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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 CENTER FOR BIOLOGICAL DIVERSITY) Civ. No.
15 and CENTER FOR FOOD SAFETY,)

16 Plaintiffs,
17 vs.

18 **COMPLAINT FOR
19 DECLARATORY AND
20 INJUNCTIVE RELIEF**

21 U.S. BUREAU OF LAND MANAGEMENT;)
22 RYAN ZINKE, Secretary of Interior; BRIAN)
23 STEED, Acting Director, Bureau of Land)
24 Mgmt.; JEROME PEREZ, California Director,)
25 Bureau of Land Mgmt.; BETH RANSEL,)
26 District Manager, California Desert District)
27 Office, Bureau of Land Mgmt.; KATRINA)
28 SYMONS, Manger, Barstow Field Office,)
Bureau of Land Mgmt.,)

Defendants.)

INTRODUCTION

1. This case challenges an illegal determination by the Trump Administration that enables a for-profit corporation called Cadiz, Inc. to construct a 43-mile pipeline through Mojave Trails National Monument and other public land while circumventing laws enacted to protect human health and the environment. A key component of the so-called “Cadiz Valley Water Conservation, Recovery and Storage Project” (Cadiz Project), the pipeline will allow Cadiz, Inc. to sell billions of gallons of groundwater mined from ancient desert aquifers to urban water districts.

1 2. The impact that the Cadiz Project pipeline will have on the fragile desert
2 environment cannot be overstated. Not only will construction and maintenance of the
3 pipeline disrupt wildlife and worsen pollution in and around Mojave Trails National
4 Monument, but also the U.S. Geological Survey has warned the pipeline will make it
5 possible for Cadiz, Inc. to extract far more groundwater from the desert aquifers than
6 is replenished naturally. The resulting draw-down of the water table will cause many
7 freshwater springs of critical importance to desert plants and animals to go dry. The
8 retreating aquifer will also desiccate desert “playa” lakebeds, resulting in toxic air
9 pollution from windswept sediments akin to what has plagued the Owens Valley to
10 the north ever since Los Angeles dried Owens Lake a century ago.

11 3. Making matters worse, the desert aquifers that Cadiz, Inc. intends to
12 drain are high in hexavalent chromium, a powerful carcinogen, and other heavy metals
13 like arsenic and mercury. Health experts have concluded that the Cadiz Project will
14 produce water laced with toxins that could pose a serious risk to consumers.

15 4. On October 13, 2017, defendants U.S. Bureau of Land Management, *et*
16 *al.* (collectively, “BLM”) improperly concluded the Cadiz Project pipeline “falls
17 within the scope” of an existing right-of-way easement granted to the Arizona
18 California Railroad under the 1875 General Railroad Right-of-Way Act (1875 Act).
19 BLM therefore wrongly determined that Cadiz, Inc. may contract to build and operate
20 its pipeline within the railroad’s right-of-way without prior authorization from BLM,
21 which would be contingent legally upon environmental review, an opportunity for
22 public review and comment, and compliance with federal environmental laws.

23 5. To accommodate Cadiz, Inc., BLM also withdrew a comprehensive legal
24 analysis undertaken by the prior presidential administration, which had reached
25 precisely the opposite conclusion with respect to the Cadiz Project pipeline. In 2011,
26 the Department of Interior analyzed Supreme Court precedent and legislative history
27 and concluded correctly that activities within an 1875 Act right-of-way must “derive
28 from or further a railroad purpose.” And in 2015, the Bureau of Land Management

1 confirmed that the Cadiz Project pipeline “does not derive from or further a railroad
2 purpose” and thus cannot be built on public land without federal review and approval.

3 6. Plaintiffs Center for Biological Diversity and Center for Food Safety will
4 be directly harmed by BLM’s illegal reversal and new determination with regard to
5 the Cadiz Project pipeline. Plaintiffs ask this Court to find and declare that the Cadiz
6 Project pipeline falls outside the scope of the 1875 Act right-of-way at issue, vacate
7 BLM’s determination to the contrary, and enjoin BLM from allowing the pipeline to
8 proceed without authorization issued in accordance with all applicable federal laws.

9 **JURISDICTION AND VENUE**

10 7. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1346, because
11 defendants are agents of the United States and because Plaintiffs’ claims arise under
12 federal law. The Court may issue a declaratory judgment and further relief under 28
13 U.S.C. §§ 2201-02. An actual justiciable controversy exists between the parties.

14 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1), because
15 a substantial part of the public land that is the subject of this action lies in this District.

16 9. Assignment to the Western Division of this Court is proper under
17 General Order No. 16-05 I.B.1.a(1)(b).

18 **PARTIES**

19 10. Plaintiff Center for Biological Diversity (CBD) is a national non-profit
20 conservation organization with over 61,000 members dedicated to the protection of
21 biodiversity and ecosystems throughout the world. CBD works through science, law,
22 and creative media to secure a future for all species, great and small, hovering on the
23 brink of extinction, with a focus on protecting the lands, waters and climate that
24 species need to survive. CBD has offices in California and over 13,000 members
25 across the state. CBD is actively involved in species and habitat protection in the
26 California Desert, including on the federal land at issue in this case.

27 11. Plaintiff Center for Food Safety (CFS) is a public interest, non-profit
28 membership organization with offices in San Francisco, California; Portland, Oregon;

1 and Washington, D.C. CFS represents over 900,000 members from every state in the
2 country, including over 100,000 Californians whose economic and personal wellbeing
3 depends upon the equitable distribution of safe and uncontaminated water. CFS's
4 fundamental mission is to protect food, farmers, and the environment from the harms
5 of industrial agriculture. To that end, CFS works to protect our freshwater resources
6 and ensure that access to and use of freshwater is fair and sustainable. CFS advocates
7 for a more equitable and democratic distribution of our shared water resources and
8 seeks to ensure that environmental stewardship is the starting point for any decision
9 affecting the distribution of water resources.

10 12. Plaintiffs have members who live, work, and recreate in the Mojave
11 Desert region in the vicinity of the Cadiz Project. Plaintiffs' members and supporters
12 enjoy, on a continuing basis, public lands within Mojave Trails National Monument
13 and other public lands that will be affected by the Cadiz Project. In a land where
14 water is scarce and precious, Plaintiffs' members have visited freshwater springs near
15 the Cadiz Project, including Bonanza Springs, to observe rare plants and animals and
16 find solace and renewal, and they intend to continue to do so in the future. Plaintiffs'
17 members derive professional, aesthetic, recreational, and educational enjoyment from
18 the natural ecosystems that these desert springs and other riparian areas support.

19 13. Plaintiffs have been, are being, and will continue to be adversely affected
20 and irreparably injured by BLM's illegal determination that the Cadiz Project pipeline
21 may proceed without environmental review or authorization by BLM. The interests of
22 Plaintiffs' members described above will be injured not only by the noise, pollution,
23 and adverse impacts to plants and wildlife associated with construction, operation, and
24 maintenance of the Cadiz Project pipeline, but also by the draw-down of the aquifers
25 that will result from operation of the Cadiz Project. The drying of desert springs and
26 riparian areas, as well as the air pollution caused by excessive drying of desert
27 lakebeds, will cause Plaintiffs' and their members to suffer actual injury-in-fact that is
28 both concrete and particularized.

1 14. Plaintiffs also have members who live in urban areas that would receive
2 water from the Cadiz Project and are justifiably concerned about the health risks
3 associated with using and consuming water that contains hexavalent chromium and
4 other heavy metals. BLM's decision to allow the Cadiz Project pipeline to circumvent
5 federal health and safety laws harms Plaintiffs and their members, because it allows
6 Cadiz, Inc. to profit by privatizing and selling public water resources that are unsafe
7 for urban uses.

8 15. Plaintiffs are non-profit advocacy organizations whose organizational
9 missions have been, are being, and will continue to be frustrated by BLM's illegal
10 determination regarding the Cadiz Project pipeline. Plaintiffs have been, are being,
11 and will continue to be required to divert their organizational resources to oppose
12 BLM's illegal determination and to ensure that the Cadiz Project pipeline is not
13 allowed to proceed.

14 16. Plaintiffs' injuries described above would be redressed by the relief
15 sought herein. Plaintiffs have no adequate remedy at law. Plaintiffs have exhausted
16 all available administrative remedies.

17 17. Defendant U.S. Bureau of Land Management is an administrative agency
18 within the Department of Interior responsible for managing the public land
19 surrounding much of the Cadiz Project and underlying much of the railroad right-of-
20 way through which the Cadiz Project pipeline is proposed to be built.

21 18. Defendant Ryan Zinke is the Secretary of Interior and sued in his official
22 capacity.

23 19. Defendant Brian Steed is the Bureau of Land Management's acting
24 director and is sued in his official capacity.

25 20. Defendant Jerome Perez is the state director for the Bureau of Land
26 Management in California and is sued in his official capacity.

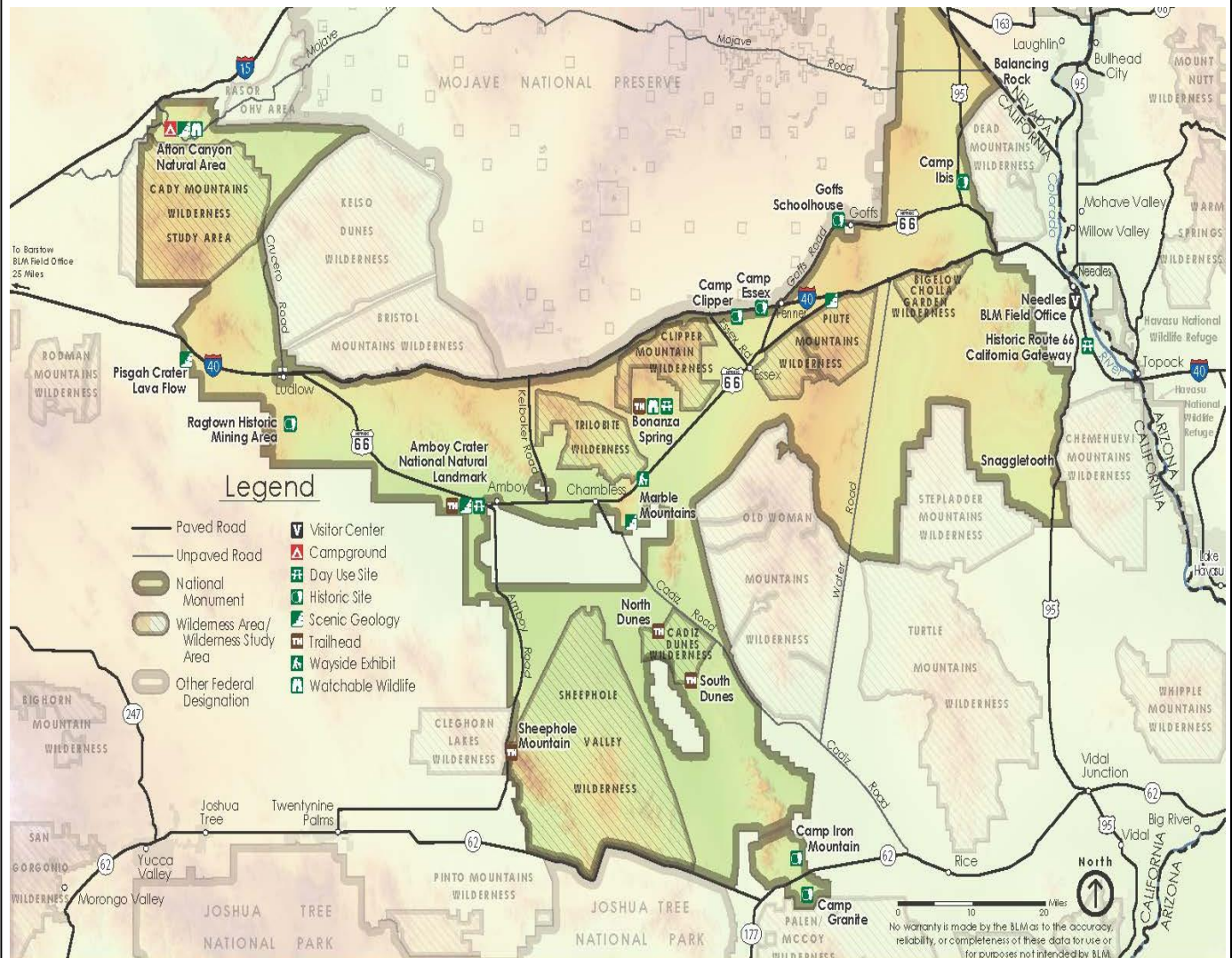
27 21. Defendant Beth Ransel is the district manager of the Bureau of Land
28 Management's California Desert District Office and is sued in her official capacity.

22. Defendant Katrina Symons is the field manager of the Bureau of Land Management’s Barstow Field Office and is sued in her official capacity.

FACTUAL BACKGROUND

Mojave Trails National Monument

23. President Obama established Mojave Trails National Monument by presidential proclamation on February 12, 2016. See 81 Fed. Reg. 8,371 (Feb. 18, 2016). Stretching from Joshua Tree National Park north to Mojave National Preserve, the Monument encompasses 1.6 million acres of federal land administered by the Bureau of Land Management and has been described as “the connective tissue of the California desert.” A BLM map of the Monument is reproduced below:



1 24. The presidential proclamation describes Mojave Trails National
2 Monument as “a stunning mosaic of rugged mountain ranges, ancient lava flows, and
3 spectacular sand dunes.” The proclamation finds that the Monument is “an invaluable
4 treasure and will continue to serve as an irreplaceable national resource for geologists,
5 ecologists, archaeologists, and historians for generations to come.” It concludes that
6 “protection of the Mojave Trails area will preserve its cultural, prehistoric, and
7 historic legacy and maintain its diverse array of natural and scientific resources,
8 ensuring that the prehistoric, historic, and scientific values of this area remain for the
9 benefit of all Americans.”

10 25. A complex network of ancient underground aquifers supports a number
11 of ecologically significant springs, seeps and other riparian areas in and near Mojave
12 Trails National Monument. For example, the Bonanza Spring complex rises from the
13 southwest slope of the Clipper Mountains and supports a substantial riparian area with
14 cottonwoods, willows, and other water-dependent vegetation within the Monument.
15 In a region where water is scarce, springs, seeps, and riparian areas provide essential
16 habitat for a variety of desert wildlife, including many imperiled species. The
17 proclamation recognizes the importance of maintaining sufficient water resources to
18 support the plants and animals that inhabit these desert lands, and it requires the
19 Secretary of Interior to “work with appropriate State officials to ensure the availability
20 of water resources, including groundwater resources, needed for monument purposes.”

21 26. Mojave Trails National Monument surrounds both Bristol Dry Lake,
22 located southeast of Amboy, and Cadiz Dry Lake, located south of the Cadiz Dunes
23 Wilderness Area. Although these desert lakebeds, or “playas,” are dry for most of the
24 year, evaporation from underground aquifers keeps the lakebeds moist year-round and
25 prevents lakebed sediment from becoming airborne particulate pollution.

26 **The Cadiz Project**

27 27. Cadiz, Inc. is a for-profit corporation that has acquired over 34,000 acres
28 of private land in the Mojave Desert, most of which is located within the large

1 rectangular “donut hole” at the center of Mojave Trails National Monument.
2 Spanning portions of the Fenner, Cadiz, and Bristol Valley watersheds, Cadiz, Inc.’s
3 property sits above portions of the same underground aquifers that feed springs, seeps
4 and riparian areas within the Monument and other nearby public lands, as well as the
5 Bristol and Cadiz Dry Lakes.

6 28. In 2012, Cadiz, Inc. received approval from the County of San
7 Bernardino to undertake the “Cadiz Valley Water Conservation, Recovery and
8 Storage Project.” The Cadiz Project is designed to extract an average of 50,000 acre
9 feet (an amount equivalent to 16.3 billion gallons) of groundwater every year for 50
10 years from the aquifers underlying Cadiz’ property. Cadiz, Inc. intends to profit by
11 selling the extracted groundwater to municipal water districts in San Bernardino, Los
12 Angeles and Orange counties.

13 29. The Cadiz Project will extract groundwater that would otherwise support
14 springs, seeps, and riparian areas in Mojave Trails National Monument and other
15 public lands and evaporate through Bristol and Cadiz Dry Lakes. Overall, the Project
16 will lower groundwater levels by 80 feet in the aquifer system through unsustainable
17 pumping. Because the Project will extract significantly more groundwater than will
18 be recharged naturally, it could take up to 390 years after the cessation of pumping for
19 the aquifer to return to its natural equilibrium.

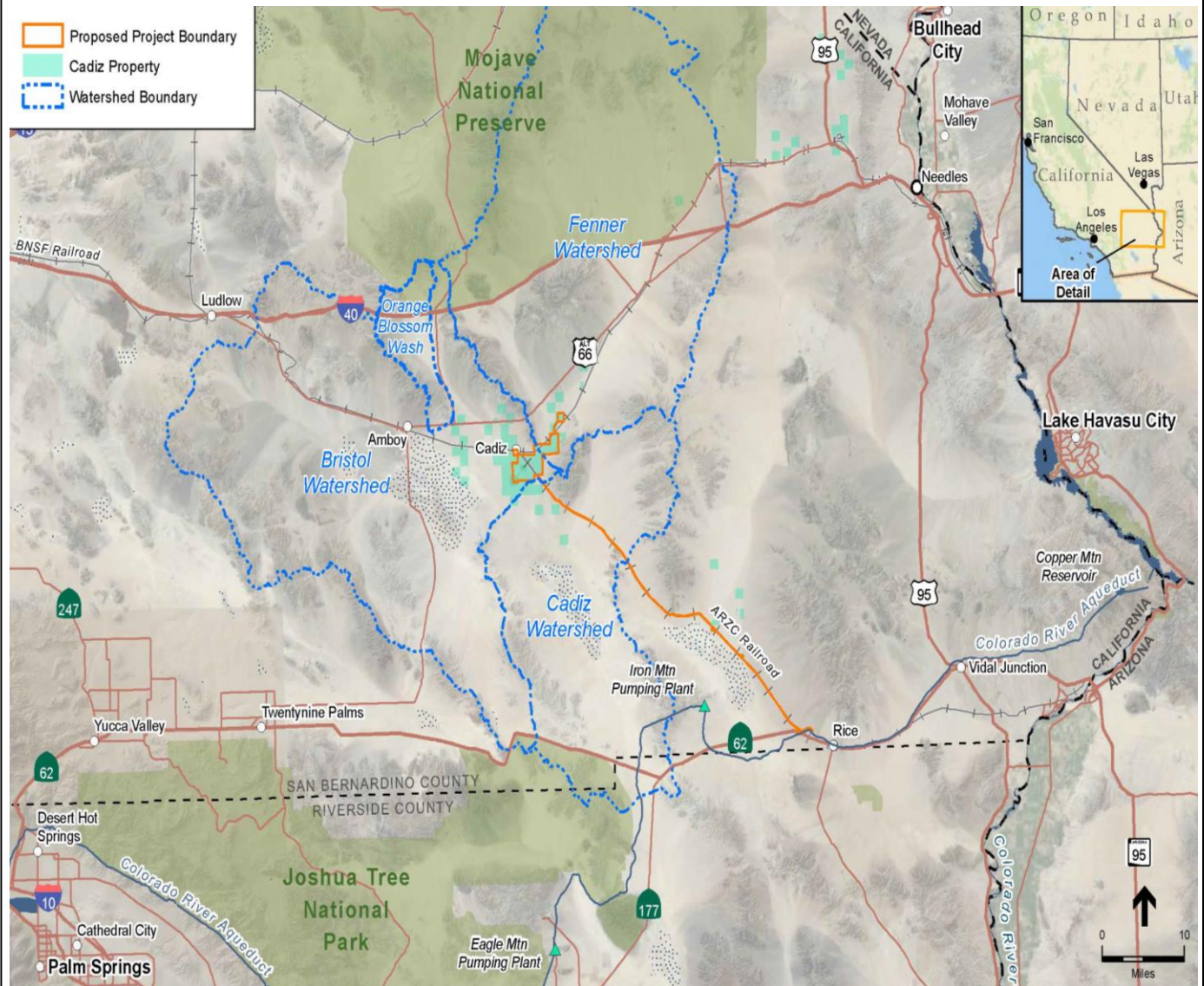
20 30. In 2000, the U.S. Geological Survey (USGS) reviewed hydraulic
21 modeling done by Cadiz, Inc. that purports to show the Fenner, Bristol, and Cadiz
22 watersheds receive 50,000 acre-feet of water each year through natural precipitation
23 run-off. USGS concluded that modeling done by Cadiz, Inc. was “not defensible” and
24 had overestimated the natural recharge rate by 5 to 25 times.

25 31. The desert aquifers that the Cadiz Project intends to tap contain
26 hexavalent chromium and other naturally occurring heavy metals. Experts have
27 warned that that water produced from the Cadiz Project will contain hexavalent
28 chromium at levels that far exceed state and federal safety guidelines.

The Cadiz Project Pipeline

32. A critical component of the Cadiz Project is a 43-mile pipeline that will be used to convey groundwater extracted from the property owned by Cadiz, Inc. south to the California River Aqueduct near the town of Rice, where it will be made available for sale to municipal waters districts further west.

33. Cadiz, Inc. intends to build its pipeline within an existing right of way granted to the Arizona and California Railroad (ARZC) under the General Railroad Right-of-Way Act of 1875. A map depicting the ARZC right-of-way in relation to the Cadiz Project and the Colorado River Aqueduct is reproduced below:



1 37. Section 4 of the 1875 Act provides that “any railroad desiring to secure
2 the benefits of this act shall . . . file with the register of the land office . . . a profile of
3 its road; and upon approval . . . the same shall be noted upon the plats . . .; and
4 thereafter all such lands over which such right of way shall pass shall be disposed of
5 subject to such right of way.” 43 U.S.C. § 937.

6 38. Construing the plain language and legislative history of the 1875 Act, the
7 U.S. Supreme Court has held that the statute “clearly grants only an easement, not a
8 fee.” *Great Northern Railway Co.*, 315 U.S. at 271. Thus, whereas earlier statutes
9 provided “lavish” outright grants of land to railroads, the 1875 Act provides only for
10 limited right-of-way easement. *Id.* at 274.

11 39. The plain language and legislative history of the 1875 Act also confirm
12 that the statute grants only those property rights necessary for the purpose of
13 constructing and running the railroad itself. Activities that do not further a railroad
14 purpose are beyond the scope of an 1875 Act right-of-way easement.

15 40. On November 4, 2011, the Department of Interior’s Solicitor’s Office
16 issued an opinion analyzing the plain language and legislative history of the 1875 Act.
17 The Solicitor’s Opinion determined:

18 Within an 1875 Act [right-of-way], a railroad’s authority to undertake or
19 authorize activities is limited to those activities that derive from or
20 further a railroad purpose, which allows a railroad to undertake, or
21 authorize others to undertake, activities that have both railroad and
22 commercial purposes, but does not permit a railroad to authorize
activities that bear no relationship to the construction or operation of a
railroad.

23 **The Federal Land Policy & Management Act of 1976**

24 41. The Federal Land Policy and Management Act (FLPMA) is a
25 comprehensive statute designed to ensure that public land administered by BLM is
26 “managed in a manner that will protect the quality of scientific, scenic, historic,
27 ecological, environmental, air and atmospheric, water resource, and archeological
28 values.” 43 U.S.C. § 1701(a)(8).

1 42. FLPMA recognizes that the deserts of southeastern California provide a
2 rich and unique environment teeming with “historical, scenic, archeological,
3 environmental, biological, cultural, scientific, educational, recreational, and economic
4 resources.” 43 U.S.C. § 1781(a)(2). Though vast, the statute recognizes that these
5 California deserts and their resources are “extremely fragile, easily scarred, and
6 slowly healed.” *Id.* Human activities can easily threaten rare and endangered species
7 of wildlife and plants in this sensitive ecosystem. 43 U.S.C. § 1781(a)(3).

8 43. To protect and conserve California’s deserts and their resources, FLPMA
9 designated 25 million acres as the California Desert Conservation Area (CDCA). 43
10 U.S.C. § 1781(c). About half of the CDCA is public land administered by the Bureau
11 of Land Management. *Id.* Congress mandated that the Secretary of the Interior
12 develop a “comprehensive, long-range plan for the management, use, development,
13 and protection of the public lands within the [CDCA].” 43 U.S.C. § 1781(d).

14 44. To ensure proper stewardship of federal public land, including land
15 within the CDCA, FLPMA also “replaced a tangled array of laws granting rights-of-
16 way across federal lands, with a single method for establishing a right-of-way over
17 public lands.” *W. Watersheds Project v. Matejko*, 468 F.3d 1099, 1104 (9th Cir.
18 2006). Specifically, FLPMA authorizes the Secretary of Interior “to grant, issue, or
19 renew rights-of-way over, upon, under, or through” land administered by BLM for,
20 among other things, “pipelines . . . for the . . . transportation or distribution of water.”
21 43 U.S.C. § 1761 (a)(1).

22 45. “Effective on and after October 21, 1976,” FLPMA provides that “no
23 right-of-way for the purposes listed in this subchapter shall be granted, issued, or
24 renewed over, upon, under, or through such lands except under and subject to the
25 provision, limitations, and conditions of this subchapter.” 43 U.S.C. § 1770(a).
26 Regulations promulgated by the Secretary of Interior under FLPMA and codified in
27 Title 43, Part 2800 of the Code of Federal Regulations make clear: “You must have a
28 grant under this part when you plan to use public lands for systems or facilities over,

1 under, on, or through public lands. These include, but are not limited to: . . . pipelines
2 . . . and other systems which impound, store, transport, or distribute water.” 43 C.F.R.
3 § 2801.9(a)(1).

4 46. Prior to granting a right-of-way for a water pipeline under FLPMA, the
5 applicant must submit substantial analysis and the Secretary of Interior, acting through
6 BLM, must make a number of findings. For example, “prior to granting or issuing a
7 right-of-way . . . for a new project which may have a significant impact on the
8 environment,” BLM “shall require the applicant to submit a plan for construction,
9 operation, and rehabilitation for such right-of-way.” 43 U.S.C. § 1764(d).

10 47. When granting rights-of-way, BLM is authorized to include terms,
11 conditions, and stipulations it determines to be in the public interest, which may
12 include modifying the proposed use or changing the route or location of the proposed
13 facilities. 43 CFR § 2805.10(a)(1). In deciding whether to grant a right-of-way, BLM
14 must also comply with the existing land and resource management plans, including
15 the CDCA Plan, as amended by the NECO Plan and the DRECP.

16 48. If the granting of a right-of-way under FLPMA may have a significant
17 impact on the environment, BLM must prepare an environmental impact statement in
18 accordance with the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*
19 Prior to granting a right-of-way under FLPMA, BLM must also comply with the
20 requirements of the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*

21 **PROCEDURAL BACKGROUND**

22 49. In 2015, during the previous presidential administration, the Bureau of
23 Land Management analyzed the Cadiz Project pipeline and issued a 24-page
24 document that determined correctly that the Project “does not derive from or further a
25 railroad purpose.” On October 2, 2015, the Bureau of Land Management informed
26 Cadiz, Inc. that it had therefore “reached an administrative determination that the
27 [Cadiz] Project as described cannot be authorized by ARZC because it is outside the
28 scope of ARZC’s [right-of-way] grants held under the 1875 Act.” “In order to

1 proceed with the proposed Project,” the Bureau stated that “Cadiz, Inc., ARZC, or
2 other parties involved will require . . . authorization for a right-of-way for the Project
3 under regulations set forth in 43 C.F.R. Part 2800.”

4 50. On September 1, 2017, under a new presidential administration, the
5 Department of Interior’s Solicitor’s Office issued a memorandum that superseded the
6 November 4, 2011 Solicitor’s Opinion regarding the scope of an 1875 Act right-of-
7 way easement and instead wrongly concludes:

8 [R]ights-of-way granted to railroad companies under the 1875 Act allow
9 railroad companies to lease portions of their easements to third parties
10 without permit or grant from the Bureau of Land Management . . .
11 provided that such leases are limited to the surface, broadly defined, of
the easement and do not interfere with the continued use of the easement
as a railroad.

12 51. On October 13, 2017, BLM advised Cadiz, Inc. by letter that it had
13 determined that the Cadiz Project pipeline is “within the scope of rights granted to the
14 Arizona and California Railroad (ARZC) under the General Railroad Right-of-Way
15 Act of March 3, 1875 (1875 Act), and therefore does not require authorization by
16 BLM.” The October 13, 2017 letter “concludes that the Cadiz Project would not
17 interfere with the continued use of the easement for railroad operations, nor would the
18 proposed activities extend beyond the surface of the easement, broadly defined.” The
19 letter further “concludes in the alternative that the Cadiz Project would further a
20 railroad purpose consistent with the historical understanding of the incidental use
21 doctrine.”

22 52. BLM’s October 13, 2017 letter “expressly supersedes” the agency’s
23 prior, October 2, 2015, administrative determination regarding the Cadiz Project
24 pipeline. BLM’s October 13, 2017 letter constitutes “final agency action” for
25 purposes of the Administrative Procedure Act, 5 U.S.C. § 704, because it determines
26 final rights and legal consequences flow from it. Plaintiffs have exhausted their
27 administrative remedies.

1 **FIRST CLAIM FOR RELIEF**

2 **(Illegal Agency Action)**

3 53. Plaintiffs re-allege, as if fully set forth herein, each and every allegation
4 contained in the preceding paragraphs.

5 54. FLPMA prohibits BLM from authorizing or otherwise allowing
6 construction or operation of the Cadiz Project pipeline to proceed in the absence of a
7 valid, right-of-way easement across the federal lands at issue.

8 55. Construction and operation of the Cadiz Project pipeline is beyond the
9 scope of the existing 1875 Act right-of-way easement held by ARZC, because it does
10 not derive from or further a railroad purpose and bears no relationship to the
11 construction or operation of a railroad. Construction and operation of the Cadiz
12 Project pipeline is not incidental to continued railroad operations.

13 56. BLM's determination that construction and operation of the Cadiz
14 Project pipeline is within the scope of the existing 1875 Act right-of-way easement
15 held by ARZC and does not require a new right-of-way granted in accordance with
16 FLPMA and other applicable laws and regulations is arbitrary, capricious, an abuse of
17 discretion, and otherwise not in accordance with law.

18 **SECOND CLAIM FOR RELIEF**

19 **(In the Alternative: Failure to Act in Accordance with Law)**

20 57. Plaintiffs re-allege, as if fully set forth herein, each and every allegation
21 contained in the preceding paragraphs.

22 58. By allowing construction and operation of the Cadiz Project pipeline to
23 proceed in the absence of a valid, right-of-way easement across the federal lands at
24 issue, BLM has failed to act in accordance with the requirements of FLPMA and the
25 other applicable federal laws and regulations identified herein.

26 **REQUEST FOR RELIEF**

27 WHEREFORE, Plaintiffs respectfully request that this Court:
28

1 A. Find and declare that construction and operation of the Cadiz Project
2 pipeline is beyond the scope of the 1875 Act right-of-way easement held by ARZC;

3 B. Find and declare that BLM violated FLPMA by determining that
4 construction and operation of the Cadiz Project pipeline may proceed in the absence
5 of a valid, right-of-way easement across the federal lands at issue;

6 C. Vacate BLM's illegal determination with regard to the Cadiz Project
7 pipeline and enjoin BLM from authorizing or otherwise allowing construction and
8 operation of the Cadiz Project pipeline to proceed in the absence of a valid, right-of-
9 way easement across the federal lands at issue;

10 D. Award Plaintiffs their costs of litigation, including reasonable attorneys'
11 fees and costs; and

12 E. Grant Plaintiffs such additional relief as the Court may deem proper.

13
14 Respectfully submitted,

15 Dated: Nov. 28, 2017

/s/ Gregory C. Loarie
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