



United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Southwest Region

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IN REPLY
REFER TO:

December 24, 2015

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: COMMENT LETTER – Draft Order dated December 1, 2015

Dear Ms. Townsend:

This letter transmits the comments of the Bureau of Indian Affairs (BIA) on the draft order declining to revoke License 659 (Application 553). The issue before the Board is whether license no. 659 is properly subject to revocation. In its draft order, the Board proposes not to revoke the license due to insufficient evidence to support the original revocation decision under the recent California Court of Appeal's decision in *Millview County Water District v State Water Resources Control Board*, 229 Cal. App. 4th 879 (2014). The draft order also addresses the Board's jurisdiction to conduct the proceeding at all given the sovereign immunity objections raised by the Morongo Band and in the BIA's "Special Appearance."

Regarding the sovereign immunity objection, the draft order explains that the Board agrees that the revocation proceeding is part of the "seamless" process for administering previously decreed water rights that involves both administrative and judicial review (citing to Water Code section 2820). The draft order provides critical clarification of the statement in the hearing officer's December 7, 2012 ruling that once a water right has been adjudicated within the meaning of the McCarran Amendment, sovereign immunity is waived with respect to "any" subsequent proceeding to administer the right. Ruling, p. 5. It was not clear from the 2012 ruling whether the instant proceeding was in fact intended to be part of the "seamless" administration process of prior decreed rights. In the draft order, the Board affirmatively states that, under California law, the subject revocation proceeding is part of the "seamless" administration process of the Whitewater Decree and that judicial review of the Board's order is under the jurisdiction of the decree court. With that understanding, BIA concurs in the Board's determination that license no. 659 is not subject to revocation.

Any questions on this matter may be referred to Mr. Doug Garcia at 916-978-6052 or by email to douglas.garcia@bia.gov. We appreciate your consideration of these comments.

Sincerely,



Stephen Palmer
Assistant Regional Solicitor

cc: The Morongo Band of Mission Indians, Revocation Hearing Service List

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