

  
**SOMACH SIMMONS & DUNN**  
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January 6, 2012

*Via Email and First Class U.S. Mail*

Larry Lindsay  
State Water Resources Control Board  
Hearings Unit  
1001 I Street  
Sacramento, CA 95814  
[llindsay@waterboards.ca.gov](mailto:llindsay@waterboards.ca.gov)

Re: Morongo Band of Mission Indians –License No. 659

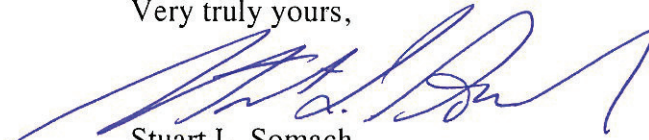
Dear Mr. Lindsay:

On November 14, 2011, I wrote to Mr. Charles R. Hoppin regarding the above-referenced matter and an associated Petition for Change. (I have enclosed a copy of this letter, without attachments, for your convenience.) In that letter, I requested that a settlement conference with the Hearing Officer be scheduled for early in 2012. I respectfully renew that request.

In addition, I requested, after the settlement conference, a pre-hearing conference with the Hearing Officer as well as the development of a discovery schedule. I renew those requests. Please note that I will be out of the Country from February 5–25, 2012. As I noted in my November 14, 2011 letter, I have two trials scheduled to begin after May 2012.

Please do not hesitate to call if you have any questions or need any additional information.

Very truly yours,



Stuart L. Somach  
Special Legal Counsel  
Morongo Band of Mission Indians

SLS:cr

Encl.

cc: Mark St. Angelo, Tribal Attorney  
Barbara Karshmer, Special Legal Counsel  
Charlie R. Hoppin, SWRCB Chairman  
John O'Hagan, SWRCB  
Jim Castle, SWRCB  
Michael Lauffer, SWRCB  
Samantha Olson, SWRCB



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November 14, 2011

FIRST CLASS MAIL

Charles R. Hoppin, Chairman  
State Water Resources Control Board  
1001 I Street, 14th Floor  
Sacramento, CA 95814

Re: Morongo Band of Mission Indians – Petition for Change of License Nos. 174, 659  
and 660 (Application Nos. 84, 553 and 554)

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Dear Mr. Hoppin:

On September 14, 2010, I wrote you with respect to the above-referenced matter. (I have enclosed, as Attachment 1 hereto, a copy of this letter for your convenience.) In this letter, among other things, I noted that the above-referenced Petition for Change (“Petition”) had been accepted on March 14, 2006, by the State Water Resources Control Board (“SWRCB”) and that, as of September 14, 2010, absolutely no action had been taken by the SWRCB to process the Petition. I suggested that the inaction was, at least in part, based upon the Enforcement Action regarding License 659 (“Enforcement Action”) and that the Enforcement Action had been improperly entangled with the Petition.

In the September 14, 2010 letter, I also noted that the SWRCB’s inaction was affecting Morongo’s ability, as a responsible government entity, to plan and implement comprehensive measures for the reasonable, beneficial use of its water rights, including the rights that are the subject of the subject Petition. I noted that Morongo could not allow the SWRCB’s inaction on the Petition to inappropriately hamper Tribal aspirations for economic development of reservation lands and its sovereign governmental responsibility to insure that Tribal resources, including water rights, are effectively used to further those aspirations. I noted, among other things, that the SWRCB, in the administration of water rights in the context of the Petition or in any Enforcement Action, faced certain practical problems that could only be resolved with the Tribe’s cooperation. In this regard, I noted that the Tribe has not and will not waive any of its sovereign rights.

On November 4, 2010, Mr. Howard, on your behalf, responded that the Enforcement Action was not entangled with the Petition. Later in November 2010, you and SWRCB staff met with the Morongo Tribal Chairman, other Tribal representatives and me to further discuss the problems identified in my September 14, 2010 letter. During that meeting Mr. Howard suggested that if Morongo took the initiative and shouldered the expense of preparing documents, including a draft CEQA document, that the Petition process would proceed without delay. Moreover, Mr. Howard indicated that the Enforcement Action would not pose a problem with respect to processing the Petition.

Subsequent to this meeting, Morongo, at the SWRCB's request prepared and submitted a number of supplemental materials to the SWRCB. (See November 24, 2010 letter from Katherine Mrowka to Stuart L. Somach enclosed as Attachment 2 hereto; and December 23, 2010 letter from Brian D. Poulsen to Katherine Mrowka enclosed as Attachment 3 hereto.) On or about February 3, 2011, the SWRCB Noticed the subject Petition. (See Notice enclosed as Attachment 4 hereto.) There were two protests to the Petition that have, since their filing, been dismissed. (See letter from Stuart L. Somach to Katherine Mrowka dated April 5, 2011, enclosed as Attachment 5 hereto.) Subsequent to this, and for reasons that still befuddle me, the SWRCB decided to again Notice the Petition. (See Notice dated May 12, 2011, enclosed as Attachment 6 hereto.) There were no protests filed in the context of this second Notice. Of significance and in spite of the fact that both notices specifically dealt with License 659, the so-called "Enforcement or Prosecution Team" neither commented on nor protested the Petition.

Subsequent to all of this, on August 16, 2011, at SWRCB staff's request, I forwarded additional information to Ms. Mrowka. This additional information was relevant to a possible CEQA exemption and confirming ongoing use of water under the various licenses dealt with in the Petition, including License 659, which is the subject of the Enforcement Action. I was informed that the statements with respect to ongoing use of water would be used as a basis for dismissal of the Enforcement Action. I again noted the need to complete the process and noted that Morongo would like to improve facilities for better integration of its licensed rights that are subject to the Petition, into the Tribe's total resource base; and that we needed the certainty that the granting of the Petition will bring in order to accomplish this. (See August 16, 2011 letter from Stuart L. Somach to Katherine Mrowka, enclosed as Attachment 7 hereto.)

To date, I have not heard anything formal in response to the letter. However, on October 12, 2011, I did receive a "courtesy" notification that there would be a hearing associated with the Enforcement Action some time at the start of 2012. In light of all of the above, I find this "courtesy" notification and the totality of the SWRCB's conduct with respect to the Petition to be in bad faith and directly contrary to what we were told would occur. I am absolutely at a loss to provide a rational explanation for what has occurred.

In determining how best to proceed, in light of the above, I would like to understand exactly how the SWRCB intends to proceed, if at all, with the Petition and how that relates to the Enforcement Action. In addition, with respect to the Enforcement Action, I request that the SWRCB (1) schedule, early in 2012, a Settlement Conference with the Hearing Officer presiding; (2) after the Settlement Conference, schedule a Pre-Hearing Conference with the Hearing Officer; and (3) develop a discovery schedule. I would also like to discuss a schedule for the hearing in light of my current trial schedule.

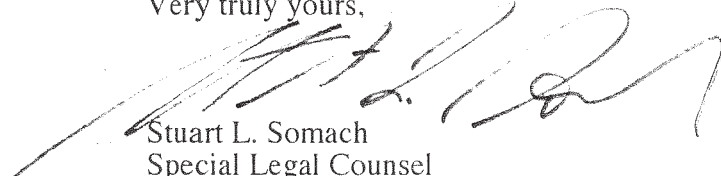
Again, the Tribal Chairman and I, along with other Morongo personnel, met with you in good faith and, based upon the representations made in that meeting and subsequently, expended Tribal resources in an attempt to meet SWRCB demands and requirements. It is indeed unfortunate that the SWRCB has ignored its commitments in the way that it has.

At the risk of just repeating the experiences of the past, it may be appropriate to meet one last time, prior to our embarking on or resuming our adversarial relationship. In this regard, I will attempt to schedule a meeting with you, through Mr. Howard's office, to discuss

Charles R. Hoppin, Chairman  
Re: Morongo Band of Mission Indians – Petition for Change  
November 14, 2011  
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the matters dealt with in this letter. In the meantime, please do not hesitate to call if you have any questions or need any additional information.

Very truly yours,



Stuart L. Somach  
Special Legal Counsel  
Morongo Band of Mission Indians

SLS:sb

Encl.

cc: Tribal Council  
Governor Jerry Brown  
Matt Rodriguez, Secretary, California Environmental Protection Agency  
Mark St. Angelo, Tribal Attorney  
Barbara Karshmer, Special Legal Counsel  
John O'Hagan, SWRCB  
Jim Castle, SWRCB  
Michael Lauffer, SWRCB  
Samantha Olson, SWRCB