

**CALIFORNIA PUBLIC UTILITIES COMMISSION
WATER DIVISION**

Advice Letter Cover Sheet

Utility Name: Havasu Water Company **Date Mailed to Service List:** 10-21-21
District: 13
CPUC Utility #: WTD 352 **Protest Deadline (20th Day):** 11-10-21
Advice Letter #: 48 W **Review Deadline (30th Day):** 11-20-21
Tier 1 2 3 Compliance **Requested Effective Date:** 10-21-21
Authorization GO 96B **Rate Impact:** \$63,100
Description: Informal General Rate Case 22.8%
Test Year 2021

The protest or response deadline for this advice letter is 20 days from the date that this advice letter was mailed to the service list. Please see the "Response or Protest" section in the advice letter for more information.

Utility Contact: Jennifer Hodges
Phone: 949-289-0532
Email: jennifer@havasuent.com

Utility Contact:
Phone:
Email:

DWA Contact: Tariff Unit
Phone: (415) 703-1133
Email: Water.Division@cpuc.ca.gov

DWA USE ONLY

<u>DATE</u>	<u>STAFF</u>	<u>COMMENTS</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[] APPROVED [] WITHDRAWN [] REJECTED

Signature: _____ **Comments:** _____
Date: _____ _____

Havasu Water Company

2312 Park Ave. #152
Tustin, California 92782
Telephone (949) 523-0900

October 21, 2021

Advice Letter No. 48-W

TO THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Havasu Water Company, Inc. (HWC) hereby transmits for electronic filing one original and two copies of this advice letter and the following tariff sheets which are enclosed:

NEW SHEET #	TITLE	CANCELLING SHEET #
299-W	Schedule No. 1, General Metered Service	297-W
300-W	Table of Contents	298-W

REQUEST

By this AL 48-W, HWC seeks authority under General Order 96-B, Rules 1.1, 4.7, and 7.6.2, Water Industry Rules 1.7, 7.3.3(5), and 8.2, Sections 454 and 1708 of the Public Utilities Code, and the California Supreme Court’s decision in *Camp Meeker Water System v. P.U.C.*, 51 Cal.3d 845 (1990), to increase its rates for water service to recover increased operating expenses and earn an adequate return on margin over current rates. Work papers justifying this increase will be provided.

In addition, this advice letter requests a change to Commission Res. 5224 addressing HWC’s prior advice letter 45-W, which pursuant to Public Utilities Code Section 1708, allows the Commission to “rescind, alter or amend any order or decision made by it.”

The requested rates will be an increase of \$61,100 (22.8%) in annual gross revenue from its present rates, because current rates fall far short of the revenues from its last general rate case Res. W-5224, necessary to drill new wells, which will be required, if HWC’s easement to distribute water to the Havasu Landing community is not determined to have been extended in perpetuity, as was found by the San Bernardino Board of Supervisors on May 4, 1981, per the terms of the 1976 settlement agreement with the U.S. Department of Interior and Chemehuevi Indian Tribe. See, HWC’s August 16, 2021 letter and attachments to the Commission’s former attorney, Mitchell Shapson. The requested rates are intended to continue to provide a rate of margin (ROM) of 23.65% in test year 2021 if adopted.

BACKGROUND

The present rates were granted June 11, 2020, Res. W-5224, by approval of a supplement to AL 45-W, which authorized a general rate increase of \$49,165, or 21.67%, with a rate of margin of 23.65%.

However, the general rate increase granted in Res. W-5224 did not resolve the pending issue concerning HWC providing a reliable and adequate supply of potable water to its customers, as required by California Health and Safety Code Section 116555 (a)(3), which issue has been recognized and acknowledged by the Commission, and was not resolved, in its June 11, 1973, Dec. 83231, its April 17, 1985, Dec. 85-04-056, and its September 17, 2015 Res. W-5059, p. 2.

HWC is a Class D water utility and provides metered water service to 211 connections and 361 customers. HWC's service territory is in the unincorporated community of Havasu Lake and its vicinity, located approximately 28 miles south of Needles, in San Bernardino County.

HWC is located in the 92363 zip code in San Bernardino County where the annual median household income (MHI), for the zip code is \$34,159, making it a Severely Disadvantaged Community, defined as any community with less than 60% of California statewide MHI of \$60,818, or \$37,091. See, the [2013-2017 American Community Survey 5-Year Estimates, https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml). Hence, if the easement is not found to have been extended in perpetuity, the proposed rate, accordingly, would need to be more than 3x the standard affordability threshold of 1.5% of MHI for average water bills as defined in Health and Safety Code Section 116760.50 (2017).

While the Commission adheres to cost-of-service regulatory principles in developing rates for its jurisdictional utilities, and HWC's requested rates for its customers are at a minimum to satisfy the utility's technical, managerial and financial capacity and operational capability, the discussion regarding affordability is presented, nonetheless, to indicate to the Commission the relationship between the proposed rates and local economic circumstances.

HWC's system consists of four pumps, a chlorinator, sand filter, 150,000 gallon storage tank, and a 10,000 gallon pneumatic tank. The sole source of the system is Lake Havasu. Water is disinfected before entering the distribution system. The water transmission system consists of 10,000 feet of 4, 6, and 8-inch diameter cement-asbestos pipe. Under the system's current configuration, the total water supply capacity of the system is 120 gallons per minute (gpm) or 403,200 gallons. As indicated in Havasu's 2017 sanitary survey conducted by the State Water Resources Control Board, Division of Drinking Water (DDW), the system sufficiently meets the maximum day demand (MDD) of 89,700 gallons. See, Resolution W-5224.

HWC purchases water annually from the City of Needles, through its contract with the Lower Colorado River Supply Project and the U.S. Bureau of Reclamation. HWC pumps water from Lake Havasu, and a raw water supply line carries the water to HWC's water treatment plant, pursuant to an easement granted by the U.S. Department of Interior, through land owned by the U.S. Department of Interior, managed by the Bureau of Land Management, which is specifically excepted from the Chemehuevi Indian Tribe's 2010 land patent.

HWC's easement was granted pursuant to a 1976 settlement agreement between HWC and the U.S. Department of Interior and the Chemehuevi Indian Tribe, which explicitly provides that the U.S. Department of Interior as Grantor, "agrees to extend the term of the easement for such longer term as may be required by the California Public Utilities Commission or any other governmental agency having jurisdiction over the operations of [HWC] for the purpose of providing sufficient access to the Colorado River." See, HWC's August 16, 2021 letter and attachments to the Commission's former attorney, Mitchell Shapson.

On May 4, 1981, the San Bernardino County Board of Supervisors, which had jurisdiction over HWC to require a longer term for the easement under San Bernardino Environment and Health Code §§33.024(c), 33.0611, and 36.022, and California Health & Safety Code 4010.8, unanimously adopted Resolution No. 81-134, determining that: "it would be in the best interests of the community at Havasu Landing if the [easement] is determined to be an easement in perpetuity rather than an easement for thirty years."

The United States and the tribe waived any claim that the easement was not therefore extended in perpetuity, when they failed to oppose Resolution No. 81-134, after timely notice. Nor was there any appeal of the grant of the easement within 30 days of it being granted on June 22, 1976, or extended in perpetuity on May 4, 1981, as required for such an appeal by 43 C.F.R. §4.411. Nor was it challenged under the Administrative Procedure Act, 28 U.S.C. §2401(a), within 6 years of the June 22, 1976 granting of the easement, the May 4, 1981 Resolution No. 81-134 extending the easement in perpetuity, or within 6 years of June 22, 2006, when the easement would have expired but for the 1981 extension in perpetuity.

The statutes of limitation and the equitable doctrine of laches now bar any claim that the easement has not been extended in perpetuity. California Code of Civil Procedure §338 bars claims filed more than three years after they accrued based upon violation of statute, common law trespass, and injury to real property. California Code of Civil Procedure §343 bars claims filed more than four years after they accrued for relief not otherwise provided for, and the Administrative Procedure Act, 28 U.S.C. §2401(a), bars claims filed more than 6 years after the June 22, 1976 granting of the easement, the May 4, 1981 Resolution No. 81-134 extending the easement in perpetuity, and after the easement's 30th year on June 22, 2006, but for the 1981 extension in perpetuity.

This general rate increase is therefore sought in an abundance of caution, pursuant to the California Supreme Court's holding in *Camp Meeker Water System v. PUC*, 51 Cal.3d 845 (1990), Water Industry Rule 8.2, and California Health & Welfare Code Section 116555 (a)(3), to insure that HWC's system provides a reliable and adequate supply of potable water to its customers, should the Public Utilities Commission find that the easement was not required to be extended in perpetuity, as determined by the San Bernardino Board of Supervisors' Resolution 81-134, to secure HWC's access to the Colorado River.

Just as in *Camp Meeker*, HWC seeks "a rate increase based on a claim that in order to meet the needs of its customers for water [HWC] would have to lease additional wells on the [government's land]." However, just as in *Camp Meeker*, the Commission should find that HWC "owns an easement that permits it to obtain water" from Lake Havasu via a pipeline through the government's land and therefore need not drill new wells on the government's land in lieu of the "exercise of the easement." 51 Cal.3d 845, 851.

Just as in *Camp Meeker*, the Commission should “exercise... its ratemaking authority...[to] construe deeds conveying real property and easements to [HWC]....in the same manner that a court or agency construes any written instrument (see Civil Code §1066 et seq.; Code of Civil Proc. §§1857, 2077) for the purpose of ascertaining facts relevant to the merits of the application for increased rates...” 51 Cal.3d 845, 850.

Based on the construction of the easement at issue, just as in *Camp Meeker*, the Commission should order: (1) “HWC to enforce those water rights against the record titleholders,” (2) “record notice to preserve its easement pursuant to Civil Code section 887.060,” which provides that “the owner of an easement may at any time record notice of intent to preserve the easement,” and (3) order the Utility Audits and Compliance Division to “intervene in proceedings” before any court or agency exercising jurisdiction over the record titleholders “to prevent the record titleholders...from obtaining rights inconsistent with those held by [HWC] under its easement.” 51 Cal.3d 845, 851.

SAFETY

HWC meets all applicable drinking water quality standards as required by the State Water Resources Control Board (SWRCB), Division of Drinking Water. The SWRCB routinely inspects HWC every three years. SWRCB last inspection before COVID was conducted in December 2017. The SWRCB District Engineer stated that HWC is well maintained and operated in the 2017 Sanitary Survey of Havasu Water Company report on June 12, 2018.

Havasu treats its source water from Lake Havasu using EDP filtration for turbidity which is then followed by chlorine gas disinfection before being distributed through the system. The utility conducts routine water testing and sampling as required by DDW for disinfectant/disinfection byproduct (D/DBP) and lead and copper monitoring.

TIER DESIGNATION AND REQUESTED EFFECTIVE DATE

These AL and enclosed tariffs are submitted pursuant to Water Industry Rule 7.3.3(5) of General Order (GO.) 96-B and this advice letter is designated as a Tier 3 filing. This advice letter will become effective upon approval through a Commission Resolution, pursuant to General Order 96-B, Water Industry Rule 7.3.3.

NOTICE

A copy of this AL has been served to all parties listed on the service list on the last page of this AL, pursuant to General Order 96-B, Water Industry Rule 4.2. This filing will not cause withdrawal of service nor conflict with any other schedule or rule.

Since the increase requested in this advice letter is a component of the general rate increase, no separate notice is required. Since this advice letter is authorized by Resolution W-4540, further “Notice” in accordance with Section III-G of General Order No. 96-A is not deemed necessary.

RESPONSE OR PROTEST

Anyone may respond to or protest this advice letter, pursuant to General Order 96-B, Water Industry Rule 7.4.1. A response supports the filing and may contain information that proves useful to the Commission in evaluating the advice letter. A protest objects to the advice letter in whole or in part and must set forth the specific grounds on which it is based. These grounds are:

1. The utility did not properly serve or give notice of the advice letter;
2. The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies;
3. The analysis, calculations, or data in the advice letter contain material error or omissions;
4. The relief requested in the advice letter is pending before the Commission in a formal proceeding; or
5. The relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process; or
6. The relief requested in the advice letter is unjust, unreasonable, or discriminatory (provided that such a protest may not be made where it would require relitigating a prior order of the Commission).

A protest may not rely on policy objections to an AL where the relief requested in the AL follows rules or directions established by statute or Commission order applicable to the utility. A protest shall provide citations or proofs where available to allow staff to properly consider the protest. The Water Division (WD) must receive a response or protest via email (or postal mail) within 20 days of the date the AL is filed. The addresses for submitting a response or protest are:

Mailing Address:

California Public Utilities
Commission
Water Division, 3rd Floor
505 Van Ness Avenue
San Francisco, CA 94102

Email Address:

Water.Division@cpuc.ca.gov

On the same day the response or protest is submitted to the WD, the respondent or protestant shall send a copy of the protest to HWC at:

Mailing Address:

Havasu Water Company
Attn: Jennifer Hodges
2312 Park Ave., #152
Tustin, California 92782

Email Address:

jennifer@havasuent.com

Cities and counties that need Board of Supervisors or Board of Commissioners approval to protest should inform DWA, within the 20 day protest period, so that a late filed protest can be entertained. The informing document should include an estimate of the date the proposed protest might be voted on.

REPLIES

The utility shall reply to each protest and may reply to any response. Each reply must be received by the WD within five business days after the end of the protest period and shall be served on the same day to the person who filed the protest or response, pursuant to General Order 96-B, General Rule 7.4.3.

CERTIFICATE OF SERVICE

I hereby certify that the service list from Advice Letter #45-W has been served a copy of this AL on October 21, 2021.

The Commission staff has been provided with work papers supporting this informal general rate case increase.

HWC respectfully requests expedited handling of this advice letter.

Executed in Tustin, California on October 21, 2021.

Havasu Water Company

/s/ Jennifer Hodges

Jennifer Hodges

President

Havasu Water Company

2312 Park Ave., #152
Tustin, California 92782
Telephone 949 523-0900
Advice Letter No. 48-W
Service List

(AS PER SECTION 4.3 OF GENERAL ORDER No. 96-B)

Sean McCarthy, P.E.
CA Dept of Public Health
DDWEM
464 W. Fourth Street, Suite 437
San Bernardino, CA 92401

LAFCO
215 N. "D" Street, Suite 204
San Bernardino, CA 92415

Land Use Services
San Bernardino County
385 N. Arrowhead Avenue
San Bernardino, CA 92415

San Bernardino Fire Authority
620 South "E" Street
San Bernardino, CA 92415

David G. Brownlee
City of Needles
817 Third Street
Needles, CA 92363

Colorado River Board of California
770 Fairmont Avenue
Suite 100
Glendale, CA 91203-106

SCHEDULE NO. 1
GENERAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service furnished on a monthly basis.

TERRITORY

The area known as Tract Nos. 6493, 6494, 6495, 5968, 8284 and vicinity, and a 40-acre parcel about 3,000 feet to the north located near Havasu Landing, approximately 28 south of Needles, San Bernardino County

RATES

Quantity Rate:

For all water, per 100 cu. ft.	\$7.88	(I)
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Service Charges:

	<u>Per Meter</u>	
For 5/8 x 3/4- inch meter	\$ 106.62	(I)
For 3/4-inch meter	\$ 159.93	
For 1 –inch meter	\$ 175.92	
For 1-1/2-inch meter	\$319.85	
For 2-inch meter	\$852.96	
For 3-inch meter	\$1,599.29	
For 4-inch meter	\$2,665.50	(I)

The Service Charge is a readiness-to-serve charge, which is applicable to all metered services, and to which is to be added to the monthly charge computed at the Quantity

SPECIAL CONDITIONS

1. A late charge will be imposed per Schedule No. LC.
2. In accordance with Section 2714 of the Public Utilities Code, if a tenant in a rental unit leaves owing the company, service to subsequent tenants in that unit will, at the company's option, be furnished on the account of the landlord or property owner.
3. In the event that customer terminates service under this schedule and reinstates service at the same location, there will be a reconnection charge equal to the minimum charge which would have been billed had the customer not terminated service.
4. All bills are subject to the reimbursement fee as set forth in Schedule No. UF.

(continued)

(To be inserted by utility)

Advice Letter No. 48-W

Decision No. _____

Issued By

Jennifer Hodges

President

(To be inserted by P.U.C.)

Date Filed _____

Effective _____

Resolution No. _____

TABLE OF CONTENTS

The following listed tariff sheets contain all effective rates and rules affecting the charges and services of the utility, together with other pertinent information.

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No. 7 – Deposits	296 W – 297-W	
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No. 19 – Service to Separate Services & Multiple Units and Resale of Water	131-W, 134-W	
No. 20 – Water Conservation	271-W	
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(continued)

(To be inserted by utility)

Issued By

(To be inserted by P.U.C.)

Advice Letter No. 48-W

Jennifer Hodges

Date Filed _____

Decision No. _____

President

Effective _____

Resolution No. _____

HAVASU WATER COMPANY
SUMMARY OF EARNINGS
IN DOLLARS

	[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]
		2018	2019	2020	3 yr		AT PRESENT	PROPOSED
		PUC RPT	PUC RPT	PUC RPT	AVERAGE	NOTES	RATES	RATES
	DESCRIPTION						TEST YR	TEST YR
							2021	2021
1	REVENUES							
2								
3	WATER SALES	221,937	220,915	245,050	229,301	USE W-5224	276,050	276,050
4	RATE INCREASE						0	63,100
5	OTHER INCOME/REFUNDS	2,919						0
6								
7	REVENUES - FROM OPERATIONS	224,856	220,915	245,050	229,301	0	276,050	339,150
8								
9	OPERATING EXPENSES							
10								
11	PURCHASED WATER	7,517	8,487	7,738	7,914	3 YR AVERAGE	7,914	7,914
12	POWER	12,432	9,688	10,447	10,856	3 YR AVERAGE	10,856	10,856
13	PUMPING ASSESSMENTS	3,679	1,240	2,564	2,494	3 YR AVERAGE	2,494	2,494
14	EMPLOYEE LABOR	37,121	32,490	36,800	36,800	USE 2020	36,800	36,800
15	MATERIALS	9,335	8,854	4,062	7,417	3 YR AVERAGE	7,417	7,417
16	CONTRACT WORK	7,970	6,905	6,220	7,032	3 YR AVERAGE	7,032	7,032
17	TRANSPORTATION EXPENSES	2,400	2,783	2,895	2,693	3 YR AVERAGE	2,693	2,693
18	OTHER PLANT MTCE							
19	OFFICE SALARIES	36,022	50,584	43,916	43,916	USE 2020	43,916	43,916
20	MANAGEMENT SALARIES	20,400	56,835	105,425	105,425	UPDATED	66,932	66,932
21	EMPLOYEE PENSIONS & BENIFITS	6,048	5,915	6,073	6,012	3 YR AVERAGE	6,012	6,012
22	UNCOLLECTIBLE ACCOUNTS							
23	OFFICE SERVICES	9,480	9,504	9,912	9,632	3 YR AVERAGE	9,632	9,632
24	OFFICE SUPPLIES AND EXPENSE	10,506	11,769	11,084	11,120	3 YR AVERAGE	11,120	11,120
25	PROFESSIONAL SERVICES	5,000	6,450	5,138	5,529	3 YR AVERAGE	5,529	5,529
26	INSURANCE	11,933	4,862	5,646	7,480	USE W-5224	14,730	14,730
27	REGULATORY COMMISSION EXP	3,774	2,699	3,079	3,184	3 YR AVERAGE	3,184	3,184
28	GENERAL EXPENSE	2,249	1,666	1,679	1,865	3 YR AVERAGE	1,865	1,865
29	EXPENSES CAPITALIZED							
30	SUBTOTAL OF OPERATING EXPENSES	185,866	220,731	262,678	269,368	0	238,125	238,125
31								
32	DEPRECIATION	9,880	9,912	9,992	9,928	UPDATED	13,678	13,678
33								
34	TAXES:							
35	REAL PROPERTY TAXES	2,069	2,010	1,702	1,702	USE 2020	1,702	1,702
36	OTHER TAXES	3,411	3,451	3,511	3,511	USE 2020	3,511	3,511
37	PAYROLL TAXES	6,007	5,185	5,529	5,529	USE 2020	5,529	5,529
38	STATE FRANCHISE TAXES	800	800	800	800		800	800
39	FEDERAL TAXES	0	1,617	(1,617)	0		0	16,255
40								
41	EXPENSES - FOR OPERATIONS	208,033	243,706	282,595	290,838	0	263,345	279,600
42								
43								
44	NET INCOME FROM UTILITY OPERATIONS	16,823	(22,791)	(37,545)	(61,538)	0	12,705	59,550
45								
46	NON-UTILITY INCOME	55	55	79				
47	NON-UTILITY EXPENSE	1,000	(31,000)					
48	INTEREST EXPENSE	(40)	(228)					
49								
50	NET REVENUE (per CPUC report)	17,838	(53,964)	(37,466)	(61,538)	0	12,705	59,550
51								
52								
53	RATE BASE						228,815	228,815
54								
55	RATE OF RETURN (ON RATE BASE)						5.55%	26.03%
56								
57	RATE OF MARGIN						5.05%	23.65%
58								
59	END OF YEAR		2019	2020	2021			
60								
61	UTILITY PLANT		480,345	480,345	630,345	\$150k FOR WELLS		
62	CWIP - will be added to plant at y/e		-					
63	ACCUMULATED DEPRECIATION		(344,652)	(344,652)	(354,644)			
64	WORKING CASH (1/12 OF ANNUAL EXP)		19,844	19,844	22,447			
65	ADVANCES							
66	CIAC - NET		(68,333)	(68,333)	(69,333)			
67	ACCUM DEFERRED ITC'S							
68	DEFERRED INCOME TAXES PAYABLE							
69								
70			87,204	87,204	228,815			
71								
72								
73								
74								

23%

Law Offices
Webb & Carey
A Professional Corporation
402 West Broadway, Suite 400
San Diego, California 92101
TEL(619) 236-1650
FAX(619) 236-1283
pwebb@webbcarey.com

August 16, 2021

Mitchell Shapson
Staff Attorney
California Public Utilities Commission
Office 415.703.2727
Cell 415.519.3366
Mitchell.Shapson@cpuc.ca.gov

Re: Havasu Water Company

Dear Mr. Shapson:

Our office now represents Havasu Water Co. (HWC) with regard to the extension in perpetuity of the easement granted by the United States to HWC for use of a pipeline to distribute water from Lake Havasu to the unincorporated community at Havasu Landing, and the Chemehuevi Indian Tribe's (CIT) claims to the contrary in the Central District of California lawsuit, *Chemehuevi Indian Tribe v. Havasu Water Co. et al.*, Case No. 20-471.

You last corresponded with HWC's prior counsel, Fred Pardes on July 28, 2016, indicating that all further correspondence to the Public Utilities Commission (PUC) concerning this easement should be directed to you. If this matter has been transferred elsewhere within the PUC, we would appreciate your forwarding this correspondence to the appropriate department, with a copy to us, so we may update our files.

This correspondence will respond to your questions concerning the easement and its extension in perpetuity by the San Bernardino County Board of Supervisors in 1981, and request that the PUC provide us with the current forms to initiate a petition to further condemn the United States' easement, pursuant to the rules established in P.U.C. §1405.1, given that the United States is an ordinary proprietor of the land through which the easement was granted, subject to California's jurisdiction, as with any other private landowner in California, *Paul v. United States*, 371 U.S. 245, 264 (1963), and the fact that since HWC is a public utility water corporation franchise, it "may condemn any property necessary for the construction and maintenance of its water system," under P.U.C. §§618, and 6265.¹ See for e.g., *Shell Cal.*

¹ At issue "is not the number or type of customers, but whether the utility has dedicated its property to public use. Here [HWC] has so dedicated its property and has submitted to the

Pipeline Co. v. City of Compton, 35 Cal.App.4th 1116, 1126 (1995), where Shell Oil's original franchise was transferred to its public utility subsidiary, which was then allowed, after 40 years of continuous use, to condemn 31,152 feet of pipeline easements through the city streets of Carson and South Central Los Angeles, for a total of \$105,000 at \$3.37 per foot. Here, HWC "surrendered the benefits associated with private control of its pipeline and subjected itself to regulation by the PUC. With this burden comes the benefit of the right to condemn." *Id.*, at 1124. Similarly, here, "the history of [more than 60 years] continuous use of the pipelines in their present location indicates public necessity for continuation of the existing use. (*Kachadoorian v. Calwa County Water Dist.* (1979) 96 Cal.App.3d 741, 749.)" *Id.*, at 1126.

Condemnation of the easement will end, once and for all, the CIT's seemingly unending efforts to oust HWC from its 62 year old business. With condemnation of the easement, HWC will own the easement rights outright, and no longer be subject to the vagaries of ownership by the federal government, whose bureaus over the last 62 years have lurched between the inherently conflicting interests of the CIT and the non-Indian residents of Havasu Landing, for whom the government owes an equal duty to provide continuing access to the Colorado River water in Lake Havasu.

The power of the Federal Government to acquire land within a State by purchase or by condemnation without the consent of the State is well established. *Kohl v. United States*, 91 U.S. 367, 371. But without the State's "consent" the United States does not obtain the benefits of Art. I, § 8, cl. 17, its possession being simply that of an ordinary proprietor. *James v. Dravo Contracting Co.*, 302 U.S. 134, 141-142 (1937). *Paul v. United States*, 371 U.S. 245, 264 (1963).

The power of the Federal Government to acquire land within a State is codified in 40 U.S.C. 255, and Cal. Gov. C. §111, which set forth the procedures for ceding jurisdiction to the United States, which procedures were never executed with regard to the strip of land at issue here. *United States v. Williams*, 84 F. App'x 678, 680 (7th Cir. 2003); *U.S. v. Pincombe*, Case No. 2:14-cr-00178, at *3 (D. Nev. Mar. 2, 2017). 40 U.S.C. §255 provides: "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted. 40 U.S.C. § 3112 (a) provides: "It is not required that the Federal Government obtain exclusive jurisdiction in the United States over land or an interest in land it acquires," and 40 U.S.C. §3112(c), provides that:

jurisdiction of the CPUC. That is all that is required to become a public utility." *Unocal California Pipeline Co. v. Conway* (1994) 23 Cal.App.4th 331, 335. "Where the Legislature provides by statute that a use, purpose, object, or function is one for which the power of eminent domain may be exercised, [as in P.U.C. §618 for water corporations] such action is deemed to be a declaration by the Legislature that such use, purpose, object, or function is a public use." C.C.P. §1240.010.

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“It is conclusively presumed that jurisdiction has not been accepted until the government accepts jurisdiction over land as provided in this section,” which requires federal acceptance of a cession of jurisdiction over federal lands by a state which is generally recorded in the Federal Register.

Where, as here, the United States acquires only a proprietary interest in property within State boundaries, the State retains all the jurisdiction over the area which it would have if a private individual rather than the United States owned the land. <https://publiclandjurisdiction.com/>. “The Property Clause has never been interpreted as an impediment to the application of state law or regulations such as this condemnation action. ‘The Property Clause itself [Art. I, § 8, cl. 17] does not automatically conflict with all State regulation of federal land.’ *California Coastal Comm. v. Granite Rock Co.*, 480 U.S. 572, 580 (1987). ‘[F]ederal ownership of lands within a State does not withdraw those lands from the jurisdiction of the State.’ *Kleppe v. New Mexico*, 426 U.S. 529, 544 (1976), citing *Wilson v. Cook*, 327 U.S. 474, 487-88 (1946) and *Surplus Trading Co. v. Cook*, 281 U.S. 647, 650 (1930).” *City of Joliet v. Mid-City National Bank of Chicago*, 05 C 6746, at *5 (N.D. Ill. 2008).

Moreover, title to Indian lands is not in dispute here, since title is admittedly held by the United States, FAC ¶13, and the CIT has made no claim, and can make no claim, to quiet title in anyone other than the United States. *Robinson v. U.S.*, 586 F.3d 683, 688 (9th Cir. 2009), “a suit that does not challenge title but instead concerns the use of land as to which title is not disputed can sound in tort or contract and not come within the scope of the Quiet Title Act (“QTA”). ... “Because, pragmatically, the effect of this suit as pleaded is not to challenge the federal government's title, the QTA does not apply to the Robinsons' suit.”

Therefore, HWC’s easement from the United States remains subject to condemnation by the HWC, since it is a public utility, P.U.C. §618, and as a public utility franchise, is granted, as is “every water franchise so granted,” “the right to use, or to lay and use, pipes, ditches, flumes, conduits, and appurtenances for the purpose of transmitting and distributing water.” P.U.C. §6265. Both the easement and the HWC are regulated by the PUC, which has exclusive jurisdiction over all such public utilities, P.U.C. §§216(a)(1), 701.10, 768, 2101 and 2701, and since the easement and the land through which the easement passes is titled in fee simple to the United States, neither of which has ever been transferred to the CIT.

Legal Status of HWC’s Easement in Perpetuity

The following will provide you with the procedural background and the legal status of the United States’ acquisition of the property through which the easement was granted and extended in perpetuity, and the explicit exclusion of that property from any purported transfer to the CIT by way of any land patent or executive “re-designation” of reservation property by the Bureau of Land Management (BLM), at the insistence of the admittedly partisan Bureau of Indian Affairs

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(BIA), which, in this dispute acts only for the CIT, and not for the Bureaus of Land Management, Reclamation or the non-Indian parties with which it is in conflict.

1. The July 8, 1940 Act of Congress

On July 8, 1940 Congress enacted Public Law 76-730, 54 Stat. 744, which authorized the purchase of 7,778 acres of Indian land for \$100,000 on which to build Parker Dam. This land had previously been withdrawn from settlement and entry by Secretarial Order on February 2, 1907. Pursuant to P.L. 76-730, this land was then administered as public lands by the Bureau of Sports Fisheries and Wildlife (which is now the BLM and U.S. Fish & Wildlife Service (USFWS)).

Therein the Act provides: “That, in aid of the construction of the Parker Dam project, authorized by the Act of August 30, 1935 (49 Stat. 1028), there is hereby granted to the United States, its successors and assigns, subject to the provisions of this Act, all the right, title, and interest of the Indians in and to the tribal and allotted lands of the Fort Mohave Indian Reservation in Arizona and the Chemehuevi Reservation in California as may be designated by the Secretary of the Interior.” That designation included all land between the 450 contour line and the 460 contour line of the west bank of the lake, a strip of lake front land approximately 1500' x 21 miles.

2. 1959 HWC Concession Contract with Bureau of Sports Fisheries and Wildlife

On August 20, 1959, HWC entered into and began continuously operating a concession contract with the Bureau of Sports Fisheries and Wildlife, Contract No. 14-16-993-389, to deliver water to the Havasu Landing Community, California, on the west side of Lake Havasu. That concession consisted of a pipeline through the 1500' strip of land, pumping station, storage tanks and a treatment plant for potable water.

HWC is a public utility, under the jurisdiction of the PUC, per P.U.C. §§701.10, 2101, and 2701. In 1974 it was also under the jurisdiction of San Bernardino County, since it had less than 200 service connections. The San Bernardino Environment and Health Code §33.0611 then provided that the County “shall monitor and enforce all applicable laws and orders for public water supply systems with less than two hundred (200) service connections within its jurisdiction pursuant to the authority cited in Chapter 1 of this Environment and Health Code, and elsewhere as provided by law, ” and §33.024(c), listed the grounds for denial of an operating permit. Today, HWC has 361 customers (with 260 connections) and is now regulated by the PUC, Cal. Dept. of Public Health, Division of Drinking Water and Environmental Management (DDWEM), San Bernardino County Departments of Health, Fire Authority, Franchise and Land Use Services, Local Agency Formation Commission of San Bernardino County (LAFCO), the California State Water Resources Control Board (SWRCB), California Colorado River Board, and is a member of the rural California Water Association.

3. 1974 Secretarial Order Reserving HWC's Contract Rights

In 1974, the BIA realized that after 34 years Lake Havasu had failed to rise to the 460 contour line on the west bank of the Colorado River, thereby leaving an approximately 1500' x 21 mile strip of land owned and operated by what is now the United States' BLM and USF&W, pursuant to Public Law 76-730, 54 Stat. 744. The BIA then sought to "re-designate" that strip of land as trust land for the Chemehuevi Indian Tribe by way of Rogers Morton's November 1, 1974 Secretarial Order. **(Exhibit A)**

Therein the 1974 Secretarial Order provided that: "Pursuant to the determination made by the Acting Secretary on August 15, 1974, this order corrects the designation by Secretary Ickes of November 25, 1941, that certain lands of the Chemehuevi Indian Reservation should be taken for use in the construction of Parker Dam pursuant to the Act of July 8, 1940, 54 Stat. 744."

However, the BIA failed to follow its own regulations and directives for transferring the land into trust for the tribe, 25 C.F.R. 151.13, and the *DOI Fee to Trust Handbook*, Release #16-47, at 57 of 100 (June 28, 2016), when it failed to remove HWC's encumbrance on the 1500' strip of land, which CIT claims makes it less marketable. and left that strip of land titled solely in the name of the United States, which remained subject to the HWC's rights under the concession contract and later its easement, as held in *In re Sunflower Racing* 219 B.R. 587, 602 (Bankr. D. Kan. 1998).

In fact, the 1974 Secretarial Order explicitly reserved all of HWC's rights under its concession Contract No. 14-16-993-389 with BLM and USF&W, and provided that:

This corrected designation is subject to the reservation of the following rights in the United States...(d) The right of the United States to make **irrevocable extensions** of the permit of any person now entitled to use the aforesaid land until August 15, 1980, if such person shall be determined by the Department of the Interior Office of Hearings and Appeals to be a full-time resident of the permitted lands for a substantial portion of each year, (e) The corrected designation is also **subject to all valid existing rights**, including specifically the following rights of private persons: (1) The rights **of all persons holding concession contracts** and special use permits referred to in Attachment A hereto, during the time that such rights shall exist under the terms of the concession contracts and special use permits, including the right of contractors, concessioners and permittees under the contracts and permits referred to in Attachment A and their agents, employees, invitees, including the public in the case of concession agreements, to have access to the lands which are the subject of said contracts and permits at such reasonable locations as the Secretary of the Interior may determine." (emphasis added).

4. The 2010 Land Patent Reserving HWC's Contract and Easement Rights

The 1974 Secretarial Order's reservation of HWC's rights was further memorialized in the 2010 Bureau of Land Management Land Patent, No. 04-2010-0007, (**Exhibit B**), which expressly excluded the land through which HWC's easement passes from the purported transfer of the 1500' strip to the tribe, and which "does not...alter or change in any way whatsoever access rights that may or may not [have] exist[ed]" at that time, stating: "Whereas, an Order of the Authorized Officer of the Bureau of Indian Affairs is now deposited in the Bureau of Land Management, **directing that**, pursuant to the Act of January 12, 1891 (26 Stat. 712), as amended by the Act of March 1, 1907 (34 Stat. 1015), and other acts, **a trust patent issue** to the Chemhuevi Tribe of Mission Indians ("Tribe") for the above described lands **excluding the following lands and subject to any existing valid rights associated therewith: ...**

3. Those lands granted in the State of California as school sections on July 10, 1895, located in sec. 36, T. 4N., R. 25 E, and sec. 36, T. 5 N., R 24 E. (where HWC's storage tanks are located)

4. Those lands taken by the United States, according to the Secretary of the Interior's designation (as amended) pursuant to P.L. 76-730, 54 Stat. 744. (where HWC's pipeline is buried)

EXCEPTING AND RESERVING TO THE UNITED STATES, 1. As to the lands designated in the Determination of August 15, 1974, and the Secretarial Order of November 1, 1974 (herein referred to as "said lands"), all such exceptions, reservations, conditions, and rights as set forth, verbatim, in paragraphs (a) through (e) of the Secretarial Order of November 1, 1974, which is attached to this patent." (**Exhibit B**, emphasis added).

Therefore, the 2010 land patent to the CIT didn't convey HWC's preexisting rights to maintenance and use of its' pipeline. *Swoboda v. Pala Mining, Inc.*, 844 F.2d 654, 658 (9th Cir. 1988), which holds:

The Indian trust patent of February 4, 1920, conveyed the land to the Pala Band "subject to all the restrictions and conditions contained in the said Act of Congress of January 12, 1891." Supp. ER, Tab 121, Exh. B at 3. Hence, the land patent itself incorporated by reference the condition that "no patent shall embrace any tract or tracts to which existing valid rights have attached in favor of any person under any of the United States laws providing for the disposition of the public domain. . . ." Consequently, the district court correctly determined that the trust patent for the Pala Indian Reservation does not preclude ownership by Swoboda of extralateral rights in the pegmatite dike vein within the surface of the reservation. *Id.*

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Similarly, here, the BLM's 2010 land patent does not preclude HWC's ownership of pre-existing rights originally obtained through its concession contract with the Bureau of Sports Fisheries and Wildlife, which were re-confirmed by the United States' 1976 settlement agreement and the extension of the easement in perpetuity.

The reservation of such pre-existing contract and easement rights in the 2010 land patent was similarly extended to the Metropolitan Water District of Southern California's pre-existing easement rights in the 2010 land patent, which also provides:

EXCEPTING AND RESERVING TO THE UNITED STATES:

SUBJECT TO:

1. The rights of the Metropolitan Water District of Southern California under that District's contract with the United States, captioned "Cooperative Contract for Construction and Operation of Parker Dam," dated February 10, 1933 (Designated 11r-712), as supplemented and amended by contracts between the same parties dated September 29, 1936, April 7, 1939, and December 16, 1952.

HWC's pre-existing contract and easement rights are therefore entitled to the same equal protection, force and effect, as that afforded the United States' grant of the easement to Metropolitan Water District's to distribute Colorado River water from Lake Havasu through the United States property held in trust for the CIT.

5. 1976 Settlement Agreement Granting Easement

Upon learning that HWC's rights under its concession contract had been specifically reserved from the 1974 Secretarial Order, and that such encumbrance prevented the transfer to the tribe of the 1500' x 20-40' strip of land in which HWC's pipeline had been laid, HWC filed suit in 1974 against the Secretary of the Interior to prevent the transfer of the 1500' strip of land to the Chemehuevi tribe and to preserve HWC's continuing rights to use the pipeline to supply its customers with potable water from the Colorado River in *Havasu Landing, Inc., et al. v. Morton, et al.*, U.S.D.C., C.D. Cal., Civil No. 74-3665-EC.

In 1976, HWC settled its claims with the United States and the CIT. Therein, it was granted a 30 year easement (1976-2006) "for right of way for the sole purpose of transporting water across said easement for the use of Grantee (HWC) and its customers, on, over, and across" the 1500' x 20-40' strip of land in Township 5 North, Range 25 East, Section 31 of San Bernardino County, which was to be recorded with the County Recorder. **(Exhibit C)**

Therein, both the government and the tribe also agreed that the easement would be automatically extended “for such longer term as may be required by any government agency having jurisdiction over the operations of HWC,” “for the purpose of providing sufficient access to the Colorado River.” All that was required was that the agency have the jurisdiction to issue a resolution that “may require” a longer term. Therein, the easement provided:

This Easement is subject to any prior valid existing right or adverse claim and is for a period of 30 years, so long as said easement shall be actually used for the purpose above specified provided, however, that **in the event** the Public Utilities Commission of the State of California or any other governmental agency having jurisdiction over the operations of Grantee requires this easement to have a longer term for the purpose of providing sufficient access to the Colorado River, **Grantor agrees to extend the term of this easement for such longer term as may be required** by the California Public Utilities Commission or such other governmental agency; (emphasis added) **(Exhibit A to Exhibit C)**

Under section 806 of the Civil Code "the extent of a servitude is determined by the terms of the grant . . .". . . ."The instrument, `unless it is ambiguous, must be construed by a consideration of its own terms. The meaning and intent thereof is a question of law..." *Sarale v. Pacific Gas*, 189 Cal.App.4th 225, 245 (2010), citing *Pasadena v. California-Michigan etc. Co.*, 17 Cal.2d 576, 578 (1941).

6. 1981 San Bernardino County Board of Supervisors Extends Easement in Perpetuity

On May 4, 1981, the San Bernardino County Board of Supervisors, which had jurisdiction over HWC that may require a longer term for the easement under San Bernardino Environment and Health Code §§33.024(c), 33.0611, and 36.022, unanimously adopted Resolution No. 81-134, whereby “such longer term [of the easement] may be required” by the County “for the purpose of providing sufficient access to the Colorado River,” pursuant to California Health & Safety Code 4010.8 and Section 36.022 of the Environment and Health Code of San Bernardino County. Therein, the County expressly found that: “it would be in the best interests of the community at Havasu Landing if the [easement] is determined to be an easement in perpetuity rather than an easement for thirty years.” **(Exhibit D)**

The extension of the easement was automatic “in the event” “such longer term may be required” by any such agency with jurisdiction over HWC. The condition for extension did not state that the word “require” must appear in the County’s Resolution No. 81-134; rather, it only provided that if the County “may require,” i.e., “had jurisdiction to require” a longer term for any reason, including “the best interests of the community at Havasu Landing,” the United States and the tribe had already agreed that the easement would be extended for any such longer term that the agency thought best, including in perpetuity, since there was no time limitation on such longer term.

7. The United States and the CIT Waived Any Challenge to the Easement

Since San Bernardino County Resolution No. 81-134 was timely noticed, and was unanimously adopted without opposition from the United States or the tribe, they have waived any claim that the easement was not extended in perpetuity. Nor was there any appeal of the grant of the easement within 30 days of it being granted on June 22, 1976, or extended on May 4, 1981, as required for such an appeal by 43 C.F.R. §4.411. *Tahoe Vista Conc.Cit. v. Co. Placer*, 81 Cal.App.4th 577, 594 (2000), finding plaintiff failed to exhaust administrative remedies, after timely notice of the Board of Supervisors' agenda. Nor was there any exhaustion of remedies before the PUC. P.U.C. §1759; *Sarale v. Pacific Gas*, 189 Cal.App.4th 225, 230-31 (2010). Nor was it challenged under the Administrative Procedure Act, per 28 U.S.C. §2401(a), within 6 years of the June 22, 1976 granting of the easement, the May 4, 1981 Resolution No. 81-134 extending the easement in perpetuity, or within 6 years of June 22, 2006, when the easement would have expired but for the 1981 extension in perpetuity.

There also can be no collateral attack by the tribe or anyone else upon the United States' agreement to extend the easement more than 6 years after these administrative and legal remedies have expired, per 28 U.S.C. §2401(a). *Wind River Mining Corp. v. United States*, 946 F.2d 710, 716 (9th Cir. 1991), *Big Lagoon Rancheria v. California*, 789 F.3d 947, 953 (9th Cir. 2015)(en banc), and *Hall v. Tesero High Plains Pipeline Co.*, 478 F. Supp. 3d 834 (D.N.D. 2020).

8. The CIT's Current Action is Barred by the Statute of Limitations and Laches

The CIT's current federal action is barred by: (1) California Code of Civil Procedure §338 for claims filed more than three years after they accrued based upon violation of the INA, 25 U.S.C. §177, the IRWA, 25 U.S.C. §332-38, the IRA, 25 U.S.C. §5123(e), common law trespass, and injury to real property; (2) California Code of Civil Procedure §343 for claims filed more than four years after they accrued for relief not otherwise provided for; (3) the Administrative Procedure Act, 28 U.S.C. §2401(a), for claims filed more than 6 years after the June 22, 1976 granting of the easement, the May 4, 1981 Resolution No. 81-134 extending the easement in perpetuity, and more than 6 years after June 22, 2006, when the easement would have expired but for the 1981 extension in perpetuity, and (4) the doctrine of laches due to the unreasonable delay in bringing the action, as held in *Apache Survival Coalition v. U.S.*, 21 F.3d

895, 910 (9th Cir. 1994),² followed by *Save Peaks Coalition v. U.S. Forest Service*, No. CV 09-8163, (D. Ariz.2010).

Here the CIT's current federal action admits that the parties agreed to the settlement terms by which the easement was extended in perpetuity, and that the action was not filed for 14 years following actual notice that HWC continued to use the easement after 2006.

9. HWC Has Also Acquired a Prescriptive Easement

Even if HWC's continued use of the extended easement for the pipeline is not enforced by way of contract, HWC's continuous use of the pipeline since 1959 has ripened into a prescriptive easement that passed with the land, when the 2010 Land Patent was issued to the Chemehuevi by the BLM. C.C.P. §§318 and 321; *Shonafelt v. Busath*, 66 Cal.App.2d 5, 8 and 14 (1944), finding plaintiffs were in "possession and use of the easement, and held such possession openly, continuously [for more than 5 years] and notoriously, not clandestinely... under a claim of right, and not by permission, the possession being open and notorious, exclusive and hostile," and that "the rule is well established in this state that an easement as a right of way is incident to the land and passes with it unless expressly excepted by the terms of the deed. (Civ. Code, secs. 1084, 1104; *Rubio Canon etc. Assn. v. Everett*, 154 Cal. 29, 33)."

Moreover, because the parties agreed that the SBBOS Resolution No. 81-134, may require the easement to be extended in perpetuity, the United States and the tribe are estopped to deny the extension, and have unclean hands having consented to the extension and waived and abandoned any claims to the contrary. They have also conceded HWC's openly hostile, actual,

² Citing *Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324, 1338-39 (10th Cir. 1982), three year delay resulted in laches; *National Parks and Cons. Ass'n v. Hodel*, 679 F. Supp. 49, 53 (D.D.C. 1987)(same); *City of Rochester v. United States Postal Serv*, 541 F.2d 967, 977 (2d Cir. 1976), finding inexcusable delay when suit was filed less than two years after the relevant agreement; *Friends of Yosemite v. Frizzell*, 420 F. Supp. 390, 397 (N.D. Cal. 1976), finding sufficient delay when suit was filed "over 3 years after the project was publicized and over 2 years after [the relevant agency action]"; *Smith v. Schlesinger*, 371 F. Supp. 559, 561 (C.D. Cal. 1974), finding inexcusable delay when suit was filed over seven months after work on a project had begun. See also, *U.S. v. State*, No. CV 9213, Subproceeding No. 05-4, at *6 (W.D. Wash. 2005), finding the Tulalips claims barred by laches due to the prejudice to the Suquamish as a result of a 15 year delay in the filing of the Tulalip claims, citing *Jarrow Formulas, Inc., v. Nutrition Now, Inc.*, 304 F. 3d 829, 835 (9th Cir. 2002), quoting *Boone v. Mech. Specialties Co.*, 609 F. 2d 956, 958 (9th Cir. 1979); *Gibson Brands, Inc. v. John Hornby Skewes & Co.*, Case No. CV 14-00609, *5-6 (C.D. Cal. 2014), finding 15 year delay sufficient to support laches defense; and *United States v. Washington*, Case No. C70-9213, at *6 (W.D. Wash. 2020), finding Upper Skagit entitled to pursue evidence of its' equitable affirmative defenses of laches.

exclusive, notorious and continuous adverse possession of the extended easement for more than the statutorily required 5 years for a prescriptive easement. C.C.P. §§ 318 and 321; *Hinrichs v. Melton* (2017) 11 Cal.App.5th 516, 525; *Shonafelt v. Busath*, 66 Cal.App.2d 5, 8 and 14 (1944).

Finally, the “BIA will not enforce against holdover grantees if the parties notify BIA that they are in good faith negotiations,” in which HWC and the BIA have been continuously engaged since at least 1974. 80 Fed. Reg. 72531.

10. SWRCB Has Also Required Extension of the Easement in Perpetuity

The California SWRCB has also required that the easement be extended for such longer term as was required by the County of San Bernardino, “for the purpose of providing sufficient access to the Colorado River,” when it delayed the funding of HWC’s July 30, 2020, \$498,500 Planning Project No. No. 36-10017-001P, until the CIT’s erroneous claims were dismissed or otherwise resolved.

The SWRCB is therefore the second governmental agency having jurisdiction over the operations of HWC, that has the authority to require, and has now required that the easement be extended in perpetuity for the purpose of providing sufficient access to the Colorado River for the Havasu Landing Community, just as the May 4, 1981, San Bernardino County Board of Supervisors Resolution No. 81-134 required that the easement be extended in perpetuity for the purpose of providing sufficient access to the Colorado River in the best interests of the Havasu Landing Community.

Conclusion

Therefore, for the foregoing reasons, HWC requests copies of the current forms for initiating condemnation of the United States’ easement, as extended in perpetuity, pursuant to both California and federal procedures for condemnation actions by public utility water corporation franchises, P.U.C. §1405.1 and Fed. R. Civ. P., Rule 71.1, as found in *U.S. v. 1.33 Acres*, 9 F.3d 70, 71, 72-74 (9th Cir. 1993), upholding a condemnation action undertaken to secure an easement necessary to dispose of federal property; *United States v. 1.41 Acres of Land*, No. C 14-01781 WHA, at *4 (N.D. Cal. 2014).³

³Property rights and liability in tort are areas of state, not federal, law. *South Carolina Pub. Serv. Auth. v. FERC*, 850 F.2d 788, 792 n. 3 (D.C. Cir. 1988), citing *Georgia Power Co. v. Sanders*, 617 F.2d 1112 (5th Cir. 1980), cert. denied, 450 U.S. 936 (1981) (relying, in part, on the state’s strong interest in avoiding the displacement of its laws governing property rights, the court concluded that state law should be applied to determine the appropriate compensation in condemnation actions under the FPA). *DiLaura v. Power Authority of State of N.Y.*, 786 F. Supp. 241, 249 (W.D.N.Y. 1991). See also, *City of Stilwell v. Ozarks Rural Elec. Coop. Corp.*, 79 F.3d

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We would also appreciate the opportunity to meet with the PUC in an effort to complete the prior attempts to resolve the issues surrounding the extension of the United States' easement in perpetuity. It appears from the documents that we have been provided that the prior attempts to resolve these issues were held at the offices of the PUC, and included representatives from both the engineering and legal Departments of the PUC, the U.S. Department of Justice, Cal. State Water Resources Control Board, and the Cal. Water Association. As set forth in PUC Resolution W-5059, dated September 17, 2015, at which time it appears the PUC was not made aware of the SBBOS Resoution 81-134 extension of the easement in perpetuity, "the Division of Water and Audits (DWA) will work either as a mediator or identify a mediator so that HWC and the Chemehuevi Indian Tribe can resolve this matter after the approval of this GRC."

Most recently, at the August 12, 2021 Scheduling Conference with Judge Wu, all parties were strongly encouraged to pursue such resolution of this dispute without the expense of further litigation, and the parties are required to report back to Judge Wu as to such efforts by noon on August 24, 2021. We are hopeful that the PUC will be able to provide a date certain for such further efforts that can be timely reported to Judge Wu, even if such date is after the next scheduling conference on August 26, 2021.

We look forward to discussing these issues at your earliest convenience.

Sincerely,
/s/Patrick D. Webb
Patrick D. Webb

1038, 1043-46 (10th Cir.1996) (REACT does not preempt Oklahoma condemnation statute), *Tlingit-Haida Reg'l Elec. Auth. v. Alaska*, 15 P.3d 754, 766-68 (Alaska 2001) (similar). *City of Cookeville. v. Upper Cumberland Electric Membership Corp.*, 484 F.3d 380, 391 (6th Cir. 2007).

Exhibit A



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SECRETARIAL ORDER

Pursuant to the determination made by the Acting Secretary on August 15, 1974, this order corrects the designation by Secretary Ickes of November 25, 1941, that certain lands of the Chemehuevi Indian Reservation should be taken for use in the construction of Parker Dam pursuant to the Act of July 8, 1940, 54 Stat. 744. The Chemehuevi Tribe has full equitable title to all those lands within the Chemehuevi Indian Reservation designated to be taken by Secretary Ickes in 1941 between the operating pool level of Lake Havasu on the east (elevation 450 feet m.s.l.) and the following north and south boundaries:

North Boundary

From a point in Section 18 T5N R25E, located as follows: Beginning at the SE Corner of said section-18 S89°22'W 711 ft; thence N00°21'E a distance of 1304 ft; thence N51°20'W a distance of 169. ft; then S01°16'E a distance of 1130 ft. From said point the North Boundary is

EXHIBIT H

EXHIBIT 18

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established on a line $S74^{\circ}08'E$ to the operating pool level of the west bank of Lake Havasu (elevation 450 feet m.s.l.).

South Boundary

From point on the south line of Sec. 33, T4N, R26E which is $3156'$ $N69^{\circ}51'E$ a distance of $350'$ more or less to the operating pool level of the west bank of Lake Havasu (elevation 450 feet m.s.l.).

This corrected designation is subject to the reservation of the following rights in the United States:

(a) The United States, acting under the Act of June 28, 1946 (60 Stat. 338), retains the rights to deposit spoil and snags from Lake Havasu on said lands at locations mutually agreeable to the United States and the Tribe. Such agreement will not be unreasonably withheld by the Tribe.

(b) The United States retains the right to flood and seep said lands in connection with its operations under the Act of December 21, 1928 (45 Stat. 1057), the Act of August 30, 1935 (49 Stat. 1028), and the said Act of June 28, 1946, (60 Stat. 338), as amended, and the Tribe will not construct or install or permit the

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construction or installation of any buildings for human habitation on any lands included in this corrected designation that are located within three hundred (300) feet landward of Lake Havasu as measured along a line horizontal to a perpendicular rising from the elevation level of four hundred fifty (450) foot m.s.l.; provided, however, that nothing herein shall be construed as imposing any restriction not now in existence whatsoever with respect to any land not included in this corrected designation which is contiguous to the land so included and which is within three hundred (300) feet landward of Lake Havasu as so measured.

The Tribe shall have the exclusive right to use and occupancy of any lands below the operating pool level of the west bank of Lake Havasu (elevation 450 feet m.s.l.) located between the north and south boundaries of this corrected designation for hunting, fishing, recreational and other similar purposes, and may, with the prior approval of the Secretary of the Interior, construct or install or permit the construction or installation of improvements on such lands.

The United States agrees that, should the operating pool level of Lake Havasu be modified to be below the elevation

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450 feet m.s.l., the Secretary of the Interior will correct this designation so as to confirm, determine and establish the tribe's full equitable title to all lands between the new operating pool level and the elevation 450 feet m.s.l.

(c) The United States, its officers, agents and employees shall, at all proper times and places, freely have ingress to, passage over and egress from said lands for the purpose of exercising the rights specified in this order and for all lawful purposes in connection with (i) protection, maintenance and administration of the Havasu National Wildlife Refuge, (ii) United States responsibilities relating to administration of the Chemehuevi Indian Reservation and (iii) United States responsibilities relating to Lake Havasu and the Colorado River. The right of ingress, passage, and egress provided for in this subparagraph (c) relate only to said lands and are not intended, nor do they create, any rights with respect to any other lands.

(d) The right of the United States to make irrevocable extensions of the permit of any person now entitled to use the aforesaid land until August 15, 1980, if such person shall be determined by the Department

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of the Interior Office of Hearings and Appeals to be a full-time resident of the permitted lands for a substantial portion of each year.

(e). The corrected designation is also subject to all valid existing rights, including specifically the following rights of private persons:

(1) The rights of all persons holding concession contracts and special use permits referred to in Attachment A hereto, during the time that such rights shall exist under the terms of the concession contracts and special use permits, including the right of contractors, concessioners and permittees under the contracts and permits referred to in Attachment A and their agents, employees and invitees, including the public in the case of concession agreements, to have access to the lands which are the subject of said contracts and permits at such reasonable locations as the Secretary of the Interior may determine.

(11) The rights of the Metropolitan Water District of Southern California under that District's contract with the United States, captioned "Cooperative

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Contract for Construction and Operation of Parker Dam," dated February 10, 1933 (Designated 11r-712), as supplemented and amended by contracts between the same parties dated September 29, 1936, April 7, 1939 and December 16, 1952.

Rogers C. B. Morton

NOV 1 1974

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EXHIBIT B

The United States of America

Serial No. CACA 40253

To all to whom these presents shall come, Greeting:

WHEREAS, there has been deposited in the Bureau of Land Management an order of the Secretary of the Interior dated February 2, 1907, withdrawing from settlement and entry the following described land:

San Bernardino Meridian, California

Fractional townships T. 4 N., R. 25 E., T. 4 N., R. 26 E., T. 5 N., R. 25 E., T. 6 N., R. 25 E., the E/2 of T. 5 N., R. 24 E., and secs. 25, 26, 35, and 36 of T. 6 N., R. 24 E.

and

Whereas, an Order of the Authorized Officer of the Bureau of Indian Affairs is now deposited in the Bureau of Land Management, directing that, pursuant to the Act of January 12, 1891 (26 Stat. 712), as amended by the Act of March 1, 1907 (34 Stat. 1015), and other acts, a trust patent issue to the Chemehuevi Tribe of Mission Indians ("Tribe") for the above described lands excluding the following lands and subject to any existing valid rights associated therewith:

1. Those lands contained in Havasu National Wildlife Refuge, as depicted on the Bureau of Land Management Survey accepted November 12, 2002.
2. Those lands contained in Railroad Patent 543283, sec. 1, T. 5 N., R. 24 E.
3. Those lands granted to the State of California as school sections on July 10, 1895, located in sec. 36, T. 4 N., R. 25 E., and sec. 36, T. 5 N., R. 24 E.
4. Those lands taken by the United States, according to the Secretary of the Interior's designation (as amended) pursuant to P.L. 76-730, 54 Stat. 744.

This patent does not create access rights across any lands owned in trust for the Tribe described in this patent or alter or change in any way whatever access rights that may or may not exist.

The above described lands owned in trust are also described as:

San Bernardino Meridian, California

T. 5 N., R. 24 E.,
sec. 1, SE 1/4;
sec. 2, all;
sec. 3, all;
secs. 10 through 15, inclusive;
secs. 22 through 27, inclusive;
sec. 34, all;
sec. 35, all.

Containing 10,283.45 acres

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T. 6 N., R. 24 E.,
sec. 26, lots 4, 5, 6, 8, and 10, NW1/4NW1/4, S1/2NW1/4,
SW1/4, W1/2SE1/4;
sec. 35, all;
sec. 36, lots 5, 7, 8, 11, and 13, SW1/4NW1/4, SW1/4,
S1/2SE1/4;
Containing 1,539.13 acres

T. 4 N., R. 25 E., excluding all lands therein below the operating
pool level of Lake Havasu, elevation four hundred fifty (450) feet
mean sea level (m.s.l.),
sec. 6, lots 1-10 inclusive;
sec. 7, lots 1-17, inclusive;
sec. 8, lots 1-4, inclusive, and SW1/4SW1/4;
sec. 9, lots 1-6, inclusive;
sec. 10, lots 1-5, inclusive;
sec. 13, lot 1;
sec. 14, lots 1-5, inclusive;
sec. 15, lots 1-5, inclusive, NW1/4NW1/4, S1/2NW1/4,
SW1/4, and S1/2SE1/4;
sec. 16, lots 1-4, inclusive, S1/2NE1/4, S1/2NW1/4, and
S1/2 excepting 1/16 of all coal, oil, and gas, and
other mineral deposits as reserved by the State of
California in Lot 1 and SE1/4NE1/4;
sec. 17, all;
sec. 18, lots 1-12, inclusive, and E1/2;
sec. 19, lots 1-12, inclusive, and E1/2;
secs. 20-22, inclusive;
sec. 23, lots 1 and 2, NE1/4NE1/4, NW1/4NW1/4,
S1/2N1/2, and S1/2;
sec. 24, lots 1-5, inclusive, SW1/4NE1/4, NW1/4NW1/4,
S1/2NW1/4, and S1/2;
sec. 25, lots 1 and 2, W1/2NE1/4, NW1/4, and S1/2;
secs. 26-29, inclusive;
sec. 30, lots 1-12, inclusive, E1/2;
sec. 31, lots 1-8, inclusive, E1/2;
secs. 32-35, inclusive.
Containing 14,787.20 acres

T. 5 N., R. 25 E., excluding all lands therein below the operating
pool level of Lake Havasu, elevation four hundred fifty (450) feet
m.s.l.,
sec. 6, lots 7, 8, 9, and 12;
sec. 7, lots 5, 7, 9, 10, 12, and 13, SW1/4NW1/4; SW1/4,
SW1/4SE1/4;
sec. 17, excluding those lands withdrawn for Havasu
National Wildlife Refuge;

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sec. 18, excluding those lands withdrawn for Havasu National Wildlife Refuge;
sec. 19, all;
sec. 20, all;
sec. 29, all;
sec. 30, all;
sec. 31, all;
sec. 32, all.

Containing approximately 4,289 acres

T. 4 N., R. 26 E., excluding all lands therein below the operating pool level of Lake Havasu, elevation four hundred fifty (450) feet m.s.l.,

sec. 19, lots 1-3, inclusive;
sec. 29, lots 1 and 2;
sec. 30, lots 1-20, inclusive;
sec. 31, lots 1-10, inclusive, S1/2NE1/4, and SE1/4;
sec. 32, lots 1-9, inclusive, SW1/4NE1/4, and S1/2;
sec. 33, lots 1-8, inclusive, and SW1/4SW1/4.

Containing 1,588.23 acres.

Aggregating approximately 32,487 acres altogether.

NOW KNOW YE that the UNITED STATES OF AMERICA, in consideration of the premises, hereby declares that it does and will hold the said tracts of land in trust for the Chemehuevi Indian Tribe of California.

EXCEPTING AND RESERVING TO THE UNITED STATES

1. As to the lands designated in the Determination of August 15, 1974, and the Secretarial Order of November 1, 1974 (herein referred to as "said lands"), all such exceptions, reservations, conditions, and rights as set forth, verbatim, in paragraphs (a) through (e) of the Secretarial Order of November 1, 1974, which is attached to this patent.
2. A right-of-way for road purposes as granted in BIA Document 695-2-980 as to secs. 12 and 13, T. 5 N., R. 24 E.
3. A right-of-way for road purposes as granted in BIA Document 695-3-980 as to secs. 13 and 24, T. 5 N., R. 24 E., 18 and 19, T. 5 N., R. 25 E.
4. A right-of-way for road purposes as granted in BIA Document 695-1-987 as to sec. 19, T. 5 N., R. 25 E.
5. A right-of-way for sewer main purposes as granted in BIA Document 695-3-989 as to S1/2 sec. 19, T. 5 N., R. 25 E.

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6. A right-of-way for road purposes as granted in BIA Document 695-1-980 as to sec. 19, T. 5 N., R. 25 E.
7. A right-of-way for road purposes as granted in BIA Document 695-4-980 as to sec. 19, T. 5 N., R. 25 E.
8. A right-of-way for road purposes as granted in BIA Document 695-1-982 as to secs. 19 and 30, T. 5 N., R. 25 E.
9. A right-of-way for road purposes as granted in R-O-W # 00-09-27-01, in BIA document 695-006-00 dated September 28, 2000, as to secs. 19 and 20, T. 5 N., R. 25 E.
10. A "Memorandum of Agreement" entered into on December 17, 2001 by and between the Bureau of Reclamation, Lower Colorado District, and the Chemehuevi Indian Tribe providing for the cooperative management of those lands and interests therein reserved by the November 1, 1974 Secretarial Order.

SUBJECT TO:

1. The rights of the Metropolitan Water District of Southern California under that District's contract with the United States, captioned "Cooperative Contract for Construction and Operation of Parker Dam," dated February 10, 1933 (Designated 11r-712), as supplemented and amended by contracts between the same parties dated September 29, 1936, April 7, 1939 and December 16, 1952.
2. A right-of-way for electrical line and water pump purposes granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-1-75 as to SE1/4 sec. 1, T. 5 N., R. 24 E., and sec. 6, T. 5 N., R. 25 E.
3. A right-of-way for a 16 KV electric distribution line, granted to Southern California Edison Co., its successors and assigns, in BIA Documents 603-188-388 and 603-188-488, as to W1/2, SE1/4 sec. 12, E1/2 sec. 13, T. 5 N., R. 24 E.; SW1/4 sec. 18, W 1/2, N1/2SE1/4 sec. 19, T. 5 N., R. 25 E.
4. A right-of-way for electrical supply systems, granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-2-75 as to SE1/4 sec. 1, T. 5 N., R. 24 E.
5. A homesite lease issued to Patricia Smith Gardner in Lease B-941-CH-A, BIA Document 3998 as to sec. 19, T. 5 N., R. 25 E.
6. A right-of-way for electrical line purposes granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-21, dated May 20, 1974, as to SW1/4SW1/4 sec. 31, T. 5 N., R. 25 E.
7. A business lease issued to the Needles Unified School District, its successors and assigns, in Lease B-566-CR, BIA Document 695-180-988 and modified in BIA Documents 695-181-988 and 695-182-988, as to sec. 19, T. 5 N., R. 25 E.

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8. A homesite lease issued to Edward D. Smith, Frank G. Smith, and Donald L. Smith for domestic livestock use in Lease B-941-CH, BIA Document 695-3-987 as to secs. 19, 20, 29, and 30, T. 5 N., R. 25 E.
9. A perpetual highway right-of-way issued to San Bernardino County, its successors and assigns, by BIA Document 1425-1957 and described in Document 695-4-8981 and Map IND-260 as to W1/2, NE1/4 sec. 30 and W1/2 sec. 31, T. 5 N., R. 25 E.
10. A right-of-way for an electrical distribution line granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-007-02 and approved in R-O-W # CHEM R 02-24-04, as modified on May 29, 2002, as to secs. 31, T. 5 N., R. 25 E.
11. A right-of-way for electrical line purposes granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-2-86 as to sec. 31, T. 5 N., R. 25 E.
12. A right-of-way for electrical line purposes granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-4-87 as to sec. 31, T. 5 N., R. 25 E.
13. A perpetual highway right-of-way issued to San Bernardino County in BIA Document 16604-1941 as to secs. 31, T. 5 N., R. 25 E and 36, T. 5 N., R. 24 E.
14. A perpetual right-of-way for overhead and underground electrical supply system purposes granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-1-88 as to sec. 19, T. 5 N., R. 25 E.
15. A right-of-way for electrical supply purposes granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-11-77 as to sec. 31, T. 5 N., R. 25 E.
16. A right-of-way for electrical supply systems, granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-5-80 as to sec. 6, T. 4 N., R. 25 E., and SW1/4SW1/4, sec. 31, T. 5 N., R. 25 E.
17. A right-of-way for electrical supply systems, granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-1-81 as to sec. 31, T. 5 N., R. 25 E.
18. right-of-way for electrical supply systems, granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-2-81 as to sec. 31, T. 5 N., R. 25 E.
19. A right-of-way for electrical supply systems, granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-3-81 as to secs. 17, 19, and 20, T. 5 N., R. 25 E.
20. A right-of-way for electrical supply systems, granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-4-81 as to sec. 31, T. 5 N., R. 25 E.
21. A right-of-way for electrical supply systems, granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-2-82 as to SW1/4, secs. 30 and NW1/4, sec. 31 T. 5 N., R. 25 E, and sec. 36, T. 5 N., R. 24 E.

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22. A right-of-way for electrical supply systems, granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-3-85 as to NW1/4, sec. 31, T. 5 N., R. 25 E.
23. A right-of-way for electrical supply systems, granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-4-85 as to sec. 19, T. 5 N., R. 25 E.
24. A right-of-way for electrical supply systems, granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-3-75 as to SW1/4 sec. 31 T. 5 N., R. 25 E.
25. A right-of-way for electrical supply systems, granted to Southern California Edison Co., its successors and assigns, in BIA Document 695-4-75 as to SW1/4 sec. 31 T. 5 N., R. 25 E.
26. A perpetual right-of-way issued to Metropolitan Water District of Southern California for transmission line and road purposes in BIA Document 37063-31 as to SW1/4, S1/2SE1/4, sec. 19; SW1/4SW1/4, sec. 28; SW1/4NW1/4, N1/2SW1/4, NW1/4SE1/4, S1/2SE1/4, sec. 29; N1/2NE1/4, SE1/4NE1/4, NE1/4NE1/4NW1/4, sec. 30; NE1/4NE1/4, sec. 32; SW1/4NE1/4, NW1/4, NE1/4SW1/4, SE1/4, sec. 33; SW1/4NW1/4SW1/4, S1/2SW1/4, S1/2SE1/4, sec. 34; S1/2SW1/4, sec. 35, T. 4 N., R. 25 E.
27. A master lease from the Chemehuevi Tribe as lessor, designated as "Lease to the Chemehuevi Housing Department for Purpose of Subletting Land for Residential Housing for Tribal Members and Essential Governmental Employees," authorizing the issuance of tribal revocable permits and approved by the Bureau of Indian Affairs February 19, 2008.
28. A master lease from the Chemehuevi Tribe as lessor, designated as "Lease to the Chemehuevi Indian Tribe Doing Business as the Havasu Landing Resort," authorizing the operation of a resort by the Tribe's economic enterprise and approved by the Bureau of Indian Affairs February 19, 2008.
29. All interest in real and personal property, including valid homesite leases, represented under the Master Lease Agreement of the Chemehuevi Department of Housing, as transferred from the Chemehuevi Housing Authority in the Absolute Assignment of Leases, Assets, and Debts dated February 27, 2002, and approved by CHA Resolution 02-01-10-01, dated January 10, 2002 (incorporating by reference Ordinance 1-10-27-01).
30. A right-of-way for a 16 kV underground electric distribution line, granted to Southern California Edison Company, its successors and assigns, in BLM Document CAS-5675 as to SWNE1/4 and NWSE1/4, sec. 32, T. 4 N., R. 26 E.

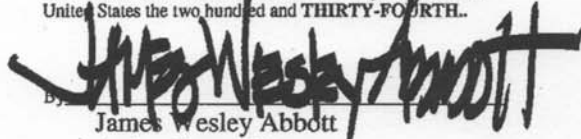
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IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

[SEAL]

GIVEN under my hand, in **Sacramento, California** the **TWENTY-EIGHTH** day of **JUNE** in the year of our Lord two thousand and **TEN** and of the Independence of the United States the two hundred and **THIRTY-FOURTH**.



By _____
James Wesley Abbott
Acting State Director
California State Office

Patent Number 04-2010-0007

EXHIBIT C

V.C.

SETTLEMENT AGREEMENT

This Settlement Agreement is made as of this 22nd day of June, 1976, between Havasu Landing, Inc., a California corporation ("Havasus Landing"), Everett L. Hodges ("Hodges"), Frank Bland ("Bland"), Mairano Martinez ("Martinez"), Garrett R. Williams ("Williams"), the Lake Havasu Homeowners Association ("Homeowners Association"), a California nonprofit association, Havasu Water Company, a California corporation ("Water Company"), the Chemehuevi Tribe of Indians (the "Tribe") and Rogers C.B. Morton, as Secretary of the United States Department of the Interior.

I. RECITALS AND DEFINITIONS

1. The Lawsuit. A lawsuit styled Havasus Landing, Inc., a California corporation, et al. v. Rogers C.B. Morton, Secretary of the Interior of the United States, and the Chemehuevi Tribe of Indians, No. CV-74-3665-EC (the "Lawsuit") is pending in the United States District Court for the Central District of California. Havasus Landing, Hodges, Bland, Martinez, Williams, and the Homeowners Association (hereinafter collectively referred to as "Plaintiffs") are plaintiffs in the Lawsuit; Rogers C.B. Morton, as Secretary of the Interior of the United States, and the Chemehuevi Tribe of Indians are defendants. The Lawsuit, among other things, challenges the legality and constitutionality of an

Order of the Acting Secretary of the Interior, John C. Whitaker, dated August 15, 1974 (the "Order"), which corrects a 1941 designation of certain lands by Interior Secretary Ickes and determines, establishes and confirms that the Chemehuevi Tribe has full equitable title to all lands within the Chemehuevi Indian Reservation riparian to Lake Havasu, all as further set forth in the Order.

2. The Havasu Concession Contract. The Lawsuit also seeks a declaratory judgment with regard to the interpretation of certain provisions of Concession Contract No. 14-16-373-389, entered into August 20, 1959, between the Bureau of Sports Fisheries and Wildlife of the United States Department of the Interior and Havasu Landing (the "Havasu Concession Contract").

3. The Permits. Certain residential and nonresidential permits, listed in Exhibit D-1 hereto (the "Permits"), have been granted with respect to the lands in which full equitable title is confirmed in the Tribe by the Order.

4. Releases. Plaintiffs and each of them desire to release the Tribe and the United States of America ("United States") from all claims of any kind or character arising out of or in connection with or related to the subject matter of the Lawsuit, the Order, the Havasu Concession Contract, and

the Permits, and to this end they are entering into this Settlement Agreement. The Tribe desires to release Havasu Landing from all claims of any kind or character arising prior to the date of this Agreement out of or in connection with or related to the subject matter of the Lawsuit, the Order or the Havasu Concession Contract.

II. CONSIDERATION

The consideration for the agreements, releases, representations and covenants of Plaintiffs and the Water Company in this Settlement Agreement is as follows:

1. Water Company Easement. The Tribe agrees, through the Bureau of Indian Affairs, United States Department of the Interior, as more fully set forth in a Grant of Easement for Right of Way attached hereto as Exhibit A, to provide to the Water Company a real property easement for the limited purpose of transporting water from Lake Havasu to the Water Company for a term and under the conditions set forth in Exhibit A. Nothing in this Agreement or such easement shall be construed to obligate the Tribe or the United States to provide any water for transport across the easement, to grant any water rights of the Tribe or the United States to the Water Company or any other person, or to construct, protect, maintain, repair or do any other acts with

regard to said easement or any pipeline or supporting facilities or improvements constructed thereon.

2. Option for Purchase of Water Company Assets.

As part of the consideration for the easement more fully described in Exhibit A hereto, the Water Company agrees, as more fully set forth in the Option Agreement attached hereto as Exhibit B, to grant the Tribe an option to purchase the assets of the Water Company, and to cause Energy Production and Sales Company, a California corporation, to grant the Tribe an option to purchase certain assets, under the terms and conditions set forth in Exhibit B.

3. Homeowners Association Easement. The Tribe agrees, through the Bureau of Indian Affairs, United States Department of the Interior, as more fully set forth in a Grant of Easement for Right of Way attached hereto as Exhibit C, to provide a real property easement to the Homeowners Association for the limited purpose of transporting water to and from the Water Company and the lots which are the subject of the Permits, and for the further limited purpose of transporting sewage from the lots which are the subject of the Permits to a site for sewage and/or treatment at such time as a site for such treatment is built. Nothing in this Agreement shall be construed as obligating the Tribe or the United States to provide any water for transport

across the easement, to grant any water rights of the Tribe or the United States to the Homeowners Association, any member thereof or any other person, or to provide any treatment facilities for sewage for any such person, or to construct, protect, maintain, repair, or do any other acts with regard to said easement or any pipeline or supporting facilities or improvements constructed thereon.

4. Renewal Options. The Tribe agrees, promptly upon execution of this Settlement Agreement, to offer a renewal option, as more fully set forth in Exhibit D attached hereto, to each residential and nonresidential permittee listed on Exhibit D-1 hereto.

5. Havasu Landing. Havasu Landing agrees to sell and the Tribe agrees to buy the noninventory assets of Havasu Landing, Inc. and its subsidiaries, as those assets existed on October 15, 1975, and to purchase the inventory of Havasu Landing, Inc. and its subsidiaries as that inventory exists on the date hereof, all as is more fully set forth in the Agreement for Purchase and Sale of Assets of even date, not attached hereto, between Havasu Landing and the Tribe.

6. Standby Pump Agreement. The Tribe agrees as more fully set forth in the Standby Pump Agreement attached hereto as Exhibit E, to provide the Water Company with the right to utilize certain pumps located on the property of the Tribe on the terms and conditions set forth in Exhibit E.

7. Individual Plaintiffs. Plaintiffs Bland, Martinez, Williams and the Homeowners Association acknowledge that they hold Permits or represent those who hold Permits and will benefit from the consideration set forth in paragraphs 2 and 3 of this Article II and will further benefit from the settlement of all litigation among the Tribe, the Secretary of the Interior and Havasu Landing.

III. AGREEMENTS, RELEASES AND COVENANTS OF PLAINTIFFS
AND WATER COMPANY

For the consideration set forth in Article II above, Plaintiffs and Water Company and each of them agree as follows:

1. Dismissal of Lawsuit. Promptly upon execution of this Agreement Plaintiffs shall file a stipulation for dismissal of the Lawsuit with prejudice in the form attached hereto as Exhibit F.

2. Releases. Plaintiffs and Water Company and each of them hereby release the Chemehuevi Tribe, its officers, agents, employees, successors, trustees and assigns, and the United States, its officers, agents, employees, successors, trustees and assigns, from all claims, demands, rights of action and causes of action which Plaintiffs or Water Company or any of them may have against the Tribe or the United States arising out of, in connection with or in

any way related to, or which may hereafter be claimed to arise out of or in connection with or to relate to, the subject matter of the Lawsuit, the Order, the Havasu Concession Contract or the Permits.

3. Claims Released. The claims which are released by Plaintiffs and Water Company in accordance with the terms of this Settlement Agreement shall include all claims made in the complaint on file in the Lawsuit and all claims, demands, debts, obligations, liabilities, costs, rights of action, and causes of action, of any kind or character whatsoever, arising out of, in connection with or in any way related to, or which may hereafter be claimed to arise out of or in connection with or to relate to, the subject matter of the Lawsuit, the Order, the Havasu Landing Concession, or the Permits. Plaintiffs and Water Company and each of them understand that the facts in respect to which the foregoing release is given may hereafter turn out to be other than or different from the facts in that connection now known by them or believed by them to be true, and Plaintiffs and Water Company and each of them therefore expressly assume the risk of the facts turning out to be so different and agree that the foregoing release shall be in all respects effective and not subject to termination or rescission by any such difference in facts.

4. Warra / Re Assignment of Claims Plaintiffs and Water Company and each of them hereby represent and warrant to the Tribe and the United States as follows:

(a) Neither Water Company nor any of the Plaintiffs has heretofore sold, assigned or transferred, or purported to sell, assign or transfer, to any person any of the claims released hereunder or any interest therein.

(b) Neither Water Company nor any of the Plaintiffs knows of any person preparing, planning or contemplating an action or proceeding against the Tribe, the United States or any entities owned or controlled by them, in connection with or in any way related to any of the claims released herein.

(c) The execution of this Settlement Agreement by the Homeowners Association, Havasu Landing and the Water Company, and the delivery of this Agreement by each of them to the United States and the Tribe, has been duly authorized by their respective boards of directors, and this Agreement constitutes a valid and binding obligation of each of them in accordance with its terms. Each of them agrees to deliver to the Tribe and the United States concurrently with the execution of this Agreement a copy of the resolutions of its board of directors authorizing execution and delivery of this Agreement, certified by its Secretary.

(d) The persons listed in Exhibit G-1 hereto constitute all the officers, directors and shareholders of Havasu Landing and the Water Company.

5. Covenant Not to Sue. Plaintiffs and the Water Company and each of them hereby agree not to directly or indirectly initiate, commence, prosecute, or participate in any action or proceeding relating to any of the claims released hereunder without the prior written consent of both the Tribe and the United States, and not to encourage, assist, or cause any other person to do so. Without limiting the foregoing, Plaintiffs and the Water Company and each of them specifically agree not to directly or indirectly pay any monies to or on behalf of any person suing or engaging in any action or proceeding relating to any of the claims released hereunder, and not to authorize Plaintiffs' or Water Company's attorneys to release any files, pleadings or work product relating to the Lawsuit to any such person.

6. Individual Releases. Plaintiffs and each of them agree to deliver to the Tribe and the United States concurrently with the execution of this Agreement a release, waiver, and covenant not to sue with regard to the Lawsuit, the Order, the Havasu Landing Concession, and the Permits from each of those individuals listed on Exhibit D-1 hereto in the form attached hereto as Exhibit D-2.

Havasu Landing and Water Company and each of them agree to deliver to the Tribe and the United States concurrently with the execution of this Agreement a release, waiver and covenant not to sue with regard to the Lawsuit, the Order and the Havasu Landing Concession from each director, officer and shareholder of Havasu Landing and the Water Company listed on Exhibit G-1 hereto in the form attached hereto as Exhibit G-2. It is expressly understood among the parties hereto that no part of this Settlement Agreement, including without limitation the easements, purchases and options referred to in Article II, shall be valid until each person listed in Exhibits D-1 and G-1 hereto shall have signed and delivered to the Tribe and the United States the releases, waivers and covenants not to sue in the forms attached hereto as Exhibits D-2 and G-2.

IV. RELEASES OF THE TRIBE

For the consideration set forth in Article II above, The Tribe hereby releases Havasu Landing, its officers and employees from all claims, demands, rights of action and causes of action which the Tribe may have had prior to the date of this Agreement arising out of, in connection with, or in any way related to the subject matter of the Lawsuit, the Order or the Havasu Concession Contract.

V. MISCELLANEOUS PROVISIONS

1. Attorneys' Fees. Each party agrees to bear its own costs and expenses, including attorneys' fees, incurred in connection with the Lawsuit, the Order, the Havasu Concession Contract, the Permits, and this Agreement.

2. Successors and Assigns. The releases, covenants, agreements, representations and waivers herein shall be binding upon and inure to the benefit of the agents, representatives, heirs, successors and assigns of the parties to this Agreement.

3. Law of the United States. This Settlement Agreement and its application shall be governed by the laws of the United States.

4. Exhibits. Attached hereto and incorporated herein by this reference are the following exhibits:

Exhibit A - Grant of Easement for Right of Way (in favor of Havasu Water Company)

Exhibit B - Option Agreement

Exhibit C - Grant of Easement for Right of Way (in favor of Havasu Homeowners Association)

Exhibit D - Renewal Option

Exhibit D-1 - List of Residential and Nonresidential
Permittees

Exhibit D-2 - Form of Release, Waiver and Covenant
Not to Sue to be signed by persons
listed in Exhibit D-1

Exhibit E - Standby Pump Agreement

Exhibit F - Stipulation for Dismissal with Prejudice

Exhibit G-1 - List of Officers, directors and
shareholders of Havasu Landing and
the Water Company

Exhibit G-2 - Form of Release, Waiver and Covenant
Not to Sue to be signed by persons listed
in Exhibit G-1

5. Meaning of Person. The term "person" as used throughout this Agreement includes not only natural persons, but corporations, partnerships, associations, clubs, governmental entities and legal entities of any kind whatever.

6. Captions. The captions of the paragraphs of this Agreement are solely for the convenience of the parties, are not a part of this Agreement and shall not be used for the interpretation of any provisions of this Agreement.

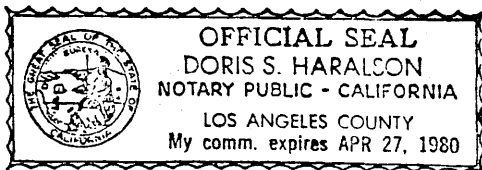
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth above.

ROGERS C.B. MORTON, SECRETARY
OF THE INTERIOR OF THE UNITED
STATES, through his attorneys:
WILLIAM D. KELLER
United States Attorney
FREDERICK M. BROSIO, JR.
Assistant United States Attorney
Chief, Civil Division

Michael E. Wolfson
MICHAEL E. WOLFSON
Assistant United States Attorney

Sworn and subscribed before me
this 22nd day of June, 1976.

Doris S. Haralson
Notary Public in and for said
County and State



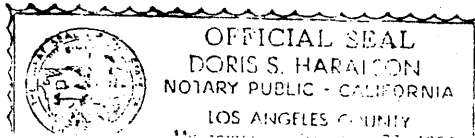
HAVASU LANDING, INC.

By *Donald Barron*
Title: Vice President

By *[Signature]*
Title: [Signature]

Sworn and subscribed before me
this 22nd day of June, 1976.

Doris S. Haralson
Notary Public in and for said
County and State



CHEMEHUEVI INDIAN TRIBE

By Herbert W. Pencille
Herbert W. Pencille
Chairman

By Rosie M. Leivas
Rosie M. Leivas
Secretary-Treasurer

Sworn and subscribed before me
this 22nd day of June 1976.

Doris S. Haralson
Notary Public in and for said
County and State



HAVASU WATER COMPANY

By John M. Bald

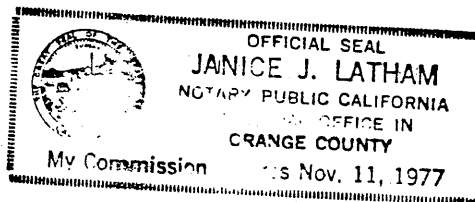
Title: Pres.

By Ernest J. Hodgen

Title: Sec.

Sworn and subscribed before me
this 16 day of June, 1976.

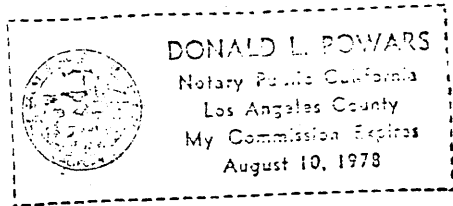
Janice Latham
Notary Public in and for said
County and State



Garrett R. Williams
Garrett R. Williams

Sworn and subscribed before me
this 20th day of June, 1976.

Donald L. Powars
Notary Public in and for said
County and State



LAKE HAVASU HOMEOWNERS ASSOCIATION

Sworn and subscribed before me
this 20th day of June, 1976.

Don J. [Signature]
By _____
Title: President

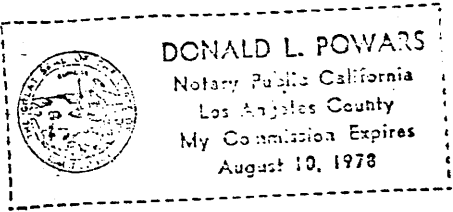
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

By Arthur J. [Signature]
Title: Treasurer

On June 19, 1976
for said Sworn and subscribed before me
person this 20th day of June, 1976.
the within Notary
sworn, Donald L. Powars

Garrett R. Williams
President

That Notary Public in and for said
and said County and State
be the same person
the within and among
deliver the same
the same at _____

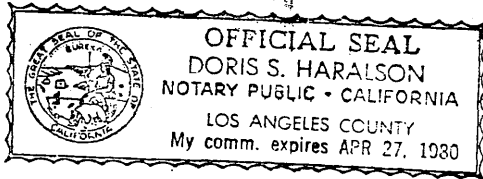


TUTTLE & TAYLOR Incorporated

By Michael Glazer
Michael Glazer
Attorneys for the Chemehuevi
Tribe of Indians

Sworn and subscribed before me
this 22nd day of June, 1976.

Doris S. Haralson
Notary Public in and for said
County and State

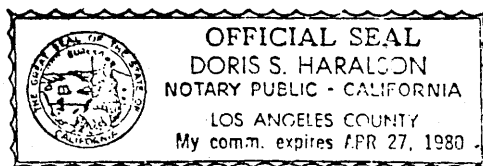


MURPHY, THORNTON, HINERFELD &
CAHILL

By Richard A. Murphy
Richard A. Murphy
Attorneys for Plaintiffs
Havasu Landing, Inc. Everett
L. Hodges, Frank Bland, Mairano
Martinez, Garrett R. Williams,
and The Lake Havasu Homeowners
Association

Sworn and subscribed before me
this 22nd day of June, 1976.

Doris S. Haralson
Notary Public in and for said
County and State



POWARS, TRETHERWAY & BENNETT

By *[Signature]*
John A. Tretheway
Attorneys for Plaintiff Havasu
Landing, Inc.

Sworn and subscribed before me
this 22nd day of June, 1976.

[Signature]
Notary Public in and for said
County and State



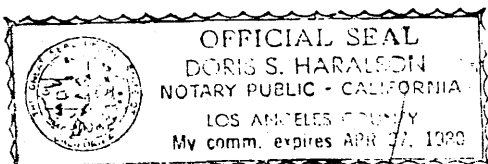
WILLIAM D. KELLER
United States Attorney
FREDERICK M. BROSIO, JR.
Assistant United States Attorney
Chief, Civil Division

[Signature]
MICHAEL E. WOLFSON
Assistant United States Attorney

Attorneys for Defendant Rogers
C.B. Morton, Secretary of the
Interior of the United States

Sworn and subscribed before me
this 22nd day of June, 1976.

[Signature]
Notary Public in and for said
County and State



UNITED STATES DEPARTMENT OF THE
INTERIOR
Bureau of Indian Affairs
Colorado River Agency

By William J. Lawrence
William J. Lawrence, Superintendent

Sworn and subscribed before me
this 22nd day of June 1976.

Doris S. Haralson
Notary Public in and for said
County and State

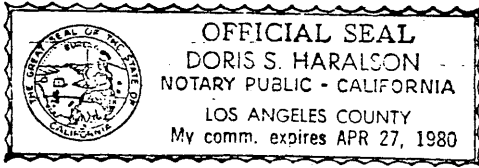


EXHIBIT A

GRANT OF EASEMENT FOR RIGHT-OF-WAY

KNOW ALL MEN BY THESE PRESENTS:

That the United States of America, acting by and through the Superintendent, Colorado River Agency, Bureau of Indian Affairs, Department of the Interior, hereinafter referred to as "Grantor," under authority contained in 230 DM 1, 10 BIAM 3, and 10 BIAM 11, and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17, 25 U.S.C. 323-328), and Part 161, Title 25, Code of Federal Regulations, in consideration of an annual rental payment of \$300 per year for the first three years beginning July 4, 1976, and thereafter, beginning July 4, 1979, an annual rental payment of \$50 per year, does hereby grant to Havasu Water Company, a California corporation, its successors or assigns, hereafter referred to as "Grantee," a non-exclusive easement for right of way for the sole purpose of transporting water across said easement for the use of Grantee and its customers, on, over, and across the land embraced within the right of way situated on the following described lands located within the Chemehuevi Reservation, County of San Bernardino, State of California:

Parcel No. 1

All that portion of the Southwest one-quarter of Section 31, Township 5 North, Range 25 East, San Bernardino Meridian, in the County of San Bernardino, State of California according to Government Survey lying within a strip of land, the centerline of which is described as follows:

Commencing at a U.S.G.L.O. Brass Cap at the Southwest corner of said section as shown on that certain Record of Survey recorded in Book 24, Pages 39 to 43 of Record of Surveys:

thence North $89^{\circ}58'30''$ East, 1318.00 feet along the Easterly prolongation of the South line of the Southeast one-quarter of Section 36, Township 5 North, Range 24 East, as shown on said Record of Survey;

thence North $8^{\circ}24'30''$ West, 779.0 feet;

thence North $49^{\circ}20'30''$ West, 1154.00 feet;

thence North $0^{\circ}24'30''$ West, 138.74 feet;

thence South $73^{\circ}34'50''$ East, 60.00 feet to Point "A"

thence South $73^{\circ}34'50''$ East, 392.37 feet to Point "B";

thence North $9^{\circ}57'10''$ East, 477.32 feet to Point "C";

thence North $9^{\circ}57'10''$ East, 10.02 feet to Point "D"; and

the TRUE POINT OF BEGINNING.

thence South $83^{\circ}51'50''$ East, 656.72 feet to the West Bank of Lake Havasu and Point "D".

Said strip of land is 26.00 feet wide, 16.00 feet on the north side of said centerline and 10.00 feet on the south side of said centerline.

The sidelines of said strip of land shall be lengthened or shortened so as to terminate at said West Bank of Lake Havasu.

Parcel No. 2

All that portion of the Southwest one-quarter of Section 31, Township 5 North, Range 25 East, San Bernardino Meridian, in the County of San Bernardino, State of California according to Government Survey described as follows:

Beginning at said Point "C", as described in Parcel No. 1 above--
thence South $87^{\circ}56'36''$ West, 130.93 feet;
thence North $1^{\circ}58'20''$ West to the boundary line of the Havasu
Lake National Wildlife Refuge, as said boundary was established by
Executive Order No. 8647, as published in the Federal Register on
January 25, 1941;
thence Easterly along said boundary line to an angle point therein;
thence Southerly to a point which bears North $9^{\circ}57'10''$ East,
10.02 feet from said Point "C";
thence South $9^{\circ}57'10''$ West, 10.02 feet to said Point "C" and
the Point of Beginning.

Parcel No. 3

All that portion of the Southwest one-quarter of Section 31, Township 5 North, Range 25 East, San Bernardino Meridian, in the County of San Bernardino, according to the Government Survey, lying within a strip of land, the centerline of which is described as follows:

Commencing at point "C" in parcel No. 1, thence South $87^{\circ}56'36''$ West 130.93 feet, thence North $1^{\circ}58'20''$ West to the boundary line of the Havasu Lake National Wildlife Refuge, as said boundary was established by Executive Order No. 8647, as published in the Federal Register on January 24, 1941, thence Easterly along said Havasu Lake National Wildlife Refuge boundary line 125.00 feet to the True Point of Beginning, thence Westerly along said Havasu Lake National Wildlife Refuge boundary line to an angle point in said boundary line, thence Westerly to a point on the West line of Section 31, said point being a one inch iron pipe tagged L.S. 2380 and being 579.70 feet South of the East one-quarter corner of Section 36, Township 5 North, Range 24 East as shown on Tract 8284, Map Book 118 pages 85 thru 92, San Bernardino County Records.

Said strip of land being 40 feet wide, 20 feet on each side of the previously described centerline.

The sidelines of said strip of land to be lengthened or shortened so as to terminate on the East line of said Section 36, Township 5 North, Range 24 East.

Excepting that portion that falls within parcel No. 2.

All as further described in the map attached hereto as Exhibit 1.

This easement is subject to any prior valid existing right or adverse claim and is for a period of 30 years, so long as said easement shall be actually used for the purpose above specified; provided, however, that in the event the Public Utilities Commission of the State of California or any other governmental agency having jurisdiction over the operations of Grantee requires this easement to have a longer term for the purpose of providing sufficient access to the Colorado River, Grantor agrees to extend the term of this easement for such longer term as may be required by the California Public Utilities Commission or such other governmental agency; and provided further, that this right of way shall be terminable in whole or in part by the Grantor for any of the following causes upon 30 days' written notice and failure of the Grantee within said notice period to correct the basis of termination (25 C.F.R. 161.20):

- a. Failure to comply with any term or condition of the grant or the applicable regulations.
- b. A nonuse of the right of way for a consecutive two-year period for the purpose for which it was granted.
- c. An abandonment of the right of way.

EXHIBIT D

RESOLUTION NO. 31-134

A RESOLUTION OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF SAN BERNARDINO, STATE OF
CALIFORNIA, RELATING TO AN EASEMENT FOR
TRANSPORTING DOMESTIC WATER TO HAVASU LANDING

On Monday, May 4, 1981, on motion of Supervisor
Older, duly seconded by Supervisor McElwain,
and carried, the following resolution is adopted:

WHEREAS, the Havasu Water Company proposes to furnish
domestic water to the community of Havasu Landing in the County
of San Bernardino, State of California; and

WHEREAS, in order to serve the best interests of the
Havasu Landing community, the transportation route for the
furnishing of such water be assured; and

WHEREAS, the United States of America did, on or about
June 22, 1976, grant to the Company an easement across certain
lands located within the Chemehuevi Reservation for the sole
purpose of transporting water to customers of the Company, said
easement having been granted for a period of thirty years only;
and

WHEREAS, pursuant to Section 4010.8 of the Health and
Safety Code of the State of California and Section 36.022 of the
Code of the County of San Bernardino, the County of San Bernardino
has jurisdiction over the domestic water supply operations of the
Havasu Water Company;

NOW, THEREFORE, BE IT RESOLVED by the Board of Super-
visors of the County of San Bernardino, State of California, that
it would be in the best interests of the community at Havasu
Landing if the aforesaid easement is determined to be an easement
in perpetuity rather than an easement for thirty years.

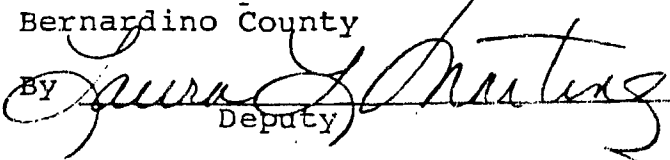
PASSED AND ADOPTED by the Board of Supervisors of the
County of San Bernardino, State of California, by the following
vote:

AYES: Supervisors: Older, McElwain, McKenna, Townsend,
Hammock
NOES: Supervisors: None
ABSENT: Supervisors: None

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF SAN BERNARDINO)

4 I, ANDREE DISHAROON, Clerk of the Board of Supervisors
5 of San Bernardino County, California, hereby certify the foregoing
6 to be a full, true and correct copy of the record of the action
7 as the same appears in the Official Minutes of said Board at
8 its meeting of May 4, 1981;

9 ANDREE DISHAROON, Clerk of the
10 Board of Supervisors of San
11 Bernardino County

12 By 
13 Deputy
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COUNTY CIVIC BUILDING
157 WEST FIFTH STREET
SAN BERNARDINO, CA 92415