band of Mission Indians
Assessor's Parcel No.: 514-160-024, 635.00 Acres
519-100-006, 80.56 Acres

Dear Mr. Fletcher:

Application is hereby made for the Bureau of Indian Affairs to take prompt action to place the fee land referenced above in trust status for the benefit of the Tribe. The Tribe intends to use the parcel for non-gaming purposes.

In preparing this request letter, we have followed the on-reservation fee-to-trust regulations, 25 C.F.R. Part 151, as published and revised on April 1, 2002. Enclosed with this letter are the following documents:

1. Tribal Resolution Number 021704-03 in support of trust transfer
2. Grant Deed
3. Property Tax Information
4. Interim Binder Form A – Type of Policy to be Issued: ALTA US Policy 9-28-91
5. All Documentation described in Schedule B
6. Vicinity Map
7. Aerial Map
8. Morongo Land Status Map
9. Property Detail Sheet
10. Tribal Environmental Study prepared January 2004 (6-copies)

A. Background.

The Morongo Indian Reservation comprises a checkerboard of land parcels in Riverside County. To enhance its sovereignty interests and governmental ability to protect and promote the health, safety, and welfare of its members and Reservation residents, the Tribe has purchased the Parcel, located within the exterior boundaries of the Reservation, as part of its ongoing efforts to consolidate its Reservation lands. Placement of the parcel in trust status will assist the Tribe in exercising its powers of self-governance and self-determination.



B. Regulatory Requirements.

25 C.F.R. § 151.10 sets forth the information required in requests for trust status. The required information is as follows:

C. Statutory authority for acquisition.

25 U.S.C. 465 authorizes the Secretary of Interior, in her discretion, to acquire land in trust for Indian Tribes. Regulations of the Interior Department provides that the Bureau of Indian Affairs, acting on behalf of the Secretary of the Interior, will accept fee simple land into trust status on a discretionary basis. 25 C.F.R. 151.1, 151.3, and 151.10. Specifically, 25 C.F.R. Part 10 provides that the BIA will "accept title to land in trust inside a reservation . . . if [the BIA determines] that the application facilitates tribal self-determination, economic development, Indian housing, land consolidation or natural resources protection"

D. The Band's need for and contemplated use of the Parcels.

Due to the checkerboarding of the Reservation, the Morongo Band is constantly faced with jurisdictional problems relating to enforcement of Tribal law, custom, and tradition and the protection and promotion of the health, safety, and welfare of Tribal Members and other residents of the Reservation. Fundamental governmental prerogatives are often frustrated when there is not a consolidated land base. The Tribe determined that the purchase of this land was necessary to facilitate tribal self-determination and self-governance.

Pursuant to contractual agreement, the Tribe sells to Perrier/Arrowhead groundwater from a well and pumping station located on the land and piped to the Arrowhead bottling plant located in another part of the Reservation. In addition, the Tribe uses surface water flowing from a spring located on the land known as SP Spring for cattle watering, irrigation, ground water recharge, and other purposes. The Tribe has no other contemplated use for the parcels.

By accepting these lands in trust, the Secretary will assist the Tribe in its efforts to consolidate and integrate these and other acquired fee parcels, and the water resources located thereon, with the other tribal trust lands and resources of the Reservation.

E. Ownership and Jurisdiction of the Parcels.

The Tribe is the sole owner of the Parcels in fee simple. It is the policy of the Tribe, subject to applicable law, to extend its jurisdictional powers to

all lands within the Morongo Indian Reservation, including the Parcels. The Tribe's security forces now patrol the Parcels.

F. Title Insurance

Enclosed please find the title insurance policy covering the Parcels. The Policy is an Interim Binder Form A and the type of Policy to be issued is an ALTA U.S. Policy 9-28-91. All Documentation described in Schedule B has been enclosed for review and nothing therein will interfere with the Tribe's use of the Parcels for self-determination purposes.

G. Environmental Compliance

The Tribe is not aware of any hazardous substance or other environmental liability on the Parcel as set forth in Part 602, Chapter 2 of the Departmental Manual. Enclosed please find the Tribal Environmental Study prepared by the Morongo Band of Mission Indians in January 2004.

The Tribe looks forward to the transfer of the Parcels to trust status at the earliest possible time. Please contact me for any necessary clarification or additional information. We appreciate your agency's assistance with this matter.

Sincerely,



Karen Woodard
Project Manager
Morongo Planning and Economic Development Department

Cc: Tribal Council (7)
Allen Parker, Chief Administrative Officer
Thomas E. Linton, Director, Morongo Planning and Economic
Development

MORONGO
BAND OF
MISSION
INDIANS



A SOVEREIGN NATION

EXHIBIT B



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

IN REPLY REFER TO:

JAN 26 2005

NOTICE OF DECISION

CERTIFIED MAIL – RETURN RECEIPT REQUESTED – 7004 0750 0000 1581 1007

Maurice Lyons, Chairperson
Morongo Band of Mission Indians
11581 Potrero Road
Banning, CA 92220

Dear Mr. Lyons:

This is notice of our decision upon the Morongo Band's (Tribe) application to have the below described real property accepted by the United States in trust for the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California.

The land referred to herein is situated in the State of California, County of Riverside, being more particularly described as follows:

Parcel 1:

Section 32, Township 2 South, Range 2 East, San Bernardino Meridian, in the County of Riverside, State of California, according to the official plat thereof.

Accepting that portion conveyed to Cabazon County Water District by Deed recorded May 27, 1994 as Instrument No. 219179 of Official Records, described as follows:

Commencing at the Southwest corner of said Section; Thence North 89° 44' 07" East, along the South line of said Section 32, a distance of 770.00 feet; Thence North 00° 20' 04" West, parallel with the West line of said Section 32, a distance of 1300.00 feet to the point of beginning; Thence South 89° 39' 56" West, a distance of 90.00 feet; Thence North 00° 20' 04" West, a distance of 660.00 feet; Thence North 89° 39' 56" East, a distance of 330.00 feet; Thence South 00° 20' 04" East, a distance of 660.00 feet; Thence South 89° 39' 56" West, a distance of 240.00 feet to the true Point of Beginning.

Also, excepting therefrom all minerals and mineral rights, interests, and royalties, including without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the property in connection therewith, as recorded in the Deed recorded December 22, 1989 as Instrument No. 448969, of official records.

**TAKE PRIDE[®]
IN AMERICA** 

Parcel 2:

The East half of the Northeast quarter of Section 5, Township 3 South, Range 2 East, San Bernardino Meridian in the County of Riverside, State of California, according to the official plat thereof.

Excepting therefrom all minerals and mineral rights, interests, and royalties, including, without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the property in connection therewith, as recorded in the Deed recorded December 22, 1989 as Instrument No. 448969, of Official Records.

The subject property consists of two parcels commonly referred to as Riverside County Assessor's Parcel Numbers 514-160-024 and 519-100-006, containing 715 acres, more or less. The parcels are undeveloped and are contiguous to the exterior boundaries of the Morongo Reservation.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the exterior boundaries of the tribe's reservation, or adjacent thereto, or within a tribal consolidation area, or (2) when the tribe already owns an interest in the land, or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation Act of 1983 (25 USC §2202 et seq). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended.

On May 5, 2004 by certified mail, return receipt requested, we issued notice of, and sought comments, regarding the land acquisition application from: Honorable Arnold Schwarzenegger; Honorable Ken Calvert; Honorable Mary Bono; Honorable Raymond Haynes; Office of the Honorable Dianne Feinstein; California State Clearinghouse; Sara Drake, California Department of Justice; Deputy Legal Affairs, Office of the Governor; Riverside County Board of Supervisors; Riverside County Planning Department; Riverside County Sheriff's Department; Riverside Treasurer & Tax Collector; Riverside Assessor's Office; Augustine Band of Mission Indians; Cabazon Band of Mission Indians; Cahuilla Band of Mission Indians; Pechanga Band of Mission Indians; Soboba Band of Mission Indians; Ramona Band of Mission Indians; Santa Rosa Band of Mission Indians; Torres-Martinez Desert Cahuilla Indians; Twenty-Nine Palms of Mission Indians; Viejas Band of Mission Indians; Bureau of Indian Affairs, Pacific Region.

The record reflects that no comment letters were received.

Pursuant to 25 CFR 151.10, the following factors were considered in formulating our decision: (1) need of the tribe for additional land; (2) the purpose for which the land will be used; (3) impact on the State and its political subdivisions resulting from removal of the land from the tax rolls; (4) jurisdictional problems and potential conflict of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; (6) whether or not contaminants or hazardous substances may be present on the property. Accordingly, the following analysis of the application is provided:

Factor 1- Need for Additional Land

The Morongo Indian Reservation is comprised of a checkerboard of land parcels with a complex mixture of title interests due to various factors. From the later part of 1800's through 1900's, the United States Government set aside land for the Tribe through various transactions. In some instances, the set aside precluded from the reservation, tract or tracts, the title to which had previously passed out of the United States Government. During the same period, the federal government issued executive orders and presidential proclamations revoking lands previously set aside for the Tribe.

The Tribe purchased the subject parcel as part of its ongoing effort to consolidate reservation lands. It is the goal of the Morongo Band of Mission Indians to assume governmental jurisdiction over all their lands in order to exercise tribal sovereignty. It is our determination that the Tribe has an established need for the additional land in order to facilitate tribal self-determination.

Factor 2 - Proposed land Use

The property is located within Section 32, Township 2 South, Range 2 East, and the East ½ of the NE ¼ of Section 5, Township 3 South, Range 2 East, San Bernardino Base Meridian, in Riverside County, California and is contiguous to the existing Morongo Reservation. The property is currently vacant and used for grazing and as a water source for an Arrowhead water bottling plant, privately developed on tribal trust land. The only structure currently on site is a pump house located at SP Spring in Section 32. The pump house serves to transport water from SP Spring, via a metal pipe, approximately 3.5 miles in length, to the Arrowhead water bottling plant. No additional development or change of land use is proposed.

Factor 3 – Impact on State and Local Government's Tax Base

The Morongo Band of Mission Indians recently commissioned an independent economic study to assess the economic impact of its activities on the region. The analysis was conducted by a prominent regional economist, who estimated that the Tribe's combined enterprises would generate more than \$2.8 billion in new jobs and economic benefits to the Riverside and surrounding counties economy for the next five-year period. The estimated jobs directly or indirectly attributable to all of the Tribe's economic operations will increase from 726 jobs in 2002 to approximately 5,800 by 2008.

According to the State's Economic Development Department, the tribal governments are the only segment of the California economy that achieved double-digit employment growth in the past year. At a time when California's overall economy is static, tribal enterprises generated more than a 12 percent increase in jobs. By contrast, the civilian labor force statewide for 2002 grew only .7 percent.

In addition to the recent unveiling of plans and ground breaking for the new \$250 million Morongo Casino and Resort & Spa, the Morongo Band of Mission Indians has diversified its economy over the past decade to include: Hadley Fruit Orchards, both retail and direct mail; Morongo Travel Center; A&W Restaurant; Coco's Restaurant; a partnership with Arrowhead Mountain Spring

Water to operate a water bottling facility on Morongo's Reservation land, using Morongo's own water.

Lastly, as a result of these enterprises, Morongo is generating millions in new taxes to the state, not only from income taxes on wages and salaries to non-Indian employees and to tribal members living off the reservation, but from sales revenues from the off-reservation expenditure of those wages and salaries.

In short, the direct and indirect economic benefits and taxes generated as a result of the Tribe's economic development more than offset the approximate \$54,400 tax loss to the County's \$1.2 billion tax base that would result from an approved land acquisition.

Factor 4 - Jurisdictional Problems/Potential Conflicts

Tribal jurisdiction in California is subject to P.L. 83-280; therefore, there will be no change in criminal jurisdiction. The Tribe will assert civil/regulatory jurisdiction. There are no known jurisdictional problems. With no proposed change in land use, it does not appear that transfer to trust status would result in jurisdictional conflict.

Factor 5 - Whether the BIA is equipped to discharge the additional responsibilities

Approximately ½ of the land is the Millard Canyon alluvial fan while the other ½ is a mountainous region. Because of its location, the site contains steep slopes on its western and eastern sides and flatter lands on the center, alluvial fan portion. The site varies in elevation from approximately 3,440 feet at its highest point to 2,480 feet at its lowest point. The site slopes to the center, alluvial fan portion and also from north to south.

The California Department of Forestry and Fire Protection (CDF) currently, and will continue to provide wildfire protection. Reimbursement of any fire protection services would be in accordance with the CDF/BIA Cooperative Fire Protection Agreement. Therefore, conveyance to trust status will not impose any significant additional responsibilities or burdens on the BIA beyond those already inherent in the federal trusteeship over the existing reservation.

This acquisition anticipates no change in land use. With no leases, rights of ways or any other trust transactions forthcoming, any additional responsibilities resulting from this transaction will be minimal. As a result, it is our determination that the BIA is equipped to administer any additional responsibilities resulting from this acquisition.

Factor 6 - Whether or not contaminants or hazardous substances are present

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability for, hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey Checklist" dated April 12, 2004 reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement, which has to be met when considering land acquisition proposals, is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1. Within 30 BIAM Supplement 1, reference is made to actions qualifying as "Categorical Exclusions," which are listed in Part 516 of (Interior) Department Manual (516 DM 6, Appendix 4). The actions listed therein have been determined not to individually or cumulatively affect the quality of the human environment, and therefore, do not require the preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A categorical exclusion requires a qualifying action, in this case, 516 DM 6, Appendix 4, Part 4.4.I, Land Conveyance and Other Transfers of interests in land where no immediate change in land use is planned. This acquisition is for 715 acres, and no change in land use is anticipated. As a result, a categorical exclusion was approved on April 20, 2004.

Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the Morongo Band of Cahuilla Mission Indians in accordance with the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. §2202).

Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

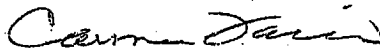
Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within 30 days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures.

If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b).

If any party receiving the enclosed notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy of the notice to said party or timely provide our office with the name and address of said party.

Sincerely,



Acting Regional Director

Enclosures

cc: Distribution List

EXHIBIT C

LandAmerica Commonwealth

DOC # 2008-0325365

06/13/2008 08:00A Fee:42.00

Page 1 of 2

Recorded in Official Records
County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



Recording Requested By:
Bureau of Indian Affairs
U.S. Dept. of the Interior

When Recorded, Mail To:
Bureau of Indian Affairs
Southern California Agency
1451 Research Park Drive, Suite 100
Riverside, CA 92507
APN: 514-160-024/519-100-006 "Ahadpour"

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GRANT DEED

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For valuable consideration, the undersigned, as the authorized representative of the MORONGO BAND OF CAHULLA MISSION INDIANS, *does hereby grant to: THE UNITED STATES OF AMERICA in trust for MORONGO BAND OF CAHULLA MISSION INDIANS OF THE MORONGO RESERVATION OF CALIFORNIA. All that real property situated in the County of Riverside, State of California, and more particularly described as:

*who acquired title as THE MORONGO BANK OF MISSION INDIANS, a federally recognized Indian tribe See Exhibit "A" attached hereto

Acceptance of this conveyance on behalf of the United States of America shall be attached hereto as Exhibit "B" and recorded with this Grant Deed.

An original Grant Deed and Acceptance of Conveyance both dated June 29, 2005 (Exhibit "C") were misplaced and are being replaced by these conveyance documents.

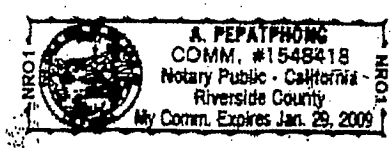
Date: 12/19/07

Tribal Chairperson Robert Martin
Morongo Reservation

State of California)
) SS.
County of Riverside)

On December 19, 2007, before me A. Papatphong, Notary Public, personally appeared Robert Martin, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand & official seal.



RECEIVED
BUREAU OF INDIAN AFFAIRS
PACIFIC REGION
2009 MAR -6 PM 2:39
LAND TITLES & RECORDS
OFFICE

Exhibit "A"

582 113Y09

All that certain real property situated in the County of Riverside State of California, described as follows:

Parcel 1:

Section 32, Township 2 South, Range 2 East, San Bernardino Meridian, in the County of Riverside, State of California, according to the official plat thereof.

Excepting that portion conveyed to Cabazon County Water District by Deed recorded May 27, 1994 as Instrument No. 219179, of Official Records, described as follows:

Commencing at the Southwest corner of said Section;

Thence North 89° 44' 07" East, along the South line of said Section 32, a distance of 770.00 feet;

Thence North 00° 20' 04" West, parallel with the West line of said Section 32, a distance of 1300.00 feet to the point of beginning;

Thence South 89° 39' 56" West, a distance of 90.00 feet;

Thence North 00° 20' 04" West, a distance of 660.00 feet;

Thence North 89° 39' 56" East, a distance of 330.00 feet;

Thence South 00° 20' 04" East, a distance of 660.00 feet;

Thence South 89° 39' 56" West, a distance of 240.00 feet to the True Point of Beginning.

Also excepting therefrom all minerals and mineral rights, interests, and royalties, including without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the property; However, Grantor or its successors and assigns shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the property in connection therewith, as recorded in the Deed recorded December 22, 1989 as Instrument No. 448969, of Official Records.

Parcel 2:

The East half of the Northeast quarter of Section 5, Township 3 South, Range 2 East, San Bernardino Meridian, in the County of Riverside, State of California, according to the official plat thereof.

Excepting therefrom all minerals and mineral rights, interests, and royalties, including, without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the property; however, Grantor or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the property in connection therewith, as recorded in the Deed recorded December 22, 1989 as Instrument No. 448969, of Official Records.

EXHIBIT "B"

582 113109

ACCEPTANCE OF CONVEYANCE
APN'S: 514-160-024 & 519-100-006

The undersigned, as the authorized representative of the Secretary of the Interior, United States Department of the Interior, Bureau of Indian Affairs, hereby accepts that grant of real property described in that Grant Deed dated December 19, 2007 from an authorized representative of the Morongo Band of Mission Indians to the UNITED STATES OF AMERICA IN TRUST FOR THE MORONGO BAND OF CAHUILA MISSION INDIANS OF THE MORONGO RESERVATION, CALIFORNIA. Said grant is accepted by the United States of America pursuant to the Indian Land Consolidation Act of January 12, 1983 (96 Stat. 2517; 25 U.S.C.A. §2202).

Date: February 19, 2008

Amy L. Dutschke
Acting Regional Director

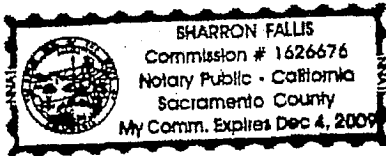
Pursuant to the authority delegated from the Secretary as set forth in 209 DM 8, 230 DM 1, and 3 IAM 4.

ACKNOWLEDGMENT

State of California)
) SS.
County of Sacramento)

On February 19, 2008, before me, Sharon Fallis, a Notary Public, personally appeared Amy L. Dutschke, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand & official seal.



Sharon Fallis

582 113Y09

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento

On February 19, 2008 before me,

Sharon Fallis - Notary Public
Here Insert Name and Title of the Officer

personally appeared

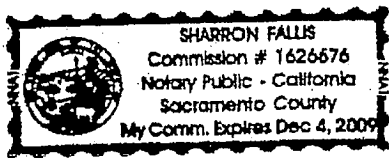
AMY L. DUTSCHKE
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sharon Fallis
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

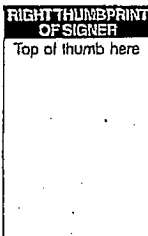
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

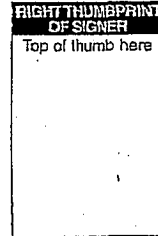
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Recording Requested By:
Bureau of Indian Affairs
U.S. Dept. of the Interior

When Recorded, Mail To:
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

582 113Y09

APN's: 514-160-024 & 519-100-006

Documentary Transfer Tax \$ -0-
Maurice Lyons Indian Affairs
Signature of Declarant (Firm Name)

GRANT DEED

For valuable consideration, the undersigned, as the authorized representative of the Morongo Band of Mission Indians, does hereby grant to: THE UNITED STATES OF AMERICA IN TRUST FOR THE MORONGO BAND OF CAHULLA MISSION INDIANS OF THE MORONGO RESERVATION, CALIFORNIA. All that real property situated in the County of Riverside, State of California, and more particularly described as:

See Exhibit "A" attached hereto.

Acceptance of this conveyance on behalf of the United States of America shall be attached hereto as Exhibit "B" and recorded with this Grant Deed.

Date: 6/29/05

Maurice Lyons
Chairperson
Morongo Band of Mission Indians

State of California)
) SS.
County of Riverside)

On June 29, 2005, before me Deanna K. Betzer, personally appeared Maurice Lyons, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand & official seal.

Deanna K. Betzer

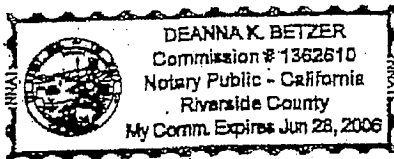


EXHIBIT NO. C

Exhibit "A"
Legal Description
APN's 514-160-024 and 519-100-006

582 113Y09

The land referred to herein is situated in the State of California, County of Riverside, being more particularly described as follows:

Parcel 1:

Section 32, Township 2 South, Range 2 East, San Bernardino Meridian, in the County of Riverside, State of California, according to the official plat thereof.

Accepting that portion conveyed to Cabazon County Water District by Deed recorded May 27, 1994 as Instrument No. 219179 of Official Records, described as follows:

Commencing at the Southwest corner of said Section; Thence North 89° 44' 07" East, along the South line of said Section 32, a distance of 770.00 feet; Thence North 00° 20' 04" West, parallel with the West line of said Section 32, a distance of 1300.00 feet to the point of beginning; Thence South 89° 39' 56" West, a distance of 90.00 feet; Thence North 00° 20' 04" West, a distance of 660.00 feet; Thence North 89° 39' 56" East, a distance of 330.00 feet; Thence South 00° 20' 04" East, a distance of 660.00 feet; Thence South 89° 39' 56" West, a distance of 240.00 feet to the true Point of Beginning.

Also, excepting therefrom all minerals and mineral rights, interests, and royalties, including without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the property in connection therewith, as recorded in the Deed recorded December 22, 1989 as Instrument No. 448969, of official records.

Parcel 2:

The East half of the Northeast quarter of Section 5, Township 3 South, Range 2 East, San Bernardino Meridian in the County of Riverside, State of California, according to the official plat thereof.

Excepting therefrom all minerals and mineral rights, interests, and royalties, including, without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the property in connection therewith, as recorded in the Deed recorded December 22, 1989 as Instrument No. 448969, of Official Records.

EXHIBIT NO. C



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

582 113Y09

ACCEPTANCE OF CONVEYANCE APN's: 514-160-024 & 519-100-006

The undersigned, as the authorized representative of the Secretary of the Interior, United States Department of the Interior, Bureau of Indian Affairs, hereby accepts that grant of real property described in that Grant Deed dated June 29, 2005 from the authorized representative of the Morongo Band of Mission Indians to the UNITED STATES OF AMERICA IN TRUST FOR THE MORONGO BAND OF CAHUILLA MISSION INDIANS OF THE MORONGO RESERVATION, CALIFORNIA. Said Grant Deed is accepted by the United States of America pursuant to the Indian Land Consolidation Act of January 12, 1983 (96 Stat. 2517; 25 U.S.C.A. §2202).

Date: 6/29/05

Amy G. Kutschke
Regional Director

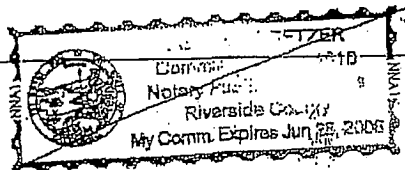
Pursuant to the authority delegated from
The Secretary set forth in 209 DM 8,
230 DM 1, and 3 IAM 4.

ACKNOWLEDGMENT

State of California)
County of Riverside) SS.

On this 29 day of June, 2005, before me, DeAnna K. Betzer,
() personally known to me, or () proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



DeAnna K. Betzer



EXHIBIT "B"

EXHIBIT NO. C



JURAT

State of California
County of Riverside } ss.

582 113Y09

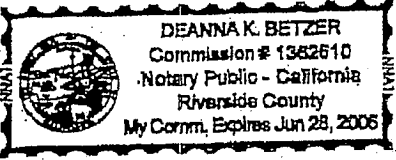
Subscribed and sworn to (or affirmed) before me

this 29 day of June, 2005, by

(1) Amy Louise Datschke
Name of Signer(s)

(2) _____
Name of Signer(s)

Deanna K. Betzer
Signature of Notary Public



OPTIONAL

Though the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here

EXHIBIT NO. C



Commonwealth Land Title Company
3480 Vine Street
Suite 100
Riverside, CA 92507
Phone: (951) 774-0825

582 113Y09

November 6, 2008

Morongo Band of Mission Indians
Karen Woodard
11581 Potero Road
Banning, California 92220

YOUR REF: 2102097
OUR NO.: 02102097

Attached is your Amended and Corrected ALTA US Policy policy of title Insurance, per your instructions.



582 113Y09

POLICY OF TITLE INSURANCE
Issued by
Commonwealth Land Title Insurance Company
SCHEDULE A

Amount of Insurance: \$2,000,000.00

Policy/File Number: 02102097

Premium: \$4,842.00

Date of Policy: July 25, 2008 at 8:00 A.M.

1. Named of Insured:

The United States of America in Trust for Morongo Band of Cahuilla Mission Indians of the Morongo Reservation of California

2. The estate or interest in the land described herein and which is covered by this policy is:

A FEE

3. The estate or interest referred to herein is at the Date of Policy vested in:

The United States of America in Trust for Morongo Band of Cahuilla Mission Indians of the Morongo Reservation of California

4. The land referred to in this policy is situated in the County of Riverside, State of California, and is more particularly described in Exhibit "A" attached hereto and made a part hereof.

By: *Theodore L. Chandler Jr.*
Authorized Signatory.

File Number: 02102097

EXHIBIT "A"

582 113Y09

All that certain real property situated in the County of Riverside State of California, described as follows:

Parcel 1:

Section 32, Township 2 South, Range 2 East, San Bernardino Meridian, in the County of Riverside, State of California, according to the official plat thereof.

Excepting that portion conveyed to Cabazon County Water District by Deed recorded May 27, 1994 as Instrument No. 219179, of Official Records, described as follows:

Commencing at the Southwest corner of said Section;

Thence North 89° 44' 07" East, along the South line of said Section 32, a distance of 770.00 feet;

Thence North 00° 20' 04" West, parallel with the West line of said Section 32, a distance of 1300.00 feet to the point of beginning;

Thence South 89° 39' 56" West, a distance of 90.00 feet;

Thence North 00° 20' 04" West, a distance of 660.00 feet;

Thence North 89° 39' 56" East, a distance of 330.00 feet;

Thence South 00° 20' 04" East, a distance of 660.00 feet;

Thence South 89° 39' 56" West, a distance of 240.00 feet to the True Point of Beginning.

Also excepting therefrom all minerals and mineral rights, interests, and royalties, including without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the property;

However, Grantor or its successors and assigns shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the property in connection therewith, as recorded in the Deed recorded December 22, 1989 as Instrument No. 448969, of Official Records.

File Number: 02102097

EXHIBIT "A" Continued

582 113 Y09

Parcel 2:

The East half of the Northeast quarter of Section 5, Township 3 South, Range 2 East, San Bernardino Meridian, in the County of Riverside, State of California, according to the official plat thereof.

Excepting therefrom all minerals and mineral rights, Interests, and royalties, including, without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the property; however, Grantor or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the property in connection therewith, as recorded in the Deed recorded December 22, 1989 as Instrument No. 448969, of Official Records.

Assessor's Parcel Number: 514-160-024

**SCHEDULE B
EXCEPTIONS FROM COVERAGE**

582 113 Y09

THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE (AND THE COMPANY WILL NOT PAY COSTS, ATTORNEY'S FEES OR EXPENSES) WHICH ARISE BY REASON OF:

- 1. Water rights, claims or title to water, whether or not shown by the public records.
- 2. An easement for the purpose shown below and rights incidental thereto as reserved in a document
 - Purpose: The Steele Foundation, Inc.
 - Recorded: January 25, 1991 as Instrument No. 27702, of Official Records

The exact location and/or extent of said easement is not disclosed in the public records.

- 3. A document subject to all the terms, provisions and conditions therein contained.
 - Entitled: Access Permit Agreement
 - Dated: October 10, 2001
 - By and between: The Morongo Band of Mission Indians, a federally recognized Indian Tribe, but excluding individually the officers, Tribal Council and members thereof, and The Perrier Group of America, Inc., a Delaware Corporation and Great Spring Waters of America, Inc., a Delaware Corporation
 - Recorded: September 30, 2002 as Instrument No. 2002-542472, of Official Records

Reference is made to said document for full particulars.

- 4. A document subject to all the terms, provisions and conditions therein contained.
 - Entitled: Memorandum of Spring Water Supply Agreement and Business Lease
 - Dated: October 10, 2001
 - By and between: The Morongo Band of Mission Indians, a federally recognized Indian Tribe and The Perrier Group of America, Inc., a Delaware Corporation and Great Springs Waters of America, Inc., a Delaware Corporation
 - Recorded: September 30, 2002 as Instrument No. 2002-542473, of Official Records

Reference is made to said document for full particulars.

582 113Y09
File Number: 02102097

SCHEDULE B Continued

5. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein.

Lessor: The Morongo Band of Mission Indians, a federally recognized Indian Tribe
Lessee: The Perrier Group of America, Inc., a Delaware Corporation and Great Spring Waters of America, Inc., a Delaware Corporation
Disclosed by: Memorandum of Spring Water Supply Agreement and Business Lease
Recorded: September 30, 2002 as Instrument No. 2002-542473, of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

6. Matters which may be disclosed by an inspection or by a survey of said land that is satisfactory to this Company, or by inquiry of the parties in possession thereof.
7. Any rights, interests or claims of the parties in possession of said land, including but not limited to those based on an unrecorded agreement, contract or lease.
8. Any easements not disclosed by those public records which impart constructive notice and which are not visible and apparent from an inspection of the surface of said land.
9. Matters that would be disclosed by an examination of the records of the district land office and/or the Bureau of Indian Affairs.



United States Department of the Interior

OFFICE OF THE SOLICITOR
Pacific Southwest Region
2800 Cottage Way
Room E-1712
Sacramento, California 95825-1890

582 113 Y09

IN REPLY
REFER TO:

February 10, 2009

916-978-5687

MEMORANDUM:

To: Pacific Regional Director, Bureau of Indian Affairs, Pacific Region
From: Regional Solicitor, Pacific Southwest Regional Office
Subject: Final Title Opinion: Morongo Band of Cahuilla; 715.60 Acres

1. You requested a final title opinion regarding land located in Riverside County containing 715.60 acres, more or less. The subject property consists of two parcels of land described as Assessor Parcel Numbers 514-160-024 and 519-100-006, contiguous to the Morongo Reservation.

2. The parcels are described in a Grant Deed recorded in Riverside County as Document No. 2008-0409593. The land being conveyed is also described in the title policy. The Grant Deed conveying title to the United States, in trust for Morongo Band of Cahuilla Mission Indians of the Morongo Reservation of California, was executed December 19, 2007, by Robert Martin, Tribal Chairperson. An Acceptance of Conveyance executed by the Acting Regional Director on February 17, 2008, notes the United States accepts the conveyance pursuant to the Indian Land Consolidation Act of January 12, 1983 (96 Stat. 2517; 25 U.S.C.A. §2202). A Certificate of Inspection and Possession (CIP) was executed September 27, 2007.

4. Title Insurance Policy No. 02102097, by Commonwealth Land Title Insurance Company, is continued indefinitely, so long as the United States holds title to the property. As of the date of the Title Policy, July 25, 2008, it shows title to be vested in the United States of America in Trust for Morongo Band of Cahuilla Mission Indians of the Morongo Reservation of California, subject to exceptions in Schedule B of the Policy. The Policy exceptions are in accordance with the Attorney General's Title Standards.

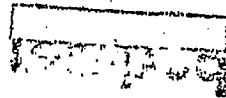
4. Your file is returned.

Reg Dir Dak M
Dep Reg Dir T all
Reg Adm Ofcr _____
Route EFF RPM
Response Required NO
Due Date _____
Memo _____ Ltr _____
Tele _____ Other _____

Daniel G. Shillito
Regional Solicitor

By: Karen D. Koch
Assistant Regional Solicitor

received
RES 2/13/09



582 113Y09

From the Legal Land Description:
Deed recorded on December 22, 1989 under Instrument
Number 448969.

3111743 111389

TICOR Title Insurance Company of California
AND WHEN RECORDED

COUSSOULIS DEVELOPMENT COMPANY
Attn: Nicholas J. Coussoulis
341 West 2nd St., Suite 1
San Bernardino, CA 92401

PAID
Doc. Transfer Tax
WILLIAM E. GOMERY
Title Co. Recorder

RECEIVED FOR RECORD
AT 2:00 PM 12/22/89

DEC 22 1989

Recorded in Official Records
of Riverside County, California

RECORDERS SURVEYORS
11000
11000

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Approved As To Form
By General Counsel
April 1989

Documentary Transfer Tax

GRANT DEED

582 113Y09

SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, Grantor, hereby grants to COUSSOULIS DEVELOPMENT COMPANY, a California corporation, Grantee, that certain real property situated at or near Cabazon, County of Riverside, State of California, and more particularly described in Exhibit "A" attached and hereby made a part hereof.

Grantor excepts from the Property hereby conveyed and reserves unto itself, its successors and assigns, all minerals and mineral rights, interests, and royalties, including without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the Property; however, Grantor or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the Property in connection therewith.

This grant is made subject to easements, covenants, conditions, reservations and restrictions of record; any matter which would be disclosed by survey, investigation or inquiry; and any tax, assessment or other governmental lien against said property.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed in duplicate this 5TH day of DECEMBER, 1989.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: [Signature]
Title: Its Vice President

Attest: [Signature]
Title: ASSISTANT SECRETARY

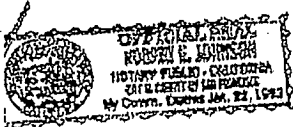
446969

STATE OF CALIFORNIA
City and County of San Francisco

On this 5TH day of DECEMBER in the year One Thousand Nine Hundred and Eighty NINE before me, ROBERT E. JOHNSON, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared

W. B. CURTIS & B. J. MEDINA

known to me (or proved to me on the basis of satisfactory evidence) to be the Its Vice President & Asst. Secretary of the corporation described in and that executed the within instrument, and al. I know to me to be the person who executed it on behalf of the corporation therein named and the acknowledged to me that such corporation executed the same.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year in this certificate first above written.

Robert E. Johnson
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires January 22, 1993

45761 JK

448969

EXHIBIT "A"

582 113 Y09

Those parcels of land situated in the County of Riverside, State of California described as follows:

PARCEL 1:

Section 32, Township 2 South, Range 2 East, San Bernardino Meridian, in the County of Riverside, State of California, according to the official plat thereof.

PARCEL 2:

The East half of the Northeast quarter of Section 5, Township 3 South, Range 2 East, San Bernardino Meridian, in the County of Riverside, State of California, according to the official plat thereof.

TOGETHER with Grantor's right, title and interest in that certain strip of land, 15 feet wide, situated in said Section 5 and in Section 8, Township 3 South, Range 2 East, S.B.B. and M., lying 7.5 feet each side of the following described center line:

Beginning at a point in the North line of said Section 5 distant easterly, along said North line, 2518.30 feet from the northwest corner of said Section 5; thence South 20°22'00" East 2173 feet; thence South 22°19'30" East 566 feet; thence South 25°18'30" East 2983.4 feet to the South line of said Section 5,

582 173Y09

448360

distant thereon 488.8 feet westerly from the southeast corner of said Section 5; thence South 25°13'30" East 1091.5 feet to the East line of said Section 8 distant South 0°05'12" East, along last said line, 986.7 feet.

The wide line of said strip of land, 15 feet wide, to terminate in the North line of said Section 5 and in the East line of said Section 8.

ALSO, TOGETHER with Grantor's right, title and interest in and to all water rights attached to said property.

582 113Y09

From the Legal Land Description:
Deed recorded on May 27, 1994 under Instrument Number
219179.

582 113 Y09

Recording Requested By
First American Title Insurance Company

Recording Requested by/
CABAZON COUNTY WATER DISTRICT

What Recorded Herein is:

CABAZON COUNTY WATER DISTRICT
c/o Krieger & Sauer, Incorporated
3502 University Avenue
Riverside, California 92501

RECEIVED FOR RECORD
AT 2:30 O'CLOCK

MAY 27 1994

First American Title Insurance Company
Riverside, California
Recorder
Fees \$

219179

CABAZON COUNTY WATER DISTRICT
GRANT DEED

8
82

Fereydoun Ahadpour
Doris Ahadpour
413 W. State Street, #A
Redlands, CA 92373

APN 514-160-022

Ahadpour

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged, Fereydoun and Doris Ahadpour, (GRANTOR(S)) grants to Cabazon County Water District (GRANTEE(S)) all that real property in the County of Riverside, State of California, described as follows:

SEE ATTACHED EXHIBITS "FEE-1" AND "FEE-2".

Dated: April 13, 1994

Signed: [Signature]
(GRANTOR)

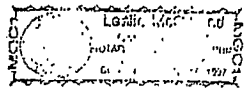
Signed: [Signature]
(GRANTOR)

STATE OF California
COUNTY OF Orange

On 4-13-94 before me, Leslie McGroun, Notary Public
Fereydoun & Doris Ahadpour, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: [Signature]
Name: Leslie McGroun
(Typed or Printed)
Notary Public in and for said County and State



(Seal)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in Real Property conveyed by the foregoing Deed or Grant to the Cabazon County Water District is hereby accepted by the undersigned on behalf of the CABAZON COUNTY WATER DISTRICT pursuant to the authority conferred by Resolution No. 261 of the Board of Directors of the CABAZON COUNTY WATER DISTRICT' enacted on August 4, 1989.

The Grantee consents to recording on the roof dated 4/25/94

SEAL

CABAZON COUNTY WATER DISTRICT
[Signature]
Richard A. Diness
Chief Manager-Secretary

582 113Y09

KRUEGER
SHEWALT INCORPORATED

EXHIBIT "FEE-1"



APN 514-160-022

That portion of Section 32, Township 2 South, Range 2 East, San Bernardino Meridian, County of Riverside, State of California, being more particularly described as follows:

- COMMENCING at the southwest corner of said section;
- Thence North 89°44'07" East, along the south line of said Section 32, a distance of 770.00 feet;
- Thence North 00°20'04" West, parallel with the west line of said Section 32, a distance of 1300.00 feet to the POINT OF BEGINNING;
- Thence South 89°39'56" West, a distance of 90.00 feet;
- Thence North 00°20'04" West, a distance of 660.00 feet;
- Thence North 89°39'56" East, a distance of 330.00 feet;
- Thence South 00°20'04" East, a distance of 660.00 feet;
- Thence South 89°39'56" West, a distance of 240.00 feet to the TRUE POINT OF BEGINNING.

Contains 5.00 acres, more or less.

Reginald A. Jensen

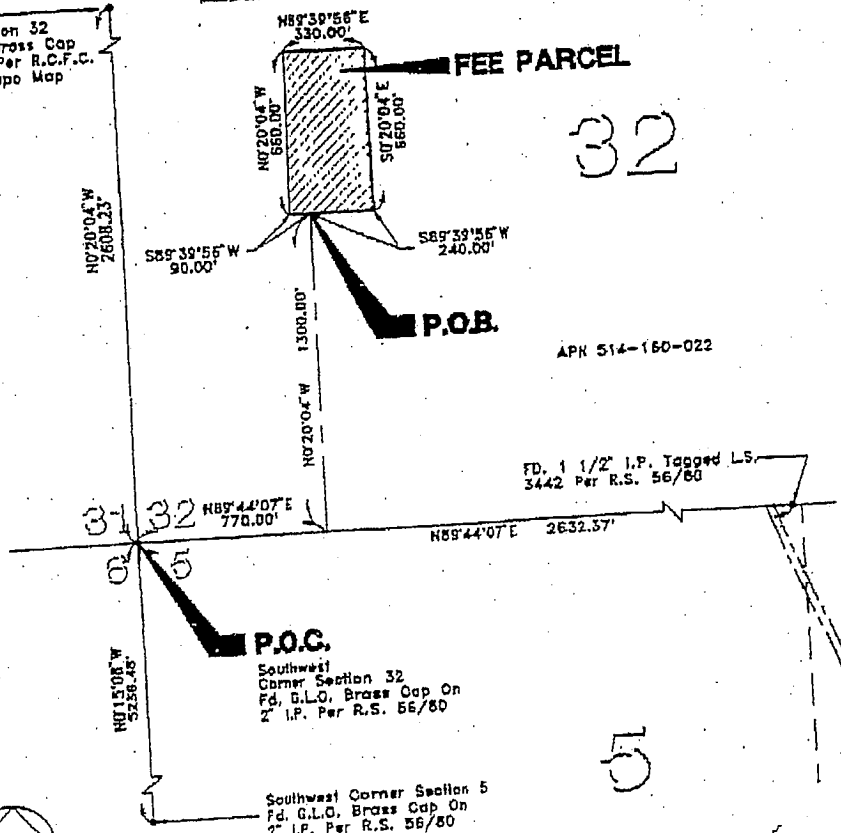



JKV/dss
LEGAL 883-2010
10/11/99

582 13Y09

Exhibit "FEE-2"

1/4 Section 32
G.L.O. Brass Cap
1" I.P. Per R.C.F.C.
W.C.D. Topo Map



FEE PARCEL
32

P.O.B.

APN 514-160-022

FD. 1 1/2" I.P. Tagged L.S.
3442 Per R.S. 56/60

P.O.C.

Southwest
Corner Section 32
Fd. G.L.O. Brass Cap On
2" I.P. Per R.S. 56/60

Southwest Corner Section 5
Fd. G.L.O. Brass Cap On
2" I.P. Per R.S. 56/60



CABAZON COUNTY WATER DISTRICT

RIVERSIDE COUNTY, CALIFORNIA

WATER SYSTEM IMPROVEMENT PROJECT
REPLACEMENT PIPELINES

GRANT DEED PLAT

PROPERTY OF FERAYDOUN AND DORIS AHADPOUR, HUSBAND AND WIFE
APN 514-160-022 BEING A PORTION OF SECTION 32, T2S, R2E, SBM

DATE: 8/16/95 DRAWN BY: TMW/JKY CHECKED BY: ETH SCALE: 1"=500' W.D.# 663-20

FILE# CCNOV20ELAT.DWG



UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

IN REPLY REFER TO:

BUREAU OF INDIAN AFFAIRS
Southern California Agency
1451 Research Park Dr., Suite 100
Riverside, CA 92507-2154
Telephone (951) 276-6624 Telefax (951) 276-6641

582 113Y09

CERTIFICATE OF INSPECTION AND POSSESSION

This relates to an acquisition of the following described land, or an interest therein, by the United States of America.

A. Property and Project Information:

The acquiring Federal Agency is: THE UNITED STATES OF AMERICA
IN TRUST FOR THE MORONGO BAND OF CAHUILLA INDIANS
OF THE MORONGO INDIAN RESERVATION, CALIFORNIA.

1. The name and address of the owner (s) of the property is:

Morongos Band of Cahuilla Indians
11581 Potrero Road
Banning, CA 92070

2. The property identified and/or described as follows:

Real property in the located in Riverside County, State of California,
described as follows:

Assessor Parcel Number: 514-160-024/519-100-006

Parcel 1:

Section 32, Township 2 south, Range 2 East, San Bernardino Meridian, in
the County of Riverside, State of California, according to the official plat
thereof.

Accepting that portion conveyed to Cabazon County Water District by
Deed recorded May 27, 1994 as Instrument No. 219179 of Official
Records, described as follows:

Commencing at the Southwest corner of said Section; Thence North 89°
44" 07" East, along the South line of said Section 32, a distance of 770.00



582 113 Y09

feet; Thence North 00° 20' 04" West, parallel with the West line of said Section 32, a distance of 1300.00 feet to the point of beginning; Thence South 89° 39' 56" West, a distance of 90.00 feet; Thence North 00° 20' 04" West, a distance of 660.00 feet; thence North 89° 39' 56" East, a distance of 330.00 feet; Thence South 00° 20' 04" East, a distance of 660.00 feet; Thence South 89° 39' 56" West, a distance of 240.00 feet to the True Point of Beginning.

Also, excepting there from all minerals and mineral rights, interests, and royalties, including without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the property; However, Grantor or its successors and assigns shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the property in connection therewith, as recorded in the Deed recorded December 22, 1989 as Instrument No. 448969, of Official Records.

Parcel 2:

The East half of the Northeast quarter of Section 5, Township 3 South, Range 2 East, San Bernardino Meridian, in the County of Riverside, State of California, according to the official plat thereof.

Excepting there from all minerals and mineral rights, Interests, and royalties, including, without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the property; however, Grantor or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the property in connection therewith, as recorded in the Deed recorded December 22, 1989 as Instrument No. 448969, of Official Records.

The above - mentioned parcels contain 715.6 acres, more or less.

3. The estate (s) to be acquired is/are: Fee Simple

B. Certification (physical inspection): I hereby certify that on September 27, 2007. I made a personal examination of that certain tract or parcel of land identified above, and that I am fully informed as to the boundaries, lines and corners of said tract. On the basis of my inspection, I hereby certify that the following statements are accurate, or, if one or more statements is not accurate I have marked it/them and I have indicated on this sheet or on an attachment my findings which vary from the statement.

582 113 Y09

September 27, 2007
Date

Beverly Sweetwater
Signature

Beverly Sweetwater, Realty Specialist, 1451 Research Park Drive, Suite 100, Riverside, Ca 92507-2154. Telephone Number (951) 276-6624 ext. 252.

1. No work or labor has been performed or any materials furnished in connection with the making of any repairs or improvements on said land within the past six months that would entitle any person to put a lien upon said premises for work or labor performed or materials furnished.
2. There are no persons or entities (corporations, partnerships, etc), which have, or may have, any rights of possession or other interest in said premises adverse to the rights of the above named owner (s) or the United States of America.
3. There are no vested or accrued water rights for mining, agricultural, manufacturing, or other purpose; nor any ditches or canals constructed by or being used thereon under authority of the United States, nor any exploration or operations whatever for the development of coal, oil, gas or other minerals on said lands; and there are no possessory rights now in existence owned or being actively exercised by any third party under any reservation contained in any patent or patents heretofore issued by the United States for said land.
4. There are no outstanding rights whatsoever in any person or entity (corporation, partnership, etc.) to the possession of said premises, nor any outstanding right, title, interest, lien or estate, existing or being asserted in or to said premises except such as are disclosed and evidenced by the public records, as revealed by the government's title evidence.

Land description certified as to accuracy.
Beverly Sweetwater
 Realty Specialist, Bureau of Indian Affairs

INVENTORY
LAND AND EASEMENTS
TO BE CONVEYED TO THE
MORONGO BAND OF MISSION INDIANS

Land

1. 5 Acre Fee Parcel (660' x 330') per Instrument No. 219179, Recorded 5/27/94 (to be conveyed by separate agreement).

Easements

1. 25' Easement for a Canal and Pipeline for Irrigation Purposes (Alignment as Shown on Map dated February 1911, Line Nos. 3 and 4) per Bureau of Indian Affairs Map No. 7482 (Map Also Being Morongo Reservation Right-of-Way Index No. 377, File No. 12).
2. Perpetual Right-of-Way for Roadway, Cattle Pass, or Other Passage Together with Water Conduits or Pipelines Over the Northeast Corner of Section 8 per 375-Morongo-714 dated 1948 (Also Recorded in Book 984, Pages 139 to 144, Official Records of Riverside County).
3. 50 Year Grant for a Domestic Water Pipeline Easement Over and Across the Extreme Southwest Corner of Section 4 per Instrument No. 104905, Recorded 9/13/1965, Expires 12/29/2014 (Triangular, with 4' Legs on Section Lines, 8 SF±).
4. 100' Easement for a Canal and Pipeline for Irrigation Purposes (Alignment as Shown on Map Dated February 1911, Line Nos. 1 and 2) per Bureau of Indian Affairs Map No. 7482, (Map Also Being Morongo Reservation Right-of-Way Index No. 377, File No. 12).
5. 30' Easement for Pipelines, Utilities, and Access per Instrument No. 219182, Recorded 5/27/94 (Coincides with East Leg of #6).
6. 30' Easement for Pipelines, Utilities, and Access per Instrument No. 396194, Recorded 10/14/94.
7. 25' Easement for Pipelines per Deed Book 411, Page 273, Recorded 2/11/15.
8. 30' Easement for Pipelines, Utilities, and Access per Instrument 219180, Recorded 5/27/94.
9. 30' Easement for Pipelines, Utilities, and Access per Instrument No. 219181, Recorded 5/27/94.
10. 80' and 100' Pipeline Right-of-Way as Shown on Record of Survey 16, Page 13. Reservation of a 50' and 100' Easement within Portions of Sections 20, 21, and 29, T2S, R2E per Instrument No. 150657, Recorded 12/4/75.
11. Reservations of a 100' Easement per Instrument No. 150657, Recorded 12/4/75.



27



EXHIBIT D

JURAT

State of California
County of Riverside } ss.

582 113Y09

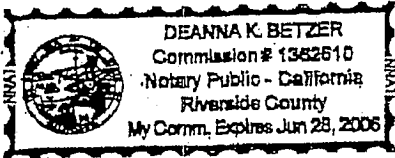
Subscribed and sworn to (or affirmed) before me

this 29 day of June, 2005, by

(1) Amy Louise Datschke
Name of Signer(s)

(2) _____
Name of Signer(s)

[Signature]
Signature of Notary Public



OPTIONAL

Though the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here

EXHIBIT NO. C

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PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California 95814; I am over the age of 18 years and not a party to the foregoing action.

On May 10, 2012 I served a true and correct copy of:

MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO DECLINE TO REVOKE LICENSE 659

X (by mail) on all parties in said action listed on the attached service list, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Somach Simmons & Dunn, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

AND

X (by electronic service) I hereby certify that a true and correct copy of the foregoing will be e-mailed on May 10, 2012 as listed below:

Division of Water Rights Prosecution Team
c/o Samantha Olson
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
solson@waterboards.ca.gov

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on May 10, 2012, at Sacramento, California.


Susan Bentley