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6 MORONGO BAND OF MISSION INDIANS

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BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

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TESTIMONY OF  
STEPHEN B. JOHNSON

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1. My name is Stephen B. Johnson. I am a registered Civil Engineer in the State of California (License No. 32396). I am Vice-President of Stetson Engineers Inc., located at 861 S. Village Oaks Drive, Suite 100, Covina, California 91724; telephone (626) 967-6202.

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**Scope of Testimony**

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3. It is my understanding the SWRCB staff issued a "Notice of Proposed Revocation," dated April 28, 2003, to the Tribe which initiated the enforcement action of License

1 659. I have prepared this written testimony to respond to the proposed revocation (or  
2 enforcement action) of water rights License 659, currently owned by the United States and held in  
3 trust for the Morongo Band of Mission Indians (“Morongo” or “Tribe”).

4 4. My testimony addresses the historical uses of surface water pursuant to License  
5 659, the Tribe’s acquisition of License 659 and the detrimental effects the enforcement action has  
6 had on the Tribe’s ability to develop and exercise its water rights. My testimony includes  
7 discussion on the following areas:

- 8 a. Historical Ownership and Reported Water Use Under License 659
- 9 b. SWRCB Actions Pursuant to License 659
- 10 c. Subsurface Outflow from Millard Canyon
- 11 d. Current and Projected Water Uses Under License 659
- 12 e. Effects of SWRCB Enforcement Action on Tribe’s Ability to Exercise  
13 Water Rights

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15 **Historical Ownership and Reported Water Use Under License 659**

16 5. The “Notice of Proposed Revocation” from the SWRCB staff indicates License  
17 659 was originally issued to the Southern Pacific Land Company on January 31, 1928. The water  
18 rights associated with License 659 are for 0.16 cubic feet per second (“cfs”) of water for irrigation  
19 purposes on 13 acres of specified land. On January 25, 1991, License 659 was assigned to the  
20 Steele Foundation Arizona Corporation. On May 25, 1994, License 659 was assigned to  
21 Ferydoun Ahadpour and Doris Ahadpour (Ahadpour). On July 9, 2001, the SWRCB staff  
22 received a “Notice of Assignment”, dated June 27, 2001, which assigned License 659 from  
23 Ahadpour to Great Spring Waters of America, Inc. (Great Spring).

24 6. In a letter dated June 16, 2003 from the SWRCB staff to Ms. Barbara Karshmer  
25 (Tribal legal counsel), the SWRCB staff acknowledged the receipt of the “Notice of Assignment”  
26 signed by the Vice President of Great Spring and dated October 31, 2002. (Exh. 6.) In the same  
27 letter, the SWRCB staff indicated it would update its water rights ownership records.

28 7. Great Spring provided the SWRCB staff with four (4) “Report of Licensee”

1 reports, each dated July 6, 2001, covering the periods from 1988 to 1990, 1991 to 1993, 1994 to  
2 1996, and 1997 to 1999. (Exhibit 7.) Great Spring reported that approximately 9.6 acre-feet (AF)  
3 was used on a monthly basis (or about 115.2 AF per year) from 1988 to 1999. Great Spring  
4 reported water was used for irrigation of 13 acres and stock watering of over 500 stock. The  
5 records provided by Great Spring are identical; however, it has been my experience that in the  
6 absence of metered water use, estimates are often provided and the estimates are often identical.

7 **SWRCB Actions Pursuant to License 659**

8 8. My review of the "Notice of Proposed Revocation" indicates the SWRCB staff  
9 was aware of and has reviewed water use records associated with License 659 as early as 1952.  
10 In our review of materials associated with License 659, we noted that despite the SWRCB's  
11 apparent knowledge about the alleged lack of use and non-compliance with license items, it took  
12 no enforcement or other actions to address that situation. It was not until the "Notice of Proposed  
13 Revocation" was issued to the Tribe, the SWRCB staff indicated a formal concern about uses  
14 under License 659. Until then, SWRCB staff had not issued any notice or enforcement action  
15 about this issue.

16 9. The Tribe performed reasonable "due diligence" before acquiring License 659.  
17 Prior to acquiring License 659, the Tribe and the Tribe's consultants reviewed the historical water  
18 use records associated with License 659. The Tribe and the Tribe's consultants submitted the  
19 "Notice of Assignment" believing if SWRCB staff had any issues associated with License 659,  
20 the SWRCB staff would notify the Tribe of those issues during this very important "transfer"  
21 process. The Tribe acquired License 659 with the intention and resources to develop the water  
22 right for beneficial uses. However, as the result of the "Notice of Proposed Revocation," the  
23 SWRCB staff's actions caused the cessation of the Tribe's efforts to develop facilities and  
24 exercise the License 659 water right.

25 **Subsurface Outflow from Millard Canyon**

26 10. As a result of the "Notice of Proposed Revocation," dated April 28, 2003, the  
27 Tribe has not been able to develop facilities and exercise the water right associated with License  
28 659. However, water associated with License 659 is currently being put to "beneficial use" as

1 groundwater storage in the Cabazon Storage Unit.

2 11. Surface water originating from Millard Canyon provides the water source for  
3 License 659. The point of diversion and place of use associated with License 659, as well as  
4 Tribal lands, overlie the Cabazon Storage Unit.

5 12. Stetson Engineers Inc. conducted a reconnaissance level analysis of the subsurface  
6 outflow from Millard Canyon. That analysis determined that water flows underground (a  
7 combination of subsurface flow and groundwater) from the Millard Canyon near the vicinity of  
8 the License 659 point of diversion. During normal rainfall conditions, all subsurface outflow  
9 from Millard Canyon flows very deep, beneath the clay layers under the San Gorgonio River, and  
10 is stored as groundwater in the Cabazon Storage Unit. Surface flow in the vicinity of License 659  
11 is put to beneficial use by way of storage in the Cabazon Storage Unit as groundwater. Exhibit 8  
12 provides a plan view map showing the location of the License 659 point of diversion, the  
13 Cabazon Storage Unit, and the Morongo Reservation boundaries. Exhibit 9 shows a cross section  
14 view A-A' from Exhibit 8. Exhibit 9 demonstrates during normal rainfall conditions, unused  
15 surface water under License 659 does not leave the Morongo Reservation and is stored in the  
16 Cabazon Storage Unit as groundwater.

17 13. The analysis also concluded that the time of travel of subsurface flow from Millard  
18 Canyon to the Whitewater River is approximately 77 years. The time of travel calculation was  
19 based on factors including a distance of approximately 84,000 feet, slope, hydraulic gradient,  
20 hydraulic conductivity, and effective porosity. Unused surface and subsurface flow under  
21 License 659, during normal conditions, does not leave the Morongo Reservation.

22 14. Water associated with License 659 is currently being put to "beneficial use" by the  
23 Tribe. As indicated in the analysis prepared by Stetson Engineers Inc., all unused water from the  
24 Millard Canyon is stored in the Cabazon Storage Unit, except during very wet years.

25 15. Under nearly ALL conditions (except during extreme rainfall and runoff  
26 conditions) surface water associated with License 659 never leaves the Morongo Reservation and  
27 is NOT available for appropriation.

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1 **Current and Projected Water Uses Under License 659**

2 16. License 659 can be used for irrigation purposes on 13 acres of specified land. As  
3 an example, the Tribe could irrigate 52 AF per year through irrigation of alfalfa over 13 acres,  
4 based on an alfalfa water use factor of approximately 4 AF per year per acre.

5 17. License 659 can also be used for groundwater recharge of the Cabazon Storage  
6 Unit, as discussed previously. License 659 can also potentially be used for municipal, domestic,  
7 stock watering, irrigation, and industrial purposes within the Morongo Tribal boundaries. The  
8 SWRCB staff issued a "Notice of Petitions for Change for License 174, 659, and 660" on  
9 February 3, 2011 which would allow the Tribe to use License 659 for all these purposes within  
10 the Morongo Tribal boundaries.

11 **Effects of SWRCB Enforcement Action on Tribe's Ability to Exercise Water Rights**

12 18. The enforcement action issued by the SWRCB staff has adversely affected the  
13 Tribe's ability to develop water facilities and exercise its water rights, including License 659 and  
14 other water rights. Surface water originating from Millard Canyon provides the water source for  
15 License 659. In addition to acquiring License 659 in 2002, Morongo acquired the following SP  
16 Spring and Millard Creek water rights, located near the vicinity of License 659:

- 17 a. Pre-1914 right (0.12 cfs; SP Spring) in 2002  
18 b. License 174 (2.5 cfs; Millard Creek) in 2001  
19 c. License 660 (0.5 cfs; SP Spring) in 2001  
20 d. Statement 1101 (0.44 cfs; SP Spring) in 2001  
21 e. Pre-1914 right (4.67 cfs; Millard Creek) in 2001

22 19. During the Tribe's acquisition of License 659 and other water rights, the SWRCB  
23 staff did not provide any indication to the Tribe that the SWRCB staff would issue enforcement  
24 action. However, less than six months after the Tribe acquired License 659, the SWRCB staff  
25 issued the "Notice of Proposed Revocation."

26 20. The enforcement action issued by the SWRCB staff has unfairly hampered the  
27 Tribe's development of its water resources. Instead of focusing on the development of its water  
28 rights, the Tribe's resources have been unfairly used to address the enforcement action issued by

1 the SWRCB staff. In addition, the enforcement action on License 659, as well as the resulting  
2 effect on the Tribe's development of this water resource, has placed the Tribe's other acquisitions  
3 of SP Spring and Millard Canyon water rights in potential jeopardy. This is because the SWRCB  
4 enforcement action has required significant Tribal resources and has affected Tribal planning for  
5 its remaining SWRCB water rights.

6 21. Previous analysis conducted by Natural Resources Consulting Engineers (NRCE)  
7 and Stetson Engineers Inc. indicate the total reliable supply available to the Tribe from the  
8 Millard Canyon and SP Spring area is approximately 1,300 AF per year. In addition, the total  
9 potential water use associated with Tribal water rights to Millard Canyon and SP Spring is  
10 approximately 11,642 AF per year. These uses include irrigation, stock watering, supplemental  
11 water supply to Potrero Canyon, commercial, golf course watering, and industrial uses.

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