

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102



June 28, 2024

Proposed Resolution W-5276

Agenda ID: 22726

To: All Interested Persons

Enclosed is Proposed Resolution W-5276 of the Water Division, which rejects Havasu Water Company Advice Letter 52-W in accordance with General Order 96-B, Industry Rules 7.3.2.(8) and 8.1. Proposed Resolution W-5276 is scheduled to appear on the August 1, 2024 Commission Meeting Agenda (ID# 22726).

The Commission may act on this resolution or it may postpone action until later. When the Commission acts on a proposed resolution, the Commission may adopt all or part of the proposed resolution, as written, or amend or modify the proposed resolution; or the Commission may set the proposed resolution aside and prepare a different resolution. Only when the Commission acts does the resolution become binding.

Interested persons may submit comments on Proposed Resolution W-5276 via email to [Water.Division@cpuc.ca.gov](mailto:Water.Division@cpuc.ca.gov) on or before **July 18, 2024**. Please reference **"Proposed Resolution W-5276" in the subject line**.

Interested persons must also serve a copy of their comments on the utility on the same date that the comments are submitted to the Water Division. If email is unavailable, please submit comments to:

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

Comments should focus on factual, legal, technical errors, or policy issues in the proposed resolution.

Persons interested in receiving comments submitted may contact the Water Division at [Water.Division@cpuc.ca.gov](mailto:Water.Division@cpuc.ca.gov) or (415) 703-1133. Please reference "Proposed Resolution W-5276."

/s/ TERENCE SHIA

Terence Shia, Director  
Water Division

Enclosures: Proposed Resolution W-5276  
Certificate of Service  
Service List

# PROPOSED RESOLUTION

Resolution W-5276  
WD

August 1, 2024  
Agenda ID# 22726

## PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION W-5276  
August 1, 2024

### RESOLUTION

**(RES. W-5276) HAVASU WATER COMPANY. ORDER  
REJECTING ADVICE LETTER 52-W IN ACCORDANCE  
WITH GENERAL ORDER 96-B, INDUSTRY RULES 7.3.2.(8)  
AND 8.1.**

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### SUMMARY

On December 15, 2023, Havasu Water Company (HWC) filed Advice Letter (AL) 52-W requesting to update its utility's service area map.

This Resolution affirms the Commission's Water Division's rejection without prejudice of AL 52-W for the following reasons: 1) HWC improperly filed its request as a Tier 1 Advice Letter rather than Tier 2 in accordance with General Order 96-B, Water Industry Rules 7.3.2(8) and 8.1; and 2) the requested service area map is inaccurate and does not include a delineation for the Vista del Lago community, which is currently served by the Chemehuevi Indian Tribe. The utility's current service area map, approved by AL 41-W on June 17, 2014, accurately delineates the area served by the Chemehuevi Indian Tribe and remains in effect.

### BACKGROUND

HWC is a Class D<sup>1</sup> investor-owned water utility with 211 metered service connections. HWC's service area is located in the unincorporated community of Havasu Lake in San Bernardino County. The sole source of water for the system is Lake Havasu. HWC accesses Lake Havasu via a supply line connecting the Lake to HWC's water treatment facility, which crosses Chemehuevi Indian Tribe (CIT) tribal lands via an easement that expired in 2006. This easement is the subject of a complaint filed in March 2020 by the

<sup>1</sup> As defined by General Order 96-B, Water Industry Rule Section 1.2, Class D investor-owned water utilities are those with less than 500 service connections.

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CIT against HWC in the U.S. District Court for the Central District of California, alleging trespass and other claims.<sup>2</sup>

On April 5, 2005, Complaint 05-04-007 was brought against HWC by the developer of Vista del Lago, Havasu Lakeshore Investments, LLC (HLI), seeking an order from the Commission requiring HWC to provide water service to the development. In Decision (D.) 06-04-007, the Commission resolved a dispute regarding the provision of water services to the Vista del Lago development. In dismissing the complaint, D.06-04-007 included the following factual findings: 1) HLI no longer wants or needs water service from HWC; 2) the case went to hearing; 3) the assigned Administrative Law Judge (ALJ) denied HLI's motion for preliminary relief; and 4) HWC does not oppose dismissal.<sup>3</sup>

As noted in the decision, HLI sought an alternate water source and identified the provider of the alternate water source as the "Chemehuevi Indian Tribe, an independent Native American nation not subject to regulation by the Commission."<sup>4</sup> Prior to ruling that the underlying complaint should be dismissed with prejudice, D.06-04-007 also noted that HWC's water system was not capable of serving the Vista del Lago development.<sup>5</sup>

Since Vista del Lago is served by the CIT, a federally recognized tribe, neither the State Water Resources Control Board's Division of Drinking Water nor the Commission have jurisdiction over the water system.<sup>6</sup> Therefore, the Commission has not granted a Certificate of Public Convenience and Necessity (CPCN) for this service area.

HWC filed AL 40-W, a Tier 2 advice letter, on November 1, 2013, to both identify the current service area (designated in red) and proposed service extension areas (designated in blue). The map filed also indicates the Vista del Lago area served by the "Chemehuevi Water Service" (designated in black). The Commission approved HWC's AL 40-W on January 9, 2014.<sup>7</sup>

<sup>2</sup> First Amended Complaint, *Chemehuevi Indian Tribe v. Havasu Water Co.*, No. 5:20-cv-00471-GW-KK (C.D. Cal. July 29, 2020).

<sup>3</sup> D.06-04-007 at 5.

<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> D.06-04-007 at 4.

<sup>6</sup> The U.S. Environmental Protection Agency provides regulatory oversight for water systems located within the exterior boundaries of any Reservation (i.e., "Indian country").

<sup>7</sup> Havasu Water Company AL 40-W is attached as Appendix A.

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On June 2, 2014, HWC filed a Tier 2 advice letter, AL 41-W, to correct and clarify which area should be designated for proposed service (designated in blue) within the service area map (designated in red). On June 17, 2014, the Commission approved AL 41-W, which includes the current service area map that accurately delineates the Vista del Lago area served by the CIT (designated in black).<sup>8</sup>

With regard to the federal court case regarding the easement dispute between the CIT and HWC, on July 28, 2022, the district court granted partial summary judgment in the CIT's favor and denied HWC's counter motion for summary judgment.<sup>9</sup> In subsequent rulings, the court directed the parties to pursue settlement on the limited issue of determining the amount of damages HWC owes to CIT for HWC's ongoing trespass. At a status conference in September 2023, the parties acknowledged that a settlement on damages had not been reached. Soon thereafter, in a status report filed on November 28, 2023, HWC claimed that CIT was infringing on HWC's exclusive service area by providing water to the Vista del Lago community. HWC is seeking an accounting of the funds received by the CIT from Vista del Lago, "so that a proper offset of any monies due for use of the easement can be determined."<sup>10</sup>

On December 14, 2023,<sup>11</sup> HWC filed a Tier 1 advice letter, AL 52-W, to update its "territory map to further identify its service area" and references several prior Commission decisions and advice letters, including advice letters 40 and 41. HWC filed AL 52-W after making its claim in federal court that CIT is infringing on the HWC's service area by providing water to Vista del Lago. In AL 52-W, HWC stated that, "[t]his map does not add any additional service area not already described in the tariff book, Decisions, and prior accepted Advice Letters."<sup>12</sup> This statement is erroneous. HWC attempted to amend its service area map in AL 52-W.

Accordingly, on February 15, 2024, the Commission's Water Division rejected without prejudice AL 52-W on the basis that HWC: 1) improperly filed its request as a Tier 1 Advice Letter rather than under Tier 2 in accordance with General Order 96-B, Water Industry Rules 7.3.2.(8) and 8.1; and 2) the requested service area map is inaccurate because it does not include a delineation for the Vista del Lago neighborhood, which is

<sup>8</sup> Havasu Water Company AL 41-W is attached as Appendix B.

<sup>9</sup> *Chemehuevi Indian Tribe*, No. 5:20-cv-00471-GW-KK, at 23 (C.D. Cal. July 28, 2022).

<sup>10</sup> HWC Defendants' November 28, 2023 Status Report at 6, included as Appendix C.

<sup>11</sup> AL 52-W is dated December 8, 2023 but was filed with Water Division on December 14, 2023.

<sup>12</sup> AL 52-W at 1.

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currently served by CIT. Water Division emailed a disposition letter to HWC that rejected the advice letter.<sup>13</sup>

The utility's current service area map, approved by AL 41-W on June 17, 2014, has not changed and remains in effect. Water Division confirmed with the South Coast Section of the State Water Resources Control Board's Division of Drinking Water that the CIT continues to serve the Vista del Lago community. Water Division has also confirmed with CIT members that the Tribe continues to 'wheel' water to Vista del Lago.<sup>14</sup>

On February 21, 2024, Patrick Webb, an attorney representing HWC, submitted by email a request for Commission review of the Water Division's disposition for AL 52-W per General Order 96-B, General Rule 7.6.3.<sup>15</sup> HWC considers the disposition to be unlawful or erroneous for the following reasons: 1) the AL was properly filed as Tier 1 because the digitized map provided does not seek to add to the utility's service area, but was provided to comply with GO 96-B, Water Industry Rule 10; 2) Water Division has erred in its determination that the proposed map was inaccurate and the Vista del Lago development remains part of HWC's exclusive service area; and 3) the CIT does not provide water to the Vista del Lago community. HWC seeks acceptance of AL 52-W and the addition of the proposed map to the utility's tariff book.

## **NOTICE, PROTESTS, AND PUBLIC MEETING**

HWC did not serve a copy of AL 52-W to its service list or adjacent utilities (which includes the CIT's water service) as required by General Order 96-B, Water Industry Rule 4.1.<sup>16</sup> Water Division provided AL 52-W and the disposition letter to the CIT.

<sup>13</sup> The disposition letter is included as Appendix D.

<sup>14</sup> The water supply source is provided through a subcontract arrangement, similar to the subcontract HWC has with the City of Needles. The City of Needles is designated as the agency for maintaining water allocations from the Lower Colorado River on behalf of the United States Bureau of Reclamation through the All American Canal Project (Project). City of Needles staff confirmed Vista del Lago is provided an annual allotment to access water from the Project.

<sup>15</sup> The Request for Review is included in Appendix E.

<sup>16</sup> The advice letter was submitted to the Water Division and to the Local Area Formation Commission (LAFCO) for San Bernardino County. HWC avers "and further notice is not deemed necessary in compliance with and pursuant to General Order 96-B, Water Industry Rule 1.3, Rule 7.3.1(3) and General Rule 4.2." AL 52-W at 2. Service to these entities is required by Water Industry Rule 4.2 when a water utility is seeking a "Service Area Extension of Transfer of Ownership." Also of note, HWC did include the CIT on the service lists for both AL 40 and AL 41, the prior ALs regarding updates to HWC's service map.

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## DISCUSSION

HWC submitted its Request for Review of an Industry Division disposition within 10 days as required by General Order (GO) 96-B, General Rule 7.6.3.

HWC's assertion that AL 52-W was properly filed as a Tier 1 advice letter<sup>17</sup> because the new map was provided to comply with Water Rule 10 and did not add a new service area is both incorrect and irrelevant. As noted in GO 96-B, General Rule 7.6.1, the "utility's designation is not binding on the reviewing Industry Division." Upon review, Industry Division staff determines the appropriate tier for an advice letter filing. In evaluating the AL 52-W filing, Water Division noted that HWC included a new service area, which had been designated as part of the Chemehuevi Water Service area in the prior HWC filings. Water Industry Rule 7.3.2 (8) states that any service extension request must be filed as a Tier 2 advice letter.

Additionally, prior to extending service into a contiguous or other area, Water Industry Rule 8.1 requires a utility to submit both a service area map, and "proof that the utility already has a water supply adequate to serve the areas or a plan to obtain such a supply." HWC did not provide any documentation of water supply adequate to serve the additional service area included in the proposed map in AL 52-W.

While filing an advice letter in the wrong tier alone provides grounds for denial, Water Division also noted HWC's AL 52-W filing ignored prior Commission precedent regarding the provision of water service to the Vista del Lago community. Decision 06-04-007 established that Vista del Lago would receive water service from the "Chemehuevi Indian Tribe, an independent Native American nation not subject to regulation by the Commission"<sup>18</sup> As noted in AL 41-W, and confirmed by Water Division with the CIT, City of Needles, and State Water Board, Vista del Lago residents continue to be served by Chemehuevi Water Service. Furthermore, D.06-04-007 stated HWC did not have the capacity to serve the Vista del Lago development without significant improvements.<sup>19</sup>

The current service map, approved via AL 41-W in 2014, remains accurate and in effect. Any extension of Havasu Water Company's service area must be filed as a Tier 2 advice

<sup>17</sup> HWC's filing of AL-52-W as Tier 1, which are effective immediately, attempted to support the assertion made to the federal district court in HWC's November 28, 2023 status report filing.

<sup>18</sup> D. 06-04-007 at 2.

<sup>19</sup> *Id.* at 4.

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letter and provide appropriate documentation of adequate water supply for the proposed service area. Accordingly, Water Division's rejection of AL 52-W without prejudice on February 15, 2024 was proper. In addition, GO 96-B, Water Division Rule 10 requires HWC to file an advice letter that includes an accurate, digitized map of the service area as delineated in AL 41-W. HWC has failed to do so.

## COMMENTS

Public Utilities Code section 311(g)(1) provides that resolutions generally must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission.

Accordingly, the draft resolution was mailed to the service list and made available for public comment on June 28, 2024.

## FINDINGS

1. By Advice Letter 52-W, filed on December 15, 2023, as a Tier 1 advice letter, Havasu Water Company (HWC) requested to update the utility's service area map pursuant to General Order 96-B, Water Industry Rule 1.3, Rule 7.3.1(3), Rule 8.5.4, and Rule 10.
2. On February 15, 2024, the Commission's Water Division rejected without prejudice AL 52-W on the basis that HWC: 1) improperly filed its request under Tier 1 rather than a Tier 2 as required by GO 96-B, Industry Rules 7.3.2.(8) and 8.1; and 2) erroneously included the Vista del Lago neighborhood, which is currently served by the Chemehuevi Indian Tribe (CIT) as designated in HWC's current service area map, approved by AL 41-W on June 17, 2014.
3. On April 13, 2006, the Commission approved D.06-04-007, dismissing with prejudice a complaint brought against Havasu Water Company by the developer of the Vista del Lago community, Havasu Lakeshore Investments, LLC, seeking an order requiring Havasu Water Company to provide water service to the development.
4. Havasu Lakeshore Investments, LLC, sought an alternate water source and identified the Chemehuevi Indian Tribe, an independent Native American nation

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not subject to regulation by the Commission, as the provider of the alternate water source.

5. On June 17, 2014, the Commission approved Advice Letter 41-W and the attached map, which included the existing service area designated in red, the proposed service area designated in blue, and designation of the area served by “Chemehuevi Water Service” in black.
6. The CIT continues to service the Vista Del Lago community as confirmed by the Water Division with the South Coast Section of the State Water Resources Control Board’s Division of Drinking Water, City of Needles, and CIT.
7. Havasu Water Company’s current service area map, approved by AL 41-W, remains accurate and in effect.
8. Havasu Water Company’s Advice Letter 52-W, filed on December 15, 2023, should be rejected without prejudice so that HWC can file an accurate digitized map that reflects the service area approved in AL 41-W.



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## **THEREFORE, IT IS ORDERED THAT:**

1. Havasu Water Company's Advice Letter 52-W, filed on December 15, 2023, is rejected without prejudice.
2. Havasu Water Company is directed to file an accurate, digitized service area map as required General Order 96-B, Water Industry Rule 1.3, Rule 7.3.1(3), and Rule 10.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on August 1, 2024; the following Commissioners voting favorably thereon:

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Rachel Peterson  
Executive Director

ALICE REYNOLDS  
President  
DARCIE HOUCK  
JOHN REYNOLDS  
KAREN DOUGLAS  
MATTHEW BAKER  
Commissioners

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### CERTIFICATE OF SERVICE

I certify that I have, by either electronic mail or postal mail, this day, served a true copy of Proposed Resolution No. W-5276 on all parties in these filings or their attorneys as shown on the attached lists.

Dated June 28, 2024, at San Francisco, California.

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Levi Goldman

Parties should notify the Water Division, Third Floor, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on which your name appears.

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## Havasu Water Company

148821 HAVASU LAKE RD., HAVASU LAKE, CA 92363

### ADVICE LETTER NO. 52-W SERVICE LIST

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

Earle & Lucia Lawrence  
[lalawrence@yahoo.com](mailto:lalawrence@yahoo.com)  
[elawrencet@yahoo.com](mailto:elawrencet@yahoo.com)  
Rich & Rosalie Barber  
[barberwaterman@msn.com](mailto:barberwaterman@msn.com)

Debbie & John Summerfruit  
P.O. Box 1633  
Needles, CA 92363

Mike Aleksich  
[mikeale@pacbell.net](mailto:mikeale@pacbell.net)  
[oldfoneman@gmail.com](mailto:oldfoneman@gmail.com)

Gary & Karen Chamberlain  
[karenhav@hotmail.com](mailto:karenhav@hotmail.com)

Jack Hawks  
California Water Association  
601 Van Ness Ave., Suite 20474  
San Francisco, CA 94102  
[jhawks@calwaterassn.com](mailto:jhawks@calwaterassn.com)  
U.S. Dept. of Interior  
Bureau of Reclamation  
Lower Colorado Region  
Boulder Canyon Operations Office  
P.O. Box 61470  
Boulder City, NV 89006-1470  
Colorado River Board of California  
770 Fairmont Avenue Suite 100  
Glendale, CA 91203-1068

David G. Brownlee  
City of Needles  
817 Third Street  
Needles, CA 92363  
Don and Maggie Dunham  
[Havasugram7@comcast.com](mailto:Havasugram7@comcast.com)

William Massey  
P.O. Box 1589  
Needles, CA 92363

Judy Bryant  
[Judy.bryant@live.com](mailto:Judy.bryant@live.com)

Bill Nichols  
12670 Jalapeno Ave.  
Chino, CA 91710

Susie Wilson  
[Suestyle65@gmail.com](mailto:Suestyle65@gmail.com)

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Chemehuevi Indian Tribe  
P.O. Box 1976  
Havasu Lake, CA 92363  
Emmanuelle Rapticavoli  
[Rapticavoli.Emmanuelle@epa.gov](mailto:Rapticavoli.Emmanuelle@epa.gov)

Alexa Engelman  
[Engelman.Alexa@epa.gov](mailto:Engelman.Alexa@epa.gov)

Christopher Chen  
[Chen.Christopher@epa.gov](mailto:Chen.Christopher@epa.gov)

Hong Wan  
[Wan.Hong@epa.gov](mailto:Wan.Hong@epa.gov)

APPENDIX A

END OF APPENDIX A