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MORONGO BAND OF MISSION INDIANS

BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

CLOSING BRIEF OF MORONGO BAND OF MISSION INDIANS

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I. INTRODUCTION

It is hard to fathom why the Prosecution Team has pursued this revocation action against the Morongo Band of Mission Indians ("Morongo"). While early investigations of prior owners' water use by the State Water Resources Control Board ("SWRCB") may have caused its enforcement personnel to speculate that one or more of those prior owners failed to fully use water covered by License 659, none of those investigations resulted in a Notice of Proposed Revocation, and none of them involved any alleged failure by Morongo to use available water covered by License 659. While it is almost impossible to glean the exact period of time that is at issue in this action from anything presented by the Prosecution Team, it is clear that for the most part the focus is on actions or activities dating back to a period from 70 to 40 years ago. As a result, the law mandates rejection of the Prosecution Team's arguments as being time barred, and even if rejection were not required by the law, common sense dictates that the SWRCB should reject the Prosecution Team's arguments because of their potential to disrupt established water rights throughout the State.

When one looks at the Prosecution Team's allegations with respect to the most recent period of alleged nonuse in the 1990s, their position is even more tenuous (if that is possible) than its allegations of nonuse during earlier periods of time. Among other things, the Prosecution Team did not (and could not) establish that water was present in the stream for appropriation during any of the critical time periods involved. The one witness that they offered stated that he could not remember the physical situation that existed during the relevant time and contradicted the written submissions filed by the actual owners of the water rights. Moreover, cross-examination following his testimony showed that he lacked credibility and thus his testimony was not reliable. He scuttled

away from the hearing immediately after presenting his testimony, thus preventing Morongo from cross-examining him on assertions made by the Prosecution Team after his abrupt departure.

The one thing on which the record is clear is that Morongo purchased the subject property and water rights without any knowledge (actual or notice) that there was a cloud on the water rights. This lack of knowledge was not because they did not, with due diligence, attempt to understand the nature of these rights. Not only did Morongo rely on its review of the SWRCB's records and files which contained no indication of a problem with License 659, but Morongo's representatives spoke with people at the SWRCB about the matter and again were provided no indication of a problem. The Prosecution Team dismissed these efforts and the apparent misrepresentations made by the SWRCB to Morongo as a case of "one hand [at the SWRCB] not knowing what the other is doing." (Reporter's Transcript ("RT") 129:23-130:1; 131:17-19.)

Based upon the totality of the record, the SWRCB must, as a matter of law, reject the Prosecution Team's efforts to revoke License 659. In addition, because revocation is discretionary and the law disfavors revocation, the SWRCB, as a matter of policy, should decline to revoke License 659. Consistent with the Policy Statements that were made and the testimony and evidence introduced at the hearing, any alleged nonuse, even if true, had nothing to do with Morongo. Morongo needs License 659 to integrate with its other water rights to meet tribal needs. Rejecting the Prosecution Team's efforts also would be consistent with Federal and State policy that seeks to foster Indian governmental self-reliance, economic development, and self-sufficiency. Morongo urges the SWRCB to decline to revoke License 659 and to order License 659 be consolidated with other Morongo water rights consistent with Morongo's pending Petition to do so.

II. ARGUMENT

A. The Motion to Dismiss

In its still-pending Motion to Dismiss or, in the Alternative, to Decline to Revoke License 659 ("Motion to Dismiss" or "Motion"), filed May 10, 2012, Morongo has explained why, for both legal and policy reasons, the proposed revocation of Morongo's License 659 must be denied. In that motion, Morongo demonstrated that (1) the United States is an indispensable party; (2) public policy requires that Morongo's water rights not be revoked; (3) the doctrine of laches bars revocation of the water rights in question; and (4) the SWRCB staff repeatedly violated Morongo's rights to due process. Rather than repeating these arguments here, Morongo instead fully incorporates that motion, including its supporting argument and exhibits, herein by reference. A copy of the Motion is appended hereto as Exhibit A for the SWRCB's convenience. The SWRCB can avoid addressing all of the legal arguments posed to it by determining, as a matter of public policy, that it will not revoke License 659.

Many of the issues raised in Morongo's Motion were also the subject of the May 21, 2012 hearing. These issues include the fundamental defects in how the Prosecution Team has proceeded, including its failure to give notice in any way to the United States, the legal owner of License 659. Significantly, the Prosecution Team has never disputed the fundamental fact of the United States' ownership, but instead, in its Opening Statement, argued that the Ninth Circuit's decision in *State Eng'r v. S. Fork Band of the Te-Moak Tribe of W. Shoshone Indians of Nev.* (9th Cir. 2003) 339 F.3d 804 ("*State Eng'r*") is authority for the erroneous proposition that the SWRCB can proceed with this action in the absence of the United States. The Prosecution Team's argument is simply wrong and mischaracterizes what the Ninth Circuit held.

The question at issue in *State Eng'r* was a jurisdictional one, i.e., did the State Court have jurisdiction over the United States. In that case the United States argued that the State did not have jurisdiction and sought to remove the matter to Federal Court. Unlike the situation here, in *State Eng'r* the United States had Notice of the State proceeding, was joined as a necessary party in that proceeding, and was participating in the proceeding. (See *State Eng'r*, *supra*, 339 F.3d at p. 808.) In contrast, the United States has not been provided Notice of these proceedings and has not been joined as a necessary party or otherwise. As noted in Morongo's Motion to Dismiss, the failure to join the United States, which is an indispensible party in this action, precludes the SWRCB from revoking License 659. As a consequence, the SWRCB must either dismiss these revocation proceedings or attempt to join the United States as a party. This was the precise issue raised by the United States Bureau of Indian Affairs in its Policy Statement to the SWRCB. RT 10:19-11:10.)

Other points made by Morongo in the Motion to Dismiss also were bolstered by the evidence offered during the Hearing, some of which are addressed further below.

B. All Alleged Nonuse Occurred Prior to Morongo Purchasing the Property and Appurtenant Water Rights

Morongo purchased the Property in 2002. (Morongo Exh. 10, Testimony of Barbara Karshmer ("Karshmer Testimony"), ¶ 15.) None of the alleged nonuse occurred when Morongo owned the Property. Instead, the alleged facts supporting nonuse occurred in the 1950s, 1960s and the 1990s. (See Prosecution Team Exh. 1, Declaration of John O'Hagan ("O'Hagan Decl."), pp. 3-4; RT 63:17-22, 79:22-24, 96:16-97:16.) Morongo, of course, had absolutely no control over any of the prior owners of the Property and in the absence of record notice from the SWRCB should not now be held responsible for their action or inaction.

More importantly, however, the SWRCB should consider the real implications of what the Prosecution Team is asking the SWRCB to do in this proceeding. The SWRCB knew of alleged nonuse at the time the alleged nonuse occurred, yet purposefully chose to take no action. (RT 68:13-25, 69:17-22, 98:20-99:20; Morongo Exh. 5, Testimony of Stephen B. Johnson ("Johnson Testimony"), ¶ 8; Karshmer Testimony, ¶ 25.) Over more than 80 years the Property and associated water rights changed hands numerous times, from Southern Pacific Land Company to Southern Pacific Railroad (O'Hagan Decl., p. 1) to Coussoulis to Steele Foundation to Ahadpour (O'Hagan Decl., p. 4) to Great Spring Waters of America, Inc., and finally to Morongo (Karshmer Testimony, ¶ 15). Despite admitting that it knew of alleged nonuse by some of those prior owners, the SWRCB affirmatively chose to take no action. Significantly, it also chose not to provide any Notice or other indication that there were any problems with the validity of these water rights. Throughout this time, various landowners made plans and investments to utilize the water authorized for diversion under License 659, without any indication from the SWRCB that the right was in jeopardy.

This raises serious policy concerns. Economic development throughout the State hinges, in part, on the reliability and stability of water rights. For example, property is purchased in reliance on both pre-1914, post-1913 and other water rights. Financial transactions for farm property, among other things, often rest on water rights acting as part of the collateral for financial transactions (as part of the realty and value of realty). Creating uncertainty in the financial sector by revoking water rights based on alleged actions of a prior owner would not only jeopardize future funding, but could lead to banks making a call on loans (for failure of collateral). Proceeding now, as proposed by the Prosecution Team, to revoke a water right based on alleged nonuse from many decades

ago would have the real world effect of destabilizing California's agricultural and broader economy. This is particularly true where, as here, the Prosecution Team alleges that the information contained in reports verified under penalty of perjury and filed with the SWRCB are insufficient or not reliable enough to support use under a post-1914 appropriative right. Property owners throughout the State must be able to rely on actions and inactions by the SWRCB as they relate to water rights for specific property transactions. (See, e.g., RT 240:18-247:24; Karshmer Testimony, ¶¶ 25-28.) The SWRCB must decline to revoke water rights based on alleged nonuse by owners several conveyances removed from and prior to the current owner, particularly where the SWRCB has either ignored or previously decided to take no enforcement action with respect to that previously alleged nonuse.

C. Morongo Purchased the Property Prior to Initiation of Revocation Proceeding, with No Notice of Proposed Revocation

It is undisputed that Morongo purchased License 659 and the property to which it is appurtenant prior to the SWRCB issuing a Notice of Proposed Revocation. (RT 248:21-249:22) The SWRCB received notice of the transfer, and confirmed assignment of License 659 in November 2002. (RT 177:5-178:7, 248:21-249:22; Morongo Exh. 16, p. 3.) Notwithstanding the fact that the SWRCB had accepted and acknowledged the Notice of Assignment, some within the SWRCB continued to incorrectly assume that Great Springs owned the property and water right. (RT 20:14-18, 72:15-19, 128:25-129:3.) Six months later, the SWRCB issued a Notice of Proposed Revocation to the prior owner. (Prosecution Team Exh. 40; Karshmer Testimony, ¶ 18.) According to Prosecution Team witnesses, this "mix up" was due to the fact that one hand of the SWRCB doesn't know what the other hand is doing. (RT 128:8-132:2.) Morongo should not be penalized for the conduct of State employees.

The testimony clearly establishes that Morongo had no notice of any pending revocation prior to purchasing the property. Nothing in the County Recorder's office indicated any cloud on title. (RT 94:10-96:9, 156:3-6, 179:10-18.) In fact, Morongo had no knowledge of any uncorrected deficiencies with License 659 prior to purchasing the property. (RT 179:15-181:17, 189:21-23.) Indeed, as part of Morongo's due diligence on the status of License 659, the SWRCB informed Morongo's representatives that License 659 was in order. (RT 180:24-181:17.)

Because Morongo purchased the Property with no notice of any cloud on title or any question as to the validity of the water rights, and was told by the SWRCB that everything appeared in order, the SWRCB must decline to revoke License 659.

D. Morongo Is Trying to Protect Its Water Supply and Water Rights

It is undisputed that Morongo is trying to protect tribal water resources for use on the Morongo Indian Reservation ("Reservation), and that License 659 is a critical part of these resources. (Morongo Exh. 4, Testimony of John Covington ("Covington Testimony"), ¶¶ 2, 4, 7-11; Johnson Testimony, ¶¶ 10, 18-21; Karshmer Testimony ¶¶ 3, 4, 7, 17, 22, 25, 28; RT 164:23-165:25, 167:7-168:7.) There is no outside supply available to the tribe to meet its water needs. (RT 168:3-7.) It is also undisputed that Morongo is able to and will put this water to reasonable beneficial use within a very short period should the SWRCB not revoke License 659. (RT 262:16-263:4.)

While the water subject to appropriation does not leave the Reservation as surface water, some of it could flow to the Cabazon Storage Unit and be captured by groundwater pumpers who pump from this groundwater basin. (RT 159:16-163:10, 165:5-24, 203:13-205:2.) By protecting the supply before it moves to the groundwater

basin, Morongo can best ensure the protection of this water source for the continuing needs of the Reservation. (RT 235:14-236:10.)

The water subject to appropriation under License 659 is critical to the needs of Morongo. Morongo's activities with respect to License 659 have been for the purpose of protecting the right to water for the current and future needs of the Reservation. Thus, for policy reasons the SWRCB should decline to revoke License 659.

E. The Prosecution Failed to Meet Its Burden to Prove Forfeiture

To establish forfeiture, the Prosecution Team was required to provide evidence sufficient to prove "that, for a period of at least five years ... water was, in fact, available for diversion" and that the water right holder failed to beneficially use the water. (*Barnes v. Hussa* (2006) 136 Cal.App.4th 1358, 1372.) The Prosecution Team failed to do so.

1. Availability of Water

The Prosecution Team has failed to establish, with credible evidence, that there was water available for use during the time of the alleged nonuse. The only testimony regarding water "wasting" down the canyon is not reliable.

The Prosecution Team's main witness on alleged nonuse, Mozafar Behzad, has no independent recollection of water use on the property and has admitted that his visits to the property were quite infrequent. (RT 42:11-43:3.) Aside from the fact that Mr. Behzad's credibility is questionable[1], he admitted that these events occurred approximately 17 years ago – and that he only remembered what "generally" happened. (RT 46:9-14.)

[1] Not only have two California Appellate Courts found that Mr. Behzad has acted inappropriately, he also has a motive to provide testimony harmful to Morongo's interest, as Morongo's protest of the Ahadpour Petition for Change was the only impediment to a proposed commercial operation on the property. As such, Mr. Behzad's testimony is, at best, unreliable. The two cases cited during the evidentiary hearing on this matter, regarding Mr. Behzad and his companies, are attached hereto as Exhibits B and C for the SWRCB's information and convenience.

The Prosecution Team's witnesses could not confirm that any water was available for appropriation, let alone an amount sufficient to satisfy License 659. (RT 105:17-25, 116:8-120:3.) Their witnesses admitted that, in the absence of water being available for diversion, a water right holder cannot make beneficial use of water and the right cannot be lost. (RT 117:18-118:4.) And, while the Prosecution Team witnesses had no idea of the time of year the aerial photographs that depict the area in the 1960s and 1990s were taken, there was a recognition that one cannot determine from the aerial photographs what amount of water was in the source. (Prosecution Team Exh. 12; RT 71:8-72:14; 115:20-116:7, 119:3-7.)

In addition, the Prosecution Team's witnesses contradicted each other on this issue. For example, while Mr. Behzad testified that water was "wasting" down the canyon, Mr. Stretars testified that the source was a "spring" and, accordingly, water is "not flowing into the creek." (RT 116:11-22, 119:10-17.) Another Prosecution Team witness questioned whether the prior property owners were denied access to the property, which may have contributed to the alleged nonuse. (RT 135:18-23.) While it is questionable as to whether the Ahadpours were ever denied access[2], if they were, and if they were denied the ability to use water, this should act to toll the applicable forfeiture period. Morongo's witnesses testified that this area is quite dry and only infrequently would there be sufficient surface flows for diversion and use. (RT 162:24-163:10, 230:3-231:20.)

There is simply insufficient evidence of the availability of water. Without sufficient evidence, the SWRCB cannot revoke License 659. (*Barnes v. Hussa, supra,* 136 Cal.App.4th at p. 1372.)

[2] This speculation by Prosecution Team witnesses is likely an inappropriate effort to try to cast Morongo in a negative light.

2. Alleged Nonuse

In an attempt to prove alleged nonuse in the 1990s, the Prosecution Team relies again on the testimony of Mr. Behzad. However, Mr. Behzad's testimony is directly contradicted by the sworn statements of the Property owners during the time in question, which claim some beneficial use of water. (RT 43:19-44:8, 85:21-24.) The Prosecution Team's reliance on the lack of evidence of irrigation depicted in the Prosecution Team's Exhibit 12 is irrelevant, as the witnesses cannot testify as to the time of year of the aerial photographs and cannot demonstrate that there was any water available to divert and apply.[3]

III. CONCLUSION

Based upon the foregoing, the testimony and exhibits introduced at the hearing on this matter, and Morongo's Motion to Dismiss, Morongo respectfully requests that the SWRCB, either on legal or policy grounds or on both grounds, not revoke License 659, and that License 659 be consolidated with other licenses Morongo holds, consistent with Morongo's pending Petition to do so.

SOMACH SIMMONS & DUNN
A Professional Corporation

Dated: July 20, 2012

By _____
for Stuart L. Somach

Attorneys for Petitioner
MORONGO BAND OF MISSION INDIANS

[3] It is ironic that the Prosecution Team has asked the Hearing Officer to consider Reports filed for another water right license to help establish the availability of water under License 659. (RT 264:5-267:9.) The reports in the SWRCB's files are either reliable or they are not. If they are reliable, then the sworn reports in the file for License 659 are sufficient. If they are not reliable, then the reports for License 660 are equally unreliable and are of absolutely no evidentiary value in this proceeding.

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 July 20, 2012 I served a true and correct copy of:

CLOSING BRIEF OF MORONGO BAND OF MISSION INDIANS

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 July 20, 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 July 20, 2012, at Sacramento, California.

Susan Bentley

SOMACH SIMMONS & DUNN
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Exhibit A

SOMACH, SIMMONS & DUNN
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MORONGO BAND OF MISSION INDIANS

BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

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

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

I. INTRODUCTION AND BACKGROUND

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

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

While originally issued to Southern Pacific Land Company/Southern Pacific Railroad Company, License 659 was ultimately assigned to Ferydoun Ahadpour and Doris Ahadpour on May 25, 1994; to Great Spring on or about July 9, 2001; and to Morongo on November 4, 2002. The Millard Canyon Property is located entirely within the exterior boundaries of the Morongo Reservation. Morongo purchased the Property to help fulfill Morongo's goal of self-governance and self-determination. When Morongo purchased the Millard Canyon Property there was no "record" notice[1] or actual notice of the pendency of a Revocation proceeding for License 659.

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

[1] While the SWRCB is required to record a license, all orders modifying a license and orders revoking all or 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.)

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

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

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

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

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

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

[3] The original grant deed and acceptance were ultimately "lost" and new copies were later resigned.

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

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

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

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

[4] Congress has waived sovereign immunity for matters related to the United States obtaining state water rights to divert and store water for federal reclamation water projects. (See *California v. United States* (1978) 438 U.S. 645, 662.) Congress has also waived sovereign immunity for stream-wide water adjudications, but not for suits involving 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.

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

III. PUBLIC POLICY DISFAVORS REVOKING THE TRIBE'S WATER RIGHT

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

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

Water Code section 1241 declares,

> If the person entitled to the use of water fails to use beneficially all or any part of the water claimed by him or her, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of five years, that unused water *may* revert to the public and shall, if reverted, 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.)

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

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

Water Code section 1675 provides the authority for revoking water right licenses.[5] Section 1675 provides,

> (a) If, at any time after a license is issued, the [SWRCB] finds that the licensee has not put the water granted under the license to a useful or beneficial purpose in conformity with this division or that the licensee has ceased to put the water to that useful or beneficial purpose, or that the licensee has failed to observe any of the terms and conditions in the license, the [SWRCB] ***may*** revoke the license and declare the water to be subject to appropriation in accordance with this part.
>
> (b) The [SWRCB] may revoke the license upon request of the licensee or after due notice to the licensee and after a hearing, when a hearing is requested by the licensee pursuant to Section 1675.1. (Emphasis added.)

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

B. Revocation Is Disfavored

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

> In the water rights context, the rights holder is subject to forfeiture for not using water, a practice generally thought to be socially responsible and usually called "conservation." Thus, forfeiture occurs not because the rights holder is misusing the resource but, instead, so the state can assign the water right to someone who will use it. As a result of these considerations, we agree with the trial court's conclusion that, since no 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

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

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

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

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

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

- The people of the State of California find that, historically, Indian tribes within the state have long suffered from high rates of unemployment 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).)

- The financial and legal records of California Indian tribes and tribal 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).)

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

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

  Providing information on programs available to assist Indian tribes.

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

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

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

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

IV. THE DOCTRINE OF LACHES BARS REVOCATION

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

Courts have dismissed quasi-adjudicative administrative proceedings where an unreasonable delay in the proceeding has caused a licensee prejudice. (See, e.g., *Gates v. Dept. 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."

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

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

A. The SWRCB's Delay Is Unreasonable

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

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

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

B. The SWRCB's Delay Prejudiced Morongo

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

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

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

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

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

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

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

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

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

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

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

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

In addition to simply shrugging off these significant due process issues[6], the SWRCB belatedly revealed that there have been *ex parte* contacts between Prosecution Team staff and/or supervisors and others at the SWRCB regarding License 659 and the proposed revocation. This is troubling in several respects.

[6] For example, the SWRCB, in dismissing Morongo's March 2, 2012 request for more specificity regarding the scope of the adjudicatory proceedings, simply stated that Morongo, after receiving the Prosecution Team's case in chief, "will have ample time to prepare for cross examination and rebuttal." (April 26, 2012 letter at p. 4.) However, and as provided in Morongo's prior filing, adequate notice requires, among others things, clear and sufficient information regarding the scope of the hearing *prior to the time a party has to make an election of whether 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.

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

First, it is unclear how any attorney-client or deliberative process privilege can be asserted at all regarding any communications between anyone on the Prosecution Team and the Hearing Team.[7] Unless the representations made before the Superior Court, and the Appellate and California Supreme Court, regarding the ethical walls that completely and adequately separate functions at the SWRCB[8] were simply a convenient story to tell the Court, then any communications between the two are not protected by *any* privilege. Moreover, the SWRCB should not only produce the substance of these distinct communications, it needs to disclose the entirety of what was discussed and identify those that participated in those discussions. For example, the newly disclosed emails reveal that Jim Kassel, who Morongo understands is an Enforcement Team supervisor, exchanged emails with Tom Howard, Barbara Evoy, and Michael Lauffer; John O'Hagan was involved with "Andy" and "David," SWRCB personnel

[7] This would include anyone supervising or assisting either "Team."

[8] From the SWRCB's Opening Brief on the Merits in *Morongo Band of Mission Indians v. State Water Resources Control Board*, California Supreme Court Case No. S155589, dated January 22, 2008, at p.8: "In addition, the [SWRCB] bans all parties, including the enforcement team, from ex parte communications with the hearing team 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."

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

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

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

VI. CONCLUSION

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

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

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

Respectfully submitted,

SOMACH SIMMONS & DUNN

DATED: May 10, 2012

By _____
Daniel Kelly

Attorneys for Morongo Band of Mission Indians

EXHIBIT A

MORONGO BAND OF MISSION INDIANS

A SOVEREIGN NATION

March 4, 2004

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

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.

245 N. MURRAY STREET, SUITE C · BANNING, CA 92220 · 909-849-8807 · FAX: 909-922-8146

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 knows 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

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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

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

245 N. MURRAY STREET, SUITE C · BANNING, CA 92220 · 909-849-2807 · FAX: 909-922-8146

EXHIBIT B

United States Department of the Interior

IN REPLY REFER TO:

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

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.

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 contaminates 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 it 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).

EXHIBIT C

LandAmerica Commonwealth

DOC # 2008-0325365
06/13/2008 08:00R Fee:42.00
Page 1 of 2
Recorded in Official Records
County of Riverside
Larry U. Ward
Assessor, County Clerk & Recorder

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
1			2						
M	A	L	485	426	PCOR	NCOR	SMF	NCHG	EXAM
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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"

2102097
055-055

GRANT DEED

9 transfer tax 42
582 113Y09

T
029

For valuable consideration, the undersigned, as the authorized representative of the MORONGO BAND OF CAHUILLA MISSION INDIANS,* does hereby grant to: THE UNITED STATES OF AMERICA in trust for MORONGO BAND OF CAHUILLA 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. Pepathong, 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.

A. PEPATHONG
COMM. #1548418
Notary Public - California
Riverside County
My Comm. Expires Jan. 29, 2009

RECEIVED
BUREAU OF INDIAN AFFAIRS
PACIFIC REGION
2008 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 1-13Y09

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

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, Sharron 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.

SHARRON FALLIS
Commission # 1626676
Notary Public - California
Sacramento County
My Comm. Expires Dec 4, 2009

582 113Y09

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Sacramento

On February 19, 2008 (Date) before me, Sharron 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 Sharron Fallis (Signature of Notary Public)

SHARRON FALLIS
Commission # 1626676
Notary Public - California
Sacramento County
My Comm. Expires Dec 4, 2009

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: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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 173Y09

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

Documentary Transfer Tax $ -0-
Signature of Declarant: Indian Affairs (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 CAHUILLA 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

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
Commission # 1362610
Notary Public - California
Riverside County
My Comm. Expires Jun 28, 2006

EXHIBIT NO. C

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

582 113 Y09

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

United States Department of the Interior

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

IN REPLY REFER TO:

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

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)
) SS.
County of Riverside)

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
Commission # 1352610
Notary Public - California
Riverside County
My Comm. Expires Jun 28, 2006

EXHIBIT "B"

EXHIBIT NO. C

TAKE PRIDE IN AMERICA

JURAT

State of California
County of Riverside } ss.

582 113Y09

Subscribed and sworn to (or affirmed) before me this 29 (Date) day of June (Month), 2005 (Year), by

(1) Amy Lowell Dutschke
Name of Signer(s)

(2) _____
Name of Signer(s)

DEANNA K. BETZER
Commission # 1362610
Notary Public - California
Riverside County
My Comm. Expires Jun 28, 2006

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	RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here	Top of thumb here

EXHIBIT NO. C

LandAmerica Commonwealth

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.

LandAmerica Commonwealth

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

582 113Y09

EXHIBIT "A"

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 Y-09

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**

File Number: 02102097

SCHEDULE B
EXCEPTIONS FROM COVERAGE

582 113Y09

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 113Y09

IN REPLY
REFER TO:

February 10, 2009

MEMORANDUM: 916-978-5687

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 Dale M
Dep Reg Dir Tom
Reg Adm Ofcr
Route EEF KPM
Response Required NO
Due Date
Memo Ltr
Tele Other

received
AES 2/13/09

Daniel G. Shillito
Regional Solicitor

By: Karen D. Koch
Assistant Regional Solicitor

582 113Y09

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

RECORDING REQUESTED BY

89 1111743 111389

Ticor Title Insurance Company of California

AND WHEN RECORDED MAIL TO

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

PAID
Dec Transfer Tax
WILLIAM E. CONERLY
Rec. Co. Recorder

RECEIVED FOR RECORD
AT 8:00 O'CLOCK A.M.
DEC 22 1989
Riverside County Recorder

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Approved As To Form
By General Counsel
April 1989

Documentary Transfer Tax $ [illegible]

582 1-13 Y09

GRANT DEED

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

448965

STATE OF CALIFORNIA
City and County of San Francisco } ss.

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 1ST VICE PRESIDENT & ASST. SECRETARY of the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named and 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.

[signature]
Notary Public in and for the City and County of San Francisco, State of California.

ROBERT E. JOHNSON
NOTARY PUBLIC - CALIFORNIA
CITY & COUNTY OF SAN FRANCISCO
My Comm. Expires JAN. 22, 1993

Corporation

My commission Expires January 22, 1993

498969

582 113Y09

EXHIBIT "A"

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, 2516.30 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°13'30" East 2983.4 feet to the South line of said Section 5,

582 113Y09

446969

distant thereon 466.6 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°06'12" East, along last said line, 986.7 feet.

The side 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.

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

582 113Y09

Recording Requested By
First American Title Insurance Company

Recording Requested by:
CABAZON COUNTY WATER DISTRICT

When Recorded Mail to:

CABAZON COUNTY WATER DISTRICT
c/o Kaiser & Sumas, Incorporated
3602 University Avenue
Riverside, California 92501

219179

RECEIVED FOR RECORD
AT 2:00 O'CLOCK
MAY 27 1994
Recorded in Official Records of Riverside County, California
Fee $ 0

CABAZON COUNTY WATER DISTRICT
GRANT DEED

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

APN 514-160-035

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 "PEP-1" AND "PEP-2".

Dated April 12, 1994

Signed: _____
(GRANTOR)

Signed: _____
(GRANTOR)

STATE OF California

COUNTY OF Riverside

On 4-13-94 before me, Leslie McGowan, Notary Public (name and title of officer), personally appeared 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 _____

Name Leslie McGowan
(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. 281 of the Board of Directors of the CABAZON COUNTY WATER DISTRICT enacted on August 4, 1982.

The Grantee consents to recordation thereof dated 6/25/94

SEAL

CABAZON COUNTY WATER DISTRICT

_____
Richard A. Bigger
District Manager-Secretary

2910

582 113Y09

KORCZD STEWART 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.

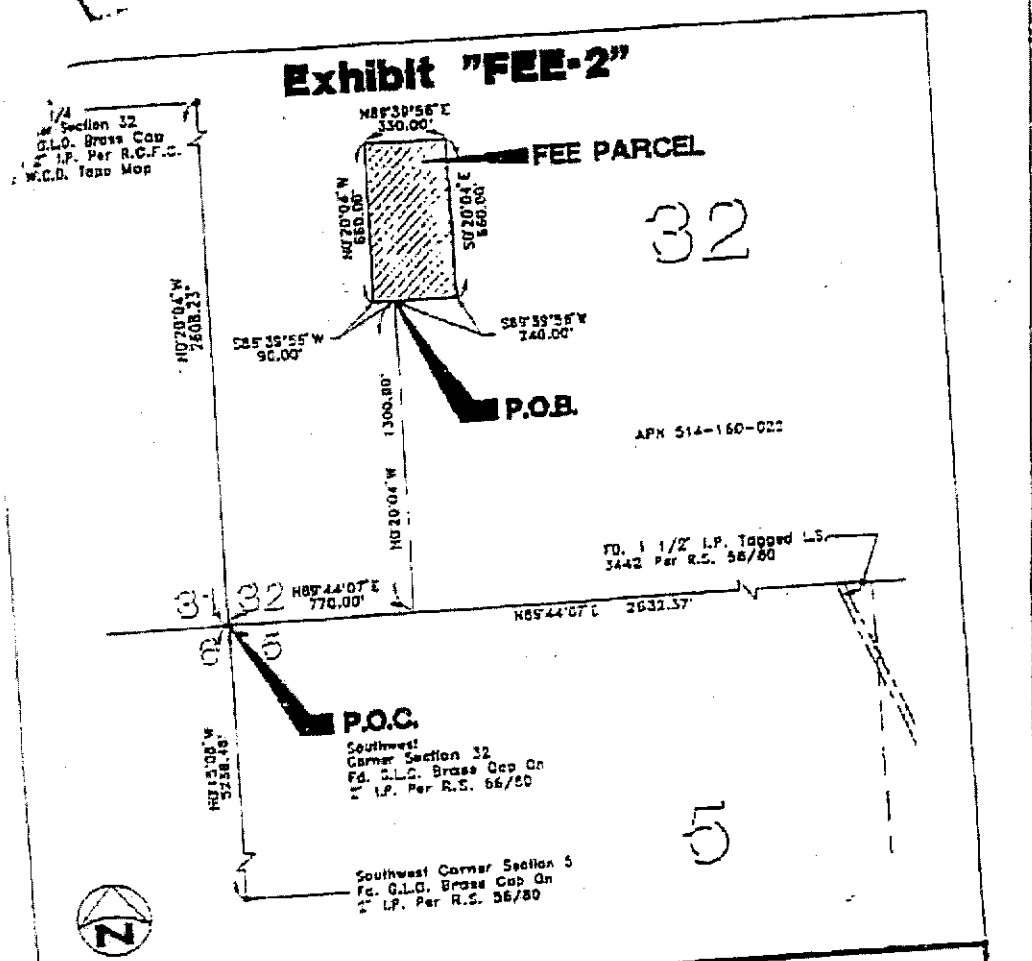
Contains 5.00 acres, more or less.

LICENSED LAND SURVEYOR REGINALD A. LAMSON Exp. 9/30/96 6852 STATE OF CALIFORNIA

JKV/aes
LEGAL/RD-2010
10/11/95

582 113Y09

Exhibit "FEE-2"



CABAZON COUNTY WATER DISTRICT

RIVERSIDE COUNTY, CALIFORNIA

WATER SYSTEM IMPROVEMENT PROJECT
REPLACEMENT PIPELINES

GRANT DEED PLAT

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

DATE: 6/15/95 DRAWN BY: TMW/JKV CHECKED BY: ETh SCALE: 1"=500' W.O.#: 663-20

FILE: CCWD\20PLAT.DWG

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
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

IN REPLY REFER TO:

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:**

Morongo 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

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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 113Y09

September 27, 2017
Date

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.

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.

ETH/mcg
C683/05-L&E-INVNTRY
1/8/01

EXHIBIT D

United States Department of the Interior

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

IN REPLY REFER TO:

582 133Y09

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

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)
) SS.
County of Riverside)

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
Commission # 1392610
Notary Public - California
Riverside County
My Comm. Expires Jun 25, 2006

EXHIBIT "B"

EXHIBIT NO. C

TAKE PRIDE IN AMERICA

JURAT

State of California
County of Riverside } ss.

582 113Y09

Subscribed and sworn to (or affirmed) before me this 29 (Date) day of June (Month), 2005 (Year), by

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

(2)
Name of Signer(s)

DEANNA K. BETZER
Commission # 1362610
Notary Public - California
Riverside County
My Comm. Expires Jun 28, 2006

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	RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here	Top of thumb here

EXHIBIT NO. C

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

SOMACH SIMMONS & DUNN
A Professional Corporation

Exhibit B

CAL PAC ASSOCIATES, INC. et al., Plaintiffs and Appellants, v. COUSSOULIS DEVELOPMENT COMPANY et al., Defendants and Respondents.

E035005

COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION TWO

2004 Cal. App. Unpub. LEXIS 8466

September 15, 2004, Filed

NOTICE: [*1] NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 977(a), PROHIBIT COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 977(B). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 977.

PRIOR HISTORY: APPEAL from the Superior Court of San Bernardino County. No. SCV 68735. Frank Gafkowski, Jr., Judge. (Retired judge of the Los Angeles Municipal Court assigned by the Chief Justice pursuant to *art. VI, ß 6 of the Cal. Const.*)

DISPOSITION: Affirmed.

COUNSEL: Mundell, Odlum & Haws and William P. Tooke for Plaintiffs and Appellants.

Varner, Saleson & Brandt and Kristen Robinson Olsen for Defendants and Respondents.

JUDGES: Gaut J.; Ramirez P. J., McKinster J. Concurred.

OPINION BY: Gaut

OPINION

1. Introduction

Plaintiff Cal Pac Associates, Inc., and its president, Mozafar Behzad appeal from an order of the trial court granting defendants' motion to add Behzad as a judgment debtor in defendants' judgment for attorney's fees against Cal Pac.

Behzad contends he is not the alter ego of Cal Pac. We hold the trial court did not abuse its discretion in so finding and affirm [*2] the judgment.

2. Factual and Procedural Background

In 1989, defendants, represented by Cal Pac, sold real property for $ 4.5 million, including a promissory note for $ 2.8 million. Defendants paid Cal Pac a broker's commission of $ 225,000 cash and a $ 90,000 promissory note, the payment of which was conditioned upon the buyers ultimately paying the $ 2.8 million promissory note. Behzad was also a president of one of the buyers. After the buyers defaulted in 1999, defendants repurchased the property at trustee's sale.

In July 2000, Cal Pac filed a complaint against defendants to recover the unpaid $ 90,000. As the sole officer, shareholder, and director of Cal Pac, Behzad controlled the litigation. After granting summary judgment in favor of defendants, the trial court granted attorney's fees to defendants and entered judgment in their favor in the amount of $ 37,208. In a previous appeal, this court affirmed the grant of summary judgment.

In April 2003, defendants moved to amend the judgment to add Mozafar Behzad as a judgment debtor and the alter ego of Cal Pac. In support of their motion, defendants submitted evidence that Cal Pac was formed in 1984 and Behzad was Cal [*3] Pac's only shareholder. Cal Pac had no employees or assets, except about $ 200 deposited in September 2002. Its corporate address has been the offices of BEK Consulting Engineers, Inc., of

which Behzad was president, and Behzad's residence. Cal Pac did not prepare annual financial statements or maintain accounting records. Between January 2000 and March 2003, the balance in Cal Pac's bank account ranged between $ 490,000 in April 2000 and negative $ 29.82 in March 2002. In July 2000, when the instant lawsuit was filed, the balance was between $ 87,860.39 and $ 99,274.37. After March 2001, the balance was always less than $ 1,000.

In opposition, Behzad maintained that Cal Pac has followed all corporate formalities and that defendants should have required a personal guaranty from Behzad if they wanted him to be responsible for Cal Pac's corporate liabilities.

In its statement of decision, the court found Behzad had deposited personal checks in Cal Pac's account after commencing this lawsuit. Furthermore, there was an intermingling of funds between BEK and Cal Pac. The court held: "The commingling of funds, unity of addresses, single director/officer/shareholder - Behzad, and absolute [*4] lack of any independence of Cal Pac, support a finding of an alter ego. Behzad's claim that because he filed the paperwork and held yearly meetings for his corporation do not make it a true corporation [*sic*]. Actions speak louder than documents. Cal Pac does not truly have a separate identity, purpose or address, and for all intents and purposes, has not done so for years. Moreover, the free use of Cal Pac's account by Behzad and his other corporation, BEK, without explanation, ledgers, books or other receipts to explain the basis for deposits and draws on the account adds to the conclusion that the corporation is no more than a shell for Behzad's dealings, and an effort to avoid liability by under-funding the entity.

"The use of the corporation as a mere shell or instrumentality for the conduct or affairs of another entity shown by the failure to maintain arm's length transactions between the plaintiff and his corporation reflects an abuse of the corporate privilege and produces an inequitable result in this case." To avoid an inequitable result, the court allowed the judgment to be amended to add Behzad as Cal Pac's alter ego.

3. Discussion

In cases where, as here, [*5] the facts are disputed, the standard of review in determining alter ego liability is whether the trial court abused its discretion and whether substantial evidence supports the trial court's decision. (*Las Palmas Associates v. Las Palmas Center Associates (1991) 235 Cal. App. 3d 1220, 1248*; *Mid-Century Ins. Co. v. Gardner (1992) 9 Cal.App.4th 1205, 1209, 1212, 1213*; *Sonora Diamond Corp. v. Superior Court (2000) 83 Cal.App.4th 523, 535.*)

The *Sonora Diamond* case offers a thorough review of the law of alter ego liability: "Ordinarily, a corporation is regarded as a legal entity, separate and distinct from its stockholders, officers and directors, with separate and distinct liabilities and obligations. [Citations.] A corporate identity may be disregarded-the 'corporate veil' pierced-where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation. [Citation.] Under the alter ego doctrine, then, when the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore [*6] the corporate entity and deem the corporation's acts to be those of the persons or organizations actually controlling the corporation, in most instances the equitable owners. [Citations.] The alter ego doctrine prevents individuals or other corporations from misusing the corporate laws by the device of a sham corporate entity formed for the purpose of committing fraud or other misdeeds. (*Associated Vendors, Inc. v. Oakland Meat Co. (1962) 210 Cal. App. 2d 825, 842, 26 Cal. Rptr. 806.*)

"In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone. (*Automotriz etc. De California v. Resnick (1957) 47 Cal.2d 792, 796*; [citations.]) 'Among the factors to be considered in applying the doctrine are commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the [*7] debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, and use of one as a mere shell or conduit for the affairs of the other.' [Citations.] Other factors which have been described in the case law include inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers. [Citations.] No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should be applied. [Citation.] Alter ego is an extreme remedy, sparingly used. [Citation.]" (*Sonora Diamond Corp. v. Superior Court, supra, 83 Cal.App.4th at pp. 538-539.*)

Here the record supports the first prong of the test for the existence of an alter ego relationship. As recognized by the trial court, there is shown "a unity of interest and ownership" between Cal Pac and Behzad in that their separate personalities do not in reality exist.

The sticky wicket is the second prong involving an inequitable result. It is not sufficiently inequitable that

defendants may not recover on their attorney's fees judgment unless Cal Pac is disregarded: [*8] ". . . The alter ego doctrine does not guard every unsatisfied creditor of a corporation but instead affords protection where some conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate form. Difficulty in enforcing a judgment or collecting a debt does not satisfy this standard." (*Sonora Diamond Corp. v. Superior Court, supra, 83 Cal.App.4th at p. 539.*)

Something more than mere uncollectability, however, is shown in this case. The evidence reflects that when Cal Pac filed its lawsuit against defendants it had significant assets but it soon reduced its bank balance to a few dollars. If allowed to maintain its corporate status, Cal Pac and, by extension, Behzad would be allowed to immunize themselves from the award of litigation costs obtained when defendants prevailed in the lawsuit Cal Pac and Behzad initiated. Otherwise stated, Cal Pac and Behzad will be using a corporation with no assets, no operating income and no business to conduct litigation risk-free. Cal Pac cannot satisfy a judgment for the defendants' costs or attorney fees; nor would Behzad have to pay those costs and fees. This is surely the kind of "inequitable [*9] result" the alter ego doctrine is designed to prevent.

Re reject Cal Pac's argument, based on two nonbinding federal cases (*Cascade Energy & Metals Corp. (10th Cir. 1990) 896 F.2d 1557, 1576-1578*; *In re Sims (5th Cir. 1993) 994 F.2d 210, 218-219)* that a more stringent rule should operate in contract cases when applying alter ego principles because in contract cases, unlike tort cases, the parties can bargain to allocate the risks. The broker's contract made between the parties 15 years ago is not part of the record so we do not know the terms of the parties' agreement. Furthermore, we agree with defendants that they probably had no reason to anticipate that they would be unsuccessfully sued by Cal Pac for the undeserved balance of its broker's commission, causing defendants to incur litigation expenses, and that, therefore, they should have obtained a personal guaranty from Behzad. Given the particular circumstances of this case, it would be inequitable and not good public policy to permit Behzad to escape liability for conduct he implemented through the shell instrumentality of Cal Pac.

4. Disposition

We affirm the judgment and order defendants [*10] as prevailing parties to recover their costs on appeal.

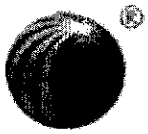
Gaut, J.

We concur:

Ramirez, P. J.

McKinster, J.

Exh. 5-1 C



D.L. WIEST ENTERPRISES, INC., Plaintiff and Respondent, v. BEK CONSULTING ENGINEERS, INC. et al., Defendants and Appellants.

E052430

COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION TWO

2011 Cal. App. Unpub. LEXIS 9907

December 28, 2011, Filed

PRIOR HISTORY: [*1]

APPEAL from the Superior Court of San Bernardino County. Super.Ct.No. CIVSS813919. Janet M. Frangie, Judge.

DISPOSITION: Affirmed.

COUNSEL: Law Offices of Gregory J. Hout and Gregory J. Hout for Defendants and Appellants.

Law Offices of Scott J. Nord and Scott J. Nord for Plaintiff and Respondent.

JUDGES: Codrington, J.; McKinster, Acting P.J., Miller, J. concurred.

OPINION BY: Codrington

OPINION

I

INTRODUCTION

BEK Consulting Engineers, Inc. and 2001 Roknian Revocable Trust (collectively, "appellants") appeal from entry of judgment following a court trial resulting in foreclosure on a mechanic's lien on appellants' property. The trial court granted a default judgment against codefendant Strata Equipment Rentals, Inc. (Strata)[1] and authorized plaintiff D.L. Wiest Enterprises, Inc. (Wiest) to foreclose on its mechanic's lien.

1 Strata is not a party to this appeal.

Appellants challenge the foreclosure judgment on the grounds Wiest's mechanic's lien was not timely recorded and, even if timely, the lien was invalid because of Wiest's noncompliance with the preliminary 20-day notice requirement under *Civil Code section 3097*.[2] Appellants also argue Wiest's mechanic's lien was invalid because there was no work of improvement and no evidence establishing [*2] the reasonable value of the use of Wiest's equipment on the property.

2 Unless otherwise noted, all statutory references are to the Civil Code.

We conclude Wiest's mechanic's lien was timely recorded and Wiest served a valid preliminary 20-day notice on the "reputed owner" of the property under *section 3097, subdivision (a)*. We further conclude removal of soil from the property, using Wiest's rental equipment, qualifies as a work of improvement under mechanic's lien law. Also, Wiest provided sufficient evidence establishing the value of Wiest's labor, services, and materials, for purposes of foreclosing on Wiest's mechanic's lien. The judgment is affirmed.

II

FACTS AND PROCEDURAL BACKGROUND

Defendants BEK Consulting Engineers, Inc. (BEK), 2001 Roknian Revocable Trust (Roknian), and 26 Berookhim Investment Inc. (Berookhim) (collectively referred to as "defendants") own tract No. 16742, which is undeveloped property in Redlands (the property). Defendants own the property as tenants in common, in equal one-third shares. In 2007, Dr. Hamid Roknian agreed to allow Strata to remove dirt from the property. Dr. Roknian confirmed this in a letter dated June 25, 2007, to Strata. Dr. Roknian stated [*3] the subject line of his letter was, "Authorization and Letter Of Intent Track # 16742." Dr. Roknian stated in his letter that authorization of soil removal was conditioned upon (1) compliance with the property grading plan, (2) the property owners not being held liable for any third party claim or damages, and (3) there being no adverse "affect" on the property. Dr. Roknian further stated in his letter that, "Upon the satisfactory removal of the soil, the owner inten[ded] to hire Strata Equipment for the Improvement and grading of the said property based on [Strata's] proposal dated [June 7th,] 2007. This letter of Intent is contingent upon the owner's economic feasibility and the approval of their construction loan."

In September 2007, Strata rented earthmoving equipment from Wiest and began removing dirt from the property. The rental equipment used to remove the dirt included two "623 paddle wheel scrapers." Wiest also provided an equipment operator the first four days the equipment was used on the property. Thereafter, Strata used its own operators.

At Wiest's request, on November 7, 2007, CRM Lien Services, Inc. (CRM) prepared and served a preliminary 20-day notice (preliminary notice) [*4] on BEK, notifying BEK that Wiest was providing Strata with earthmoving rental equipment to be used on defendants' property, at an estimated cost of $60,000. The notice was sent to BEK at 411 West State Street in Redlands. The preliminary notice was returned with a notation, "address unknown." On December 13, 2007, CRM reserved the notice on BEK at 731 Wimbleton Drive, in Redlands.

On December 15, 2007, after Strata finished removing dirt from the property, Wiest retrieved its earthmoving equipment from the property. According to statements and invoices presented at trial, the cost of Wiest's rental equipment and related services and expenses amounted to $83,746. Wiest understood that Strata would be renting its earthmoving equipment again in connection with construction work on the property.

In July 2008, Steve Williams, Strata's owner and president,[3] informed David Wiest that defendants had not paid Strata and therefore Strata would no longer be working on the property. On July 15, 2008, Wiest recorded a $83,746 mechanic's lien against the property, for the cost of services, material, and labor provided at Strata's request. Defendants refused to pay Wiest for the rental equipment and [*5] services. Defendants claimed Wiest's mechanic's lien was untimely. On August 8, 2008, Strata recorded a notice of cessation of labor, as of July 3, 2008.

3 It appears from the notice of cessation, verified by Steve Williamson, as president of Strata, that Williams's true name is Steve "Williamson," not Steve Williams.

On October 6, 2008, Wiest filed a complaint against Strata and defendants, seeking judgment against Strata for recovery of the cost of renting Wiest's equipment, and for foreclosure on Wiest's mechanic's lien against defendants' property. BEK and Roknian cross-complained against Strata. Strata defaulted on the complaint and cross-complaint. Berookhim also defaulted on the complaint. The matter was tried on September 24, 2010.

After the prosecution presented its case in chief, defense counsel moved for a defense judgment on the grounds Wiest did not serve a timely preliminary notice on defendants, the mechanic's lien was untimely, and there was no work on the property after December 15, 2007. (*Code Civ. Proc., ß 631.8.*) The trial court denied defendants' motion for a defense judgment. The court stated there was evidence of work on the property after December 15 based on Williams's [*6] statement to David Wiest that Strata last worked on the property in July 2008. Over defendants' objection, the court ruled that Williams's statement was admissible hearsay as an admission against interest as to both Strata and defendants.

After defendants presented their case, the court heard argument and took the matter under submission. The trial court entered a written decision on September 27, 2010, in which the court entered judgment against Strata in the amount of $107,011.33, consisting of the lien amount of $83,746, plus interest. The court also authorized Wiest to foreclose on its mechanic's lien, with the proceeds applying to the costs of foreclosure and then to payment of Wiest in the sum of $70,624.75 for the use of Wiest's rental equipment, plus costs of suit and interest. The remainder of the sales proceeds was to be paid to defendants.

The trial court made the following findings in its written decision. Defendants were the owners of the

property in question. Between September 29, 2007, and December 17, 2007, Wiest furnished equipment and labor for use on the property, at the request of Strata, acting as defendants' agent. Defendants had knowledge of the work of improvement [*7] on their property. On November 7, 2007, Wiest served defendants and Strata with a preliminary notice. Because Wiest did not serve the notice within 20 days after commencing work on the property, Wiest's lien was limited to all work furnished on and after October 18, 2007. On July 15, 2008, Wiest timely filed and recorded a mechanic's lien. Strata recorded a notice of cessation of labor on the property on August 8, 2008. Wiest timely filed its complaint on October 6, 2008.

III

MECHANIC'S LIEN

Appellants contend Wiest's mechanic's lien is invalid and unenforceable because it was not timely recorded. We disagree.

A. Applicable Mechanic's Lien Law

"'A mechanics' lien is the remedy provided by the California Constitution as implemented by the statutes; it enforces against the owner of property payment of the debt incurred for the performance of labor, or the furnishing of material used in construction. [Citation.] The purpose of the statute, *Civil Code sections 3082 through 3267*, is to provide protection to the supplier of materials or services used in an improvement to land, and to ensure that the supplier receives the payment due. [Citation.] The supplier requires this protection because of [*8] the contribution which increases the value of the property.'" (*Fontana Paving, Inc. v. Hedley Brothers, Inc. (1995) 38 Cal.App.4th 146, 153* (*Fontana Paving*), quoting *Gary C. Tanko Well Drilling, Inc. v. Dodds (1981) 117 Cal.App.3d 588, 593-594* (*Dodds*).)

Whenever possible, statutes pertaining to enforcement of mechanics' liens "'should be liberally construed to effectuate the purposes of the law. [Citation.] When in dispute, a determination of the prescribed time is a matter of law which may be independently considered on appeal by a construction of the pertinent statutes. [Citation.]' [Citation.]" (*Fontana Paving, supra, 38 Cal.App.4th at p. 154*, quoting *Dodds, supra, 117 Cal.App.3d at pp. 593-594*.)

Under California's mechanic's lien law, a mechanic's lien attaches to any interest in a work of improvement and the real property on which it is situated. (ß 3128.) The lien is a direct lien, similar to a mortgage, and is imposed as security for payment of sums due the mechanic. (*Id.*, ß 3123; 10 Miller & Starr, Cal. Real Estate (3d ed. 2001) ß 28:4, pp. 18-19.) To preserve a mechanic's lien, the lien claimant must serve a preliminary 20-day notice on the property owner under *sections 3097* [*9] and *3114*, and timely record a claim of lien within certain time periods following the completion or cessation of work. (ßß 3115-3116.) The recordation of the mechanic's lien provides constructive notice of the lien to subsequent purchasers and encumbrancers. (10 Miller & Starr, *supra*, ß 28:48, pp. 159-160.) Although the mechanic's lien may be recorded after the work is completed, the lien relates back to the date the first labor or material was furnished for the work of improvement. (*Schrader Iron Works, Inc. v. Lee (1972) 26 Cal.App.3d 621, 632*; *Halbert's Lumber, Inc. v. Lucky Stores, Inc. (1992) 6 Cal.App.4th 1233, 1247*.)

B. Timeliness of Wiest's Mechanic's Lien

Under section 3116, "Each claimant other than an original contractor, in order to enforce a lien, must record his claim of lien after he has ceased furnishing labor, services, equipment, or materials, and before the expiration of (a) 90 days after completion of the work of improvement if no notice of completion or cessation has been recorded, or (b) 30 days after recordation of a notice of completion or notice of cessation." (ß 3116.)

Here, there was no notice of completion of work and Strata did not file a notice of cessation [*10] until August 8, 2008, after Wiest recorded its mechanic's lien. Therefore, Wiest was required to record its mechanic's lien within 90 days after completion of the work of improvement under section 3116. Appellants argue Wiest's mechanic's lien was untimely because Wiest's work of improvement was completed on December 15, 2007, and Weists mechanic's lien was not recorded until July 15, 2008.

The timeliness of Wiest's lien turns on whether Wiest's removal of its rental equipment from the property on December 15, 2007, constituted completion of work, triggering the 90-day limitation period to record a mechanic's lien. We conclude there was sufficient evidence supporting the trial court's finding that "completion of the work of improvement" on defendants' property under section 3116 did not occur until July 2008. Such evidence includes Strata's notice of cessation, Dr. Roknian's letter of authorization and intent dated June 25, 2007, and testimony by David Wiest and Dr. Roknian.

David Wiest testified that, even though Wiest removed its equipment off the property in December 2007, David Wiest understood Strata had not completed work on the property and would continue using Wiest's rental [*11] equipment on the project in the future. After Wiest's equipment was moved off the property, Strata continued working on the job site, doing erosion control and

maintenance on the property. Williams told David Wiest that Strata would need the scrapers back on the property in the future. Strata indicated that the date when the equipment would be needed would depend on bank financing. David Wiest understood that he would be paid for the use of his rental equipment on defendants' property upon Strata receiving a "joint check from the owner."

The last time Williams told David Wiest that Strata was working at the project site was in July 2008. It was also not until July of 2008, that Williams told David Wiest that Strata would not be returning to the job site and would be filing a notice of cessation of labor. Wiest then recorded a mechanic's lien against the property (exh. 2).

David Wiest further testified that he spoke to Strata about the loan for financing the property construction. Strata provided David Wiest with a copy of a letter dated November 26, 2007, from Temecula Valley Bank, to Mozafar Behzad, owner of BEK, at Behzad's residence address on Wimbleton Drive in Redlands. The letter [*12] stated that the bank was interested in providing construction financing for the proposed residential subdivision on the property. The letter included a general outline of the terms and conditions for the proposed loan structuring. Defendants were listed as the borrowers. The proposed loan was for $3.65 million, with an 18-month term. A firm commitment to lend money to defendants had not yet been made or accepted.

David Wiest's understanding of the letter was that defendants were applying for construction financing from Temecula Valley Bank and were going to build 15 homes on the property, with construction continuing over several years. David Wiest understood that the final loan paperwork was being completed and the loan was "pretty much a done deal and this [was] how they were going to pay" Wiest. This is why David Wiest believed the construction would be continuing into 2008 and later. David Wiest thought Strata was going to do the grading using Wiest's equipment.

Dr. Roknian's letter of authorization and intent, dated June 25, 2007, indicated that defendants intended that Strata would not only remove soil from the property, but would also provide grading work and other improvements [*13] to the property, contingent upon defendants obtaining the necessary financing for the work. In addition, Dr. Roknian testified that he told Strata in his letter that, if the property owner got a construction loan and, if it was economically feasible, then the owner would proceed with additional work on the property. Dr. Roknian acknowledged receiving a letter from Temecula Valley Bank indicating the bank intended to provide a construction loan for the project. Defendants submitted to the bank a loan application for $3.6 million but never got the loan. Dr. Roknian testified that he told Strata that defendants intended to develop the property the following year if the economy was good and that Strata was welcome to bid on the project. In June 2007, Williams of Strata sent Dr. Roknian a construction proposal to develop the property. The project included grading the property, installing electric power and gas, demolishing the "defacing" by the road, and expanding the road.

The evidence was sufficient to support the trial court's finding that Strata continued working on the property after removing soil from the property using Wiest's equipment, and did not cease working on the property until [*14] July 3, 2008, as stated in Strata's notice of cessation. In turn, Strata's need for Wiest's earthmoving equipment ceased at that time and Wiest was required to file a mechanic's lien within 90 days. Upon learning Strata had ceased working on the property in July, Wiest timely filed its mechanics lien on July 15, 2008. There was evidence Strata had begun construction work on the property, which continued after Wiest removed its equipment in December 2007, up until July 2008. There was also evidence defendants intended that Strata, not only remove dirt from the property, but also provide additional work on the property, including grading, which required the use of Wiest's earthmoving equipment. Under these circumstances, we conclude Wiest's mechanic's lien was timely filed.

Appellants argue in their reply brief that the only evidence supporting a finding that Strata told Wiest his equipment would be needed again after December 2007, consisted of inadmissible hearsay, which the trial court erred in admitting into evidence. Because appellants did not raise the objection in their opening brief, appellants forfeited this evidentiary challenge. "Points raised in the reply brief for the first [*15] time will not be considered, unless good reason is shown for failure to present them before. To withhold a point until the closing brief deprives the respondent of the opportunity to answer it or requires the effort and delay of an additional brief by permission." (*Campos v. Anderson (1997) 57 Cal.App.4th 784, 794, fn. 3.*) Here, there is no good reason for appellants failing to raise the evidentiary issue in their opening brief and it does not constitute proper rebuttal on appeal, particularly since Wiest has been deprived of the opportunity to respond to the admissibility challenge on appeal.

Furthermore, even if the testimony constituted inadmissible hearsay, any error in allowing the testimony was harmless error. There was sufficient evidence, other than David Wiest's hearsay testimony, establishing that Strata continued working on the property after Wiest removed his equipment and that David Wiest was led to believe his equipment would be needed again on the job site. The notice of cessation indicated Strata continued

working on the property until July 3, 2008. David Wiest also testified he believed his equipment would be needed again on the property and therefore did not file a [*16] mechanic's lien until he was informed Strata would no longer be working on the project. Dr. Roknian's letter, sent to Strata in June 2007, further indicates that defendants intended that Strata, not only remove soil from the property, but also provide grading and other construction work, which would require Wiest's equipment.

This evidence, apart from Wiest's hearsay testimony, was sufficient to establish that Wiest timely recorded his mechanic's lien. David Wiest reasonably believed Strata continued working on the property until July 2008, and therefore Strata would continue to use Wiest's earthmoving equipment to develop the property after soil was removed from the property.

IV

PRELIMINARY 20-DAY NOTICE

Appellants contend that Wiest failed to comply with *section 3097*, which required Wiest to serve a preliminary 20-day notice (preliminary notice) on defendants before recording a mechanic's lien. Appellants argue that, although Wiest served a preliminary notice on BEK, notice was not served on all three owners. In addition, the first preliminary notice was sent to the wrong address and therefore was invalid.

A. Applicable Law Regarding Preliminary Notice

Normally, service of a preliminary [*17] notice is required in order to enforce a mechanic's lien. (*ß 3097, subds. (a)-(b).*) Those not under direct contract with the owner, who furnish labor, services, equipment, or material, for which a lien may be claimed under mechanic's lien law, must serve a preliminary notice on the property owner. (*ß 3097, subd. (a).*) Serving a timely preliminary notice on a property owner preserves a claimant's rights to enforce all mechanic's liens on the property. (ß 3129; *Forsgren Associates, Inc. v. Pacific Golf Community Development LLC (2010) 182 Cal.App.4th 135, 151.*)

The preliminary notice is required because, although the Legislature intended the statutes to protect subcontractors and others, "it imposed the notice requirements for the concurrently valid purpose of alerting owners and lenders to the fact that the property or funds involved might be subject to claims arising from contracts to which they were not parties and would otherwise have no knowledge. [Citations.]" (*Romak Iron Works v. Prudential Ins. Co. (1980) 104 Cal.App.3d 767, 778* (*Romak*).) The requisite preliminary notice provides owners with such notice. The preliminary notice requirement is a safeguard which ensures landowners [*18] due process of law. (*Ibid.*) The Legislature intended "to exact strict compliance with the preliminary notice requirement." (*Ibid.*)

Under *section 3097*, the claimant should serve the preliminary notice within 20 days after the claimant has begun providing labor, services, equipment, or material for which a mechanic's lien will be made. (*ß 3097, subd. (d).*) However, failure to serve the notice within 20 days after the claimant first begins the work of property improvement does not invalidate the mechanic's lien claim. If service is late, the claimant is limited to a lien for only labor, services, equipment, or material furnished within 20 days immediately preceding service of the notice and continuing through completion of work. (*ß 3097, subd. (d).*) The notice under such circumstances will not cover the work performed more than 20 days before service of the notice. (*Romak, supra, 104 Cal.App.3d at p. 778.*)

B. Notice Served on a Reputed Owner

Appellants argue that the preliminary notice was not served on all three owners of the property. It was only served on BEK. This is not fatal to Wiest's lien claim.

Section 3097, subdivision (a) states in relevant part, that "Except one under direct contract [*19] with the owner . . . , every person who furnishes labor, service, equipment, or material for which a lien . . . otherwise can be claimed under this title, . . . shall, as a necessary prerequisite to the validity of any claim of lien, . . . cause to be given to *the owner or reputed owner* . . . a written preliminary notice as prescribed by this section." (Italics added.)

Taking into account the realities of the construction business and the mechanic's lien law, the court in *Brown Co. v. Appellate Department (1983) 148 Cal.App.3d 891, 900* (*Brown*), defined the meaning of "reputed owner" as follows: "The term 'reputed owner' must be given a meaning in the context of the statutory scheme in which it appears and must be consistent with the purposes of the statutory provisions. Considering these and the historical meaning ascribed to the term 'reputed owner' as used in the mechanic's lien law we are persuaded the 'reputed owner' who may lawfully be given the preliminary notice pursuant to *sections 3097* and *3098* is a person or entity reasonably and in good faith believed to be the owner by those involved with the work of improvement including the general contractor and those furnishing labor, [*20] service, equipment or material to be used in the work of improvement. [Citations.]" (*Ibid.*) "[T]he statute contemplates that a materialman may rely on the general contractor for information as to who is the owner or reputed owner of the property." (*Id. at p. 902.*) Here, Wiest relied on information provided by Strata, as to the owner's identity and address.

Whether Wiest's "reasonableness and good faith in naming a reputed owner are questions of fact to be determined by the trier of fact and the question of good faith is peculiarly appropriate for determination by the trial court which sees and hears the witnesses." (*Brown, supra, 148 Cal.App.3d at pp. 901-902.*)

Wiest established at trial that the first and second notices were served on the "owner or reputed owner" of the property. Janice Kupratis (Kupratis), president of CRM, testified that her company, CRM, prepares construction lien documents, such as preliminary notices, and has been doing so for over 24 years. When a client requests preparation of a document, her office does research to verify the entities involved in the project and the locations where documents should be sent. CRM prepares the notices and serves them by certified [*21] mail.

At Wiest's request, CRM prepared preliminary notices in connection with defendants' Redlands property. On November 7, 2007, Kupratis prepared a preliminary notice, naming BEK as the owner. Kupratis was given the name of the owner of the property and also researched the owner. She determined that BEK was the owner. Kupratis also verified that BEK's address, 411 West State Street, Redlands, which was given to her by the general contractor, Strata, by performing an internet search for the company name and address. CRM sent the preliminary notice by certified mail to BEK at 411 West State Street, Suite A, Redlands.

After the first preliminary notice was returned undelivered, Kupratis did additional research. By doing a "corporate search," she discovered another address for BEK and sent the second notice to BEK at 731 Wimbleton in Redlands. The notice was sent on December 13, 2007, certified return receipt requested, and was received the following day. Kupratis also served Strata with the preliminary notice. Kupratis testified she had never heard of 2001 Roknian Trust or 26 Berookhim Investment, Inc. Kupratis further testified she recently did research to confirm the property owner [*22] and address. This included doing a title search, which came up with BEK as the owner. She also checked court documents. Kupratis acknowledged she had not seen the property deed. Kupratis did a "Google" search within a couple of days before the trial and came up with the address of 411 West State Street, Redlands, for BEK.

Kupratis's testimony established that Wiest, through CRM, made a good faith, reasonable attempt to serve a preliminary notice on the property owners. "As would seem to be indicated by the clear words of the statute, it is sufficient to give only the name of the reputed owner. When an individual does so in good faith, he does not lose his lien if he subsequently determines that some other individual is the actual owner. [Citations.]" (*Frank Pisano & Associates v. Taggart (1972) 29 Cal.App.3d 1, 19.*) In the instant case, Wiest in good faith served only one of the three property owners, not knowing that there were two additional owners. Service of the preliminary notice on BEK satisfied the requirement under *section 3097* that Wiest serve the reputed owner with a preliminary notice.

As the court in *Brown, supra, 148 Cal.App.3d 891*, noted, *section 3097* "'is a remedial statute, [*23] adopted in obedience to the requirements of the *constitution (art. XX, sec. 15)*, and is to be liberally construed in furtherance of the purposes for which it was authorized. The persons for whose benefit the statute is enacted are not presumed to be versed in the niceties of pleading, and the notices, which under its provisions they are authorized to give, have regard to substance rather than form. The terms of the section clearly indicate that it was not the intention of the legislature that in the claim of lien which he files for record the claimant shall state the name of the real owner, at the risk of losing his lien if it shall turn out that he was in error. . . . [[W]hether the person is being designated as owner or reputed owner], *it is only the opinion of the claimant upon matters that are not presumptively within his knowledge, but which he has formed from external information; . . .*' [Citation.]" (*Brown, at p. 901*, quoting *Corbett v. Chambers (1895) 109 Cal. 178, 184-185.*) In other words, if the preliminary notice is not received by the true owner, but is provided to someone who the claimant reasonably, in good faith, believes is the proper person, the preliminary notice [*24] is valid.

Even though the preliminary notices were served only on BEK, service of the notices was sufficient for purposes of enforcement of Wiest's mechanic's lien as to all three owners.[4]

> 4 Because Berookhim defaulted on the complaint and is not a party to this appeal, Berookhim forfeited any objection to the preliminary notices.

C. Date of Valid Service of the Preliminary Notice

Appellants argue the first preliminary notice, sent by certified mail on November 7, 2007, was invalid because it was sent to the wrong address, since BEK was no longer at 411 West State Street in Redlands. The post office returned the notice, with the notation, "address unknown." The preliminary notice was re-served on December 13, 2007, at BEK's address on Wimbleton Drive in Redlands. The trial court nevertheless relied on the date of attempted service of the first preliminary notice on November 7, when calculating the amount of Wiest's recovery on the mechanic's lien.

With regard to service of the preliminary notice, *section 3097, subdivision (f)* states in relevant part that "[t]he notice required under this section may be served as follows: [∂] (1) . . . by first-class registered or certified mail, postage [*25] prepaid, addressed to the person to whom notice is to be given at his or her residence or place of business address or at the address *shown by the building permit on file* with the authority issuing a building permit for the work, *or at an address recorded pursuant to subdivision (j).* [∂] . . . [∂] *(3) If service is made by first-class certified or registered mail, service is complete at the time of the deposit of that registered or certified mail.*" (*ß 3097, subd. (f)*; italics added.) Subdivision (j) concerns "[a] mortgage, deed of trust, or other instrument securing a loan." (*ß 3097, subd. (j).*) Apparently, there were no loan documents, since, according to Dr. Roknian, the owners did not secure loan financing for the construction, and Williams indicated there may not have been any building permits as well.

Section 3097.1 states that "Proof that the preliminary 20-day notice required by *Section 3097* was served in accordance with *subdivision (f) of Section 3097* shall be made as follows: (a) If served by mail, by the proof of service affidavit described in subdivision (c) of this section accompanied either by the return receipt of certified or registered mail, or by a photocopy of the [*26] record of delivery and receipt maintained by the post office, showing the date of delivery and to whom delivered, or, *in the event of nondelivery, by the returned envelope itself.*" (Italics added.) In the instant case, the first notice was served by certified mail and returned with the notation, "address unknown," indicating nondelivery.

Wiest established it made a reasonable, good faith attempt to serve the first preliminary notices, as well as the second notice. Strata provided Kupratis of CRM with the name of BEK, as the property owner, and BEK's address at 411 West State Street in Redlands. Kupratis testified she confirmed the information from a second source, by "Googling" the company name. Strata, Wiest, and Kupratis were unaware that BEK's address had changed.

Mozafar Behzad, owner of BEK, testified that BEK was previously located at 411 West State Street in Redlands but Behzad moved BEK to his residence at 731 Wimbleton Drive in Redlands. It is unclear as to when this occurred. Behzad testified he did not know when he moved BEK from the 411 West State Street to Wimbleton Drive. Almost a year after the first notice was served, Behzad was still using BEK's corporate stationary [*27] with 411 West State Street printed at the bottom. Behzad acknowledged that, on his letter to Wiest, dated August 5, 2008, Behzad crossed out BEK's printed address of 411 West State Street and handwrote his Wimbleton address below it.

Even though the first attempted service of BEK was unsuccessful and the post office returned the notice, Wiest was entitled to rely on the date of attempted service of the first preliminary notice, because the first attempt to serve the preliminary notice constituted a reasonable, good faith attempt to serve defendants with the preliminary notice, based on information provided by the general contractor, Strata. (*Brown, supra, 148 Cal.App.3d at p. 903.*) The mechanic's lien statute, *section 3097*, "contemplates that a materialman may rely on the general contractor for information as to who is the owner or reputed owner of the property. . . . The conclusion is irresistible the Legislature intended that, in the absence of some indication to the contrary, a potential lien claimant should be permitted to rely on the information given by the general contractor concerning the owner or reputed owner of the property." (*Id. at p. 903.*)

Furthermore, there was no evidence [*28] establishing when Behzad moved BEK to Behzad's residence address and no evidence that a reasonable search prior to the first notice would have disclosed BEK's change of address. Wiest used a company specializing in serving lien documents to serve the notice, which did not discover the change of address until the notice was returned undelivered. It can be reasonably inferred that Strata obtained the property owner identity and address from Roknian or Behzad, and that Strata, Kupratis, and Wiest had no way of knowing that BEK was no longer using the 411 West State Street address until the post office returned the notice with the notation "address unknown." A reasonable inference can be made that the property owners provided no notice to Strata, Wiest, or the public of BEK's change of address from State Street to Behzad's residence address on Wimbleton Drive.

Because Wiest made a good faith attempt to serve the owner of the property with a preliminary notice, the first attempt at service on November 7, 2007, constituted valid service of the preliminary notice, and the date of deposit in the mail of the first notice triggered the limitation period under *section 3097* for recording Wiest's [*29] mechanic's lien.

V

WORK OF IMPROVEMENT

Appellants contend there was no "work of improvement" to which Wiest's mechanic's lien could attach. Appellants argue that the removal of soil from defendants' property does not constitute a work of improvement under section 3106.

Under section 3106, "'Work of improvement' includes but is not restricted to the construction . . . of any building . . . [and] the *filling, leveling, or grading of any*

lot or tract of land, . . . Except as otherwise provided in this title, 'work of improvement' means the entire structure or scheme of improvement as a whole." (Italics added.)

Wiest provided Strata with earthmoving equipment used to change the topography of defendants' property by removing a 20-foot pile of manmade fill from the property. Roknian stated in his letter, agreeing to Strata removing soil from the property, that authorization of soil removal was conditional upon compliance with the property grading plan. The trial court reasonably found that the removal of the soil improved the property for purposes of future development under mechanic's lien law.

VI

SUFFICIENCY OF EVIDENCE OF EQUIPMENT VALUE

Appellants summarily argue that Wiest failed to establish [*30] the value of Wiest's labor, materials, or equipment to the property. Section 3123, subdivision (a) provides that a claimant may recover the reasonable value of his labor, materials, or equipment, or the price agreed upon, whichever is less. (ß 3123, subd. (a).) Appellants claim Strata's removal of dirt from the property had no value to the property, and there was no evidence to the contrary.

Appellants' contention has no merit. First, appellants forfeited this objection by not raising it in the trial court. "'It is axiomatic that arguments not asserted below are waived and will not be considered for the first time on appeal.'" (*Martinez v. Scott Specialty Gases, Inc. (2000) 83 Cal.App.4th 1236, 1249*; see also *Easterby v. Clark (2009) 171 Cal.App.4th 772, 783, fn. 7.*)

Second, Wiest established the value of its labor, materials, and rental equipment by presenting sufficiently detailed billing statements and invoices, from which the court calculated damages and the amount of Wiest's recovery on his mechanic's lien.

VII

DISPOSITION

The judgment is affirmed. Wiest is awarded its costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ Codrington

J.

We concur:

/s/ McKinster

Acting P.J.

/s/ Miller

J.