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

14 CENTER FOR BIOLOGICAL DIVERSITY)
15 and CENTER FOR FOOD SAFETY,)

16 Plaintiffs,)

17 vs.)

18 U.S. BUREAU OF LAND MGMT.; RYAN)
19 ZINKE, Secretary of Interior; BRIAN STEED,)
20 Deputy Director, Programs and Policy, Bureau)
21 of Land Mgmt.; MICHAEL NEDD, Acting)
22 Deputy Director, Operations, Bureau of Land)
23 Mgmt.; JEROME PEREZ, California Director,)
24 Bureau of Land Mgmt.; BETH RANSEL,)
25 District Manager, California Desert District)
26 Office, Bureau of Land Mgmt.; MICHAEL)
27 AHRENS, Manager, Needles Field Office,)
28 Bureau of Land Mgmt.,)

Defendants.)

Civ. No. 2:17-cv-08587-GW-AS

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. This case challenges an October 13, 2017, determination by the Trump Administration’s Bureau of Land Management (BLM) that enables a for-profit corporation called Cadiz, Inc. to construct a 43-mile-long pipeline through Mojave Trails National Monument and other public land in violation of federal laws enacted

1 to protect human health and the environment. A key component of the so-called
2 “Cadiz Valley Water Conservation, Recovery and Storage Project” (Cadiz Project),
3 the pipeline will allow Cadiz, Inc. to sell billions of gallons of groundwater mined
4 from ancient desert aquifers to urban water districts.

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

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

19 4. As set forth below, BLM’s determination with respect to the Cadiz
20 Project pipeline is illegal. First, BLM wrongly concluded that the Cadiz Project
21 pipeline “falls within the scope” of grandfathered railroad rights-of-way through
22 federal public land and can proceed in the absence of a right-of-way issued by BLM in
23 accordance with the procedural and substantive safeguards of the Federal Land Policy
24 and Management Act (FLPMA). Second, BLM failed to analyze the significant
25 environmental impacts that will flow from its determination with respect to the Cadiz
26 Project pipeline, as required by the National Environmental Policy Act (NEPA).

27 5. Plaintiffs Center for Biological Diversity and Center for Food Safety ask
28 this Court to set aside BLM’s illegal determination regarding the Cadiz Project

1 pipeline and enjoin BLM from authorizing or otherwise allowing construction and
2 operation of the pipeline pending compliance with all applicable laws and regulations.

3 **JURISDICTION AND VENUE**

4 6. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1346, because
5 defendants are agents of the United States and because Plaintiffs' claims arise under
6 federal law. The Court may issue a declaratory judgment and further relief under 28
7 U.S.C. §§ 2201-02.

8 7. An actual justiciable controversy exists between the parties. Plaintiffs
9 have exhausted all available administrative remedies.

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

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

14 **PARTIES**

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

23 11. Plaintiff Center for Food Safety (CFS) is a public interest, non-profit
24 membership organization with offices in San Francisco, California; Portland, Oregon;
25 and Washington, D.C. CFS represents over 900,000 members from every state in the
26 country, including over 100,000 Californians whose economic and personal well-
27 being depends upon the equitable distribution of safe and uncontaminated water.
28 CFS's fundamental mission is to protect food, farmers, and the environment from the

1 harms of industrial agriculture. To that end, CFS works to protect our freshwater
2 resources and ensure that access to and use of freshwater is fair and sustainable. CFS
3 advocates for a more equitable and democratic distribution of our shared water
4 resources and seeks to ensure that environmental stewardship is the starting point for
5 any decision affecting the distribution of water resources.

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

15 13. Plaintiffs have been, are being, and will continue to be adversely affected
16 and irreparably injured by BLM's October 13, 2017, determination with respect to the
17 Cadiz Project pipeline. The interests of Plaintiffs' members described above will be
18 injured not only by the noise, pollution, and adverse impacts to plants and wildlife
19 associated with construction, operation, and maintenance of the Cadiz Project
20 pipeline, but also by the draw-down of the aquifers that will result from operation of
21 the Cadiz Project. The drying of desert springs and riparian areas, as well as the air
22 pollution caused by excessive drying of desert lakebeds, will cause Plaintiffs' and
23 their members to suffer actual injury-in-fact that is both concrete and particularized.

24 14. Plaintiffs also have members who live in urban areas that will receive
25 water from the Cadiz Project and are justifiably concerned about the health risks
26 associated with using and consuming water that contains hexavalent chromium and
27 other heavy metals. BLM's decision to allow the Cadiz Project pipeline to circumvent
28 federal health and safety laws harms Plaintiffs and their members, because it allows

1 Cadiz, Inc. to profit by privatizing and selling public water resources that are unsafe
2 for urban uses.

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

9 16. Plaintiffs' injuries described above are caused by BLM's determination
10 with respect to the Cadiz Project pipeline, because BLM's determination authorizes
11 Cadiz, Inc. to undertake harmful activities that would otherwise be illegal or
12 impracticable. Plaintiffs' injuries would be redressed by the relief sought herein.
13 Plaintiffs have no adequate remedy at law.

14 17. Defendant Bureau of Land Management is the administrative agency
15 within the Department of Interior responsible for managing the public land
16 surrounding much of the Cadiz Project and underlying much of the railroad rights-of-
17 way through which the Cadiz Project pipeline is proposed to be built.

18 18. Defendant Ryan Zinke is Secretary of the U.S. Department of Interior
19 and sued in his official capacity as such.

20 19. Defendant Brian Steed is BLM's Deputy Director for Programs and
21 Policy and sued in his official capacity as such. According to BLM's website, Mr.
22 Steed is currently "exercising authority of the director."

23 20. Defendant Michael Nedd is BLM's Acting Deputy Director for
24 Operations and sued in his official capacity as such. Mr. Nedd signed BLM's October
25 13, 2017, determination regarding the Cadiz Project pipeline when he was serving as
26 the agency's Acting Director.

27 21. Defendant Jerome Perez is BLM's California State Director and sued in
28 his official capacity as such.

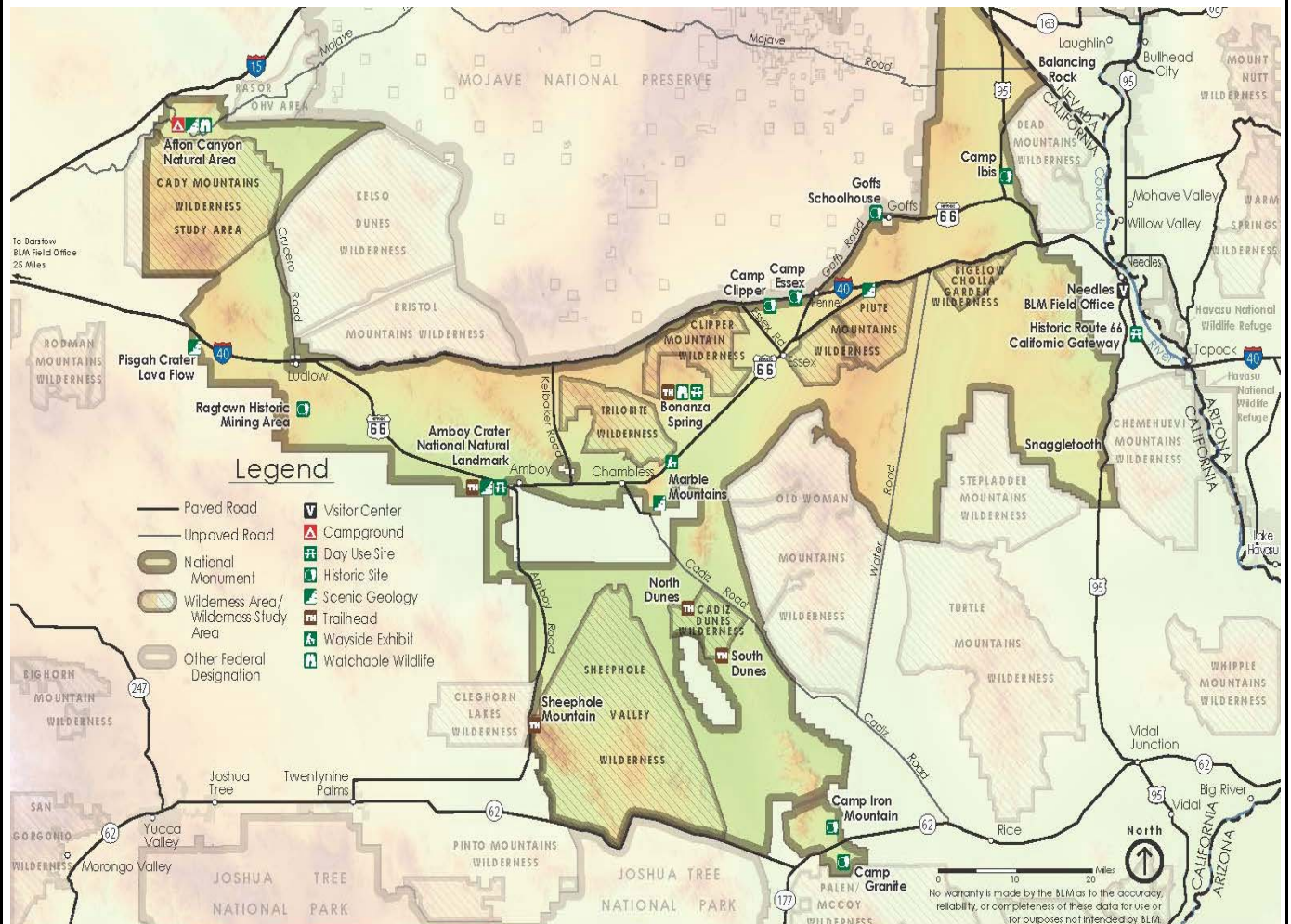
22. Defendant Beth Ransel is the District Manager for BLM’s California Desert District and sued in her official capacity as such.

23. Defendant Michael Ahrens is the Field Manager for BLM’s Needles Field Office and sued in his official capacity as such.

FACTUAL BACKGROUND

Mojave Trails National Monument

24. 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 25. 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 26. 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 27. 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 28. 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 29. Cadiz, Inc. seeks to construct and operate the “Cadiz Valley Water
7 Conservation, Recovery and Storage Project” or “Cadiz Project.” When complete, the
8 Cadiz Project would extract an average of 50,000 acre feet (an amount equivalent to
9 16.3 billion gallons) of groundwater every year for 50 years from the aquifers
10 underlying Cadiz’ property. Cadiz, Inc. seeks to profit by selling the extracted
11 groundwater to municipal water districts in San Bernardino, Los Angeles and Orange
12 counties.

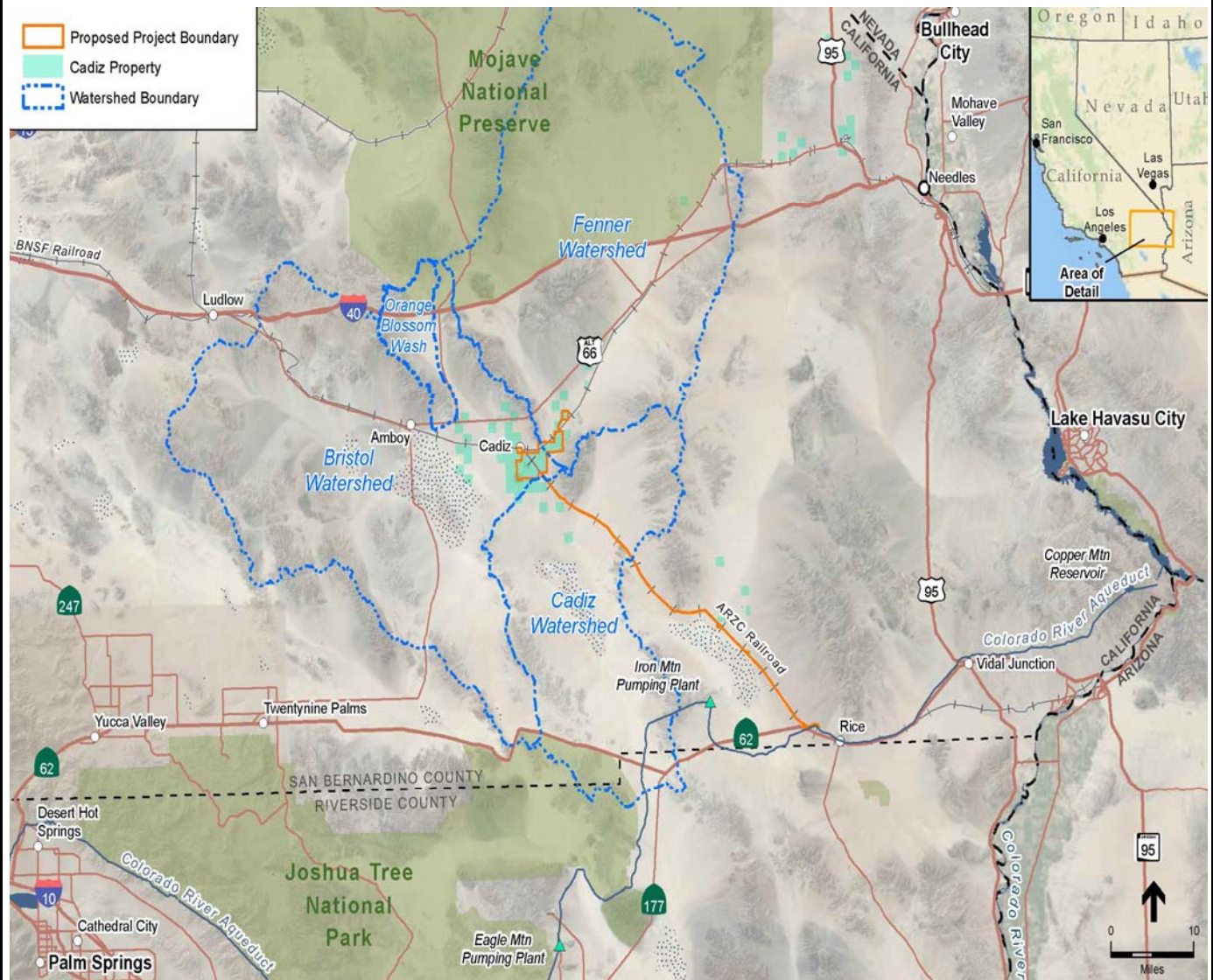
13 30. The groundwater that Cadiz, Inc. intends to mine and sell would
14 otherwise support springs, seeps, and riparian areas in Mojave Trails National
15 Monument and other public lands and evaporate through Bristol and Cadiz Dry Lakes.
16 Overall, the Cadiz Project would lower groundwater levels by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

20 31. 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 32. The desert aquifers that the Cadiz Project intends to draw down 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

33. For the Cadiz Project to proceed, Cadiz, Inc. must have a financially feasible means for transporting the groundwater beneath its property to municipal water districts and other consumers. Currently, the only practicable option is for Cadiz, Inc. to construct a 43-mile-long pipeline within existing rights-of-way held by the Arizona and California Railroad Company (ARZC), which extend from Cadiz, Inc.'s property south through Mojave Trails National Monument and other public land to the Colorado River Aqueduct near the town of Rice. A map depicting the ARZC rights-of-way in relation to the Cadiz Project and the Colorado River Aqueduct is reproduced below:



1 **The Federal Land Policy and Management Act**

2 39. Congress enacted the Federal Land Policy and Management Act
3 (FLPMA) in 1973 to ensure that federal public land administered by BLM is
4 “managed in a manner that will protect the quality of scientific, scenic, historic,
5 ecological, environmental, air and atmospheric, water resource, and archeological
6 values.” 43 U.S.C. § 1701(a)(8).

7 40. FLPMA finds that the deserts of southeastern California are a rich and
8 unique environment teeming with “historical, scenic, archeological, environmental,
9 biological, cultural, scientific, educational, recreational, and economic resources.” 43
10 U.S.C. § 1781(a)(1). Though vast, the statute recognizes that these deserts are
11 “extremely fragile, easily scarred, and slowly healed.” 43 U.S.C. § 1781(a)(2).
12 FLPMA finds that “the California desert environment and its resources, including
13 certain rare and endangered species of wildlife, plants, and fishes, and numerous
14 archeological and historic sites, are seriously threatened by air pollution . . . and
15 pressures of increased use.” 43 U.S.C. § 1781(a)(3).

16 41. In an effort to protect southern California’s deserts for future generations,
17 FLPMA designated 25 million acres of federal public land as the California Desert
18 Conservation Area (CDCA). 43 U.S.C. § 1781(c). About half of the CDCA is public
19 land administered by the Bureau of Land Management. *Id.* Congress mandated that
20 the Secretary of the Interior develop a “comprehensive, long-range plan for the
21 management, use, development, and protection of the public lands within the
22 [CDCA].” 43 U.S.C. § 1781(d).

23 42. FLPMA also “replaced a tangled array of laws granting rights-of-way
24 across federal lands, with a single method for establishing a right-of-way over public
25 lands” administered by BLM. *W. Watersheds Project v. Matejko*, 468 F.3d 1099,
26 1104 (9th Cir. 2006). The statute preserves “any right-of-way . . . heretofore issued,
27 granted, or permitted.” 43 U.S.C. § 1769(a). However, “[e]ffective on and after
28 October 21, 1976,” FLPMA provides that “no right-of-way for the purposes listed in

1 this subchapter shall be granted, issued, or renewed over, upon, under, or through such
2 lands except under and subject to the provision, limitations, and conditions of this
3 subchapter.” 43 U.S.C. § 1770(a).

4 43. FLPMA sets forth a process by which the Secretary of Interior, acting
5 through BLM, may “grant, issue, or renew rights-of-way over, upon, under, or
6 through” federal land administered by BLM for, among other things, “pipelines . . .
7 for the . . . transportation or distribution of water.” 43 U.S.C. § 1761 (a)(1).

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

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

20 **The National Environmental Policy Act**

21 46. NEPA is “our basic national charter for protection of the environment.”
22 *Or. Nat’l Desert Ass’n v. Jewell*, 840 F.3d 562, 568 (9th Cir. 2016) (quoting 40 C.F.R.
23 § 1500.1(a)). “To the fullest extent possible,” NEPA requires all federal agencies to
24 prepare a “detailed statement” that discusses the environmental effects of, and
25 reasonable alternatives to, all “major Federal actions significantly affecting the quality
26 of the human environment.” 42 U.S.C. § 4332(2)(C). This statement is commonly
27 known as an “environmental impact statement” or EIS.

28 47. The Supreme Court has explained that an EIS serves two purposes:

1 First, it ensures that the agency, in reaching its decision, will have
2 available, and will carefully consider, detailed information concerning
3 significant environmental impacts. Second, it guarantees that the
4 relevant information will be made available to the larger audience that
may also play a role in both the decisionmaking process and the
implementation of that decision.

5 *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 768 (2004).

6 48. Regulations promulgated by the Council on Environmental Quality to
7 assist federal agencies in implementing NEPA explain that an EIS must analyze both
8 the direct effects of the agency action on the environment and the “indirect effects,
9 which are caused by the action and are later in time or farther removed in distance, but
10 are still reasonably foreseeable.” 40 C.F.R. § 1508.8. An EIS must also consider the
11 “cumulative impacts” of the action, that is, the environmental impacts that result
12 “from the incremental impact of the action when added to other past, present, and
13 reasonably foreseeable future actions.” *Id.* § 1508.7.

14 49. An EIS must also consider alternatives to the agency action and “present
15 the environmental impacts of the proposal and the alternatives in comparative form,
16 thus sharply defining the issues and providing a clear basis for choice” among the
17 alternatives. 40 C.F.R. § 1502.14. The consideration and evaluation of alternatives
18 “is the heart of the [EIS].” *Id.* An EIS must “[d]evote substantial treatment to each
19 alternative considered in detail including the proposed action so that reviewers may
20 evaluate their comparative merits.” *Id.* § 1502.14(b).

21 **PROCEDURAL BACKGROUND**

22 50. In September 2008, Cadiz, Inc. entered into a lease with ARZC for the
23 purpose of constructing the Cadiz Project pipeline within ARZC’s 1875 Act rights-of-
24 way through Mojave Trails National Monument and other federal public land.

25 51. In June 2009, Senator Feinstein sent then-Secretary of Interior Ken
26 Salazar a letter requesting that the Department of Interior examine whether
27 construction and operation of the Cadiz Project pipeline within the existing ARZC
28 rights-of-way would require federal review and authorization.

1 52. On November 4, 2011, the Department of Interior’s Solicitor’s Office
2 issued Opinion M-37025, in which it analyzed the “the scope of a railroad’s authority
3 to authorize activities within a right-of-way (ROW) granted pursuant to the General
4 Railroad Right-of-Way Act of March 3, 1875.” Opinion M-37025 concluded:

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

11 53. On December 2, 2011, BLM issued Instruction Memorandum No. 2012-
12 038 (IM 2012-038) to provide “interim guidance” to BLM field offices “in light of the
13 release of Solicitor’s Opinion M-37025.” IM 2012-038 confirmed that BLM “retains
14 authority over proposed uses within 1875 Act ROWs across BLM-managed public
15 lands which do not derive from or further a railroad purpose.” IM 2012-038 provided
16 that “in those situations where a use is proposed within an 1875 Act ROW located on
17 public lands,” the relevant BLM field office “must first evaluate whether a railroad
18 purpose will be served by the proposed use.”

19 54. On October 1, 2012, the Board of Supervisors for the County of San
20 Bernardino voted to approve the Cadiz Project.

21 55. On August 11, 2014, BLM issued Instruction Memorandum No. 2014-
22 122 (IM 2014-122). IM 2014-122 established revised and more detailed guidance to
23 assist BLM field offices in evaluating whether an activity falls within the scope of an
24 1875 Act right-of-way. IM 2014-122 reaffirmed that “[t]he determination of whether
25 an activity located within an 1875 Act ROW across BLM-managed public lands is
26 within or outside the scope of such 1875 Act ROW must be made by the BLM.” IM
27 2014-122 also clarified that “[d]etermining whether a particular activity derives from
28 or furthers a railroad purpose requires a fact-specific case-by-case evaluation.”

 56. In 2015, BLM prepared a 24-page recommendation document in which it
analyzed, in accordance with Opinion M-37025 and Instruction Memorandum No.

1 2014-122, “whether activities proposed within Arizona and California Railroad . . .
2 railroad rights-of-way (ROWs), as undertaken by third-party proponent Cadiz, Inc.,
3 across public land managed by [BLM], fall within the scope of the Railroad’s ROW
4 grants.” BLM’s recommendation concluded that the Cadiz Project “pipeline and the
5 water it will convey do not fall within that set of activities that derive from or further a
6 railroad purpose,” and therefore “would need approval from BLM.” It explains:

7 The primary purpose of the pipeline is to convey water for distribution to
8 a separate and distant location for commercial distribution, and nearly
9 100 percent of the conveyed water would be solely devoted to this
10 purpose. There is no relationship between the express purpose for the
11 pipeline and the railroad’s operation. Cadiz, Inc. has not provided any
12 facts that adequately explain how this primary purpose helps promote or
13 advance railroad purposes.

14 Construction of the pipeline itself is not necessary for rail operations, nor
15 will the conveyance of water through the pipeline convert the pipeline
16 into a facility that is necessary for operation of the railroad. . . . There
17 simply are no facts that suggest that the continuation of railroad
18 operations is in any way dependent on the water pipeline’s construction,
19 nor does the proponent offer any evidence of such need.

20 57. On October 2, 2015, BLM informed Cadiz, Inc. by letter that it had
21 “reached an administrative determination that the [Cadiz] Project as described cannot
22 be authorized by ARZC because it is outside the scope of ARZC’s [right-of-way]
23 grants held under the 1875 Act.” BLM’s letter states that “[i]n order to proceed with
24 the proposed Project, Cadiz, Inc., ARZC, or other parties involved will require . . .
25 authorization for a right-of-way for the Project.” BLM’s letter enclosed a five-page
26 summary of the “case-specific evaluation” that BLM undertook with respect to the
27 Cadiz Project pipeline.

28 58. On March 14, 2016, Cadiz, Inc. made available its “Form 10-K Annual
Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the
fiscal year ended December 31, 2015.” Therein, Cadiz, Inc. stated that “if the BLM
will not change [its October 2, 2015, determination], then [Cadiz, Inc.] will need to
file a right-of-way permit application with the BLM for a review of the pipeline’s use
. . . and/or seek to clarify a railroad’s property rights in U.S. Federal Court. Both

1 alternatives will likely result in a delay of final Project implementation and we cannot
2 reasonably predict the outcome of either process.”

3 59. On January 20, 2017, President Donald Trump took office.

4 60. On March 29, 2017, BLM issued Instruction Memorandum No. 2017-060
5 (IM 2017-060). IM 2017-060 rescinded both IM 2014-122 and IM 2012-038, and
6 directed that “[a]ll issues related to addressing activities within railroad rights-of-way
7 granted pursuant to the [1875 Act] across [BLM]-managed lands are to be directed to
8 the BLM Washington Office.”

9 61. On June 30, 2017, the Acting Solicitor of Interior, Daniel H. Jorjani
10 temporarily suspended Solicitor Opinion M-37025.

11 62. On September 1, 2017, Acting Solicitor Jorjani issued Opinion M-37048.
12 Opinion 37048 permanently withdrew Opinion M-37025 and wrongly concluded “that
13 the rights-of-way granted to railroad companies under the 1875 Act allow railroad
14 companies to lease portions of their easements to third parties without permit or grant
15 from [BLM], provided that such leases are limited to the surface, broadly defined, of
16 the easement and do not interfere with the continued use of the easement as a
17 railroad.”

18 63. On October 13, 2017, defendant Michael Nedd, then serving as BLM’s
19 Acting Director, advised Cadiz, Inc. that BLM’s October 2, 2015 administrative
20 determination with respect to the Cadiz Project pipeline “is no longer an accurate
21 representation of BLM’s view of the applicable law and facts.” Mr. Nedd advised
22 Cadiz, Inc. that “[i]n light of further review of the relevant law, the BLM concludes
23 that authorizing the proposed activity [i.e., the Cadiz Project pipeline] falls within the
24 scope of rights granted to the [ARZC] under the [1875 Act], and therefore does not
25 require authorization from BLM.” Mr. Nedd explained that BLM’s conclusion in this
26 regard was based on BLM’s view “that the Cadiz Project would not interfere with the
27 continued use of the easement of the easement for railroad operations, nor would the
28 proposed activities extend beyond the surface of the easement, broadly defined.” In

1 addition, Mr. Nedd explained that BLM had decided “in the alternative that the Cadiz
2 Project would further a railroad purpose consistent with the historical understanding
3 of the incidental use doctrine.” Mr. Nedd concluded by stating:

4 [T]he BLM determines that the ability to authorize the proposed uses of
5 easements under the 1875 Act falls within the decision rights of the
6 [ARZC] railroad. Because those rights were transferred from the United
7 States government as part of the 1875 easement, authorization by the
8 BLM is unnecessary.

9 64. On October 16, 2017, Cadiz, Inc. issued a press release in which it stated
10 that, as a result of BLM’s October 13, 2017, determination, “no further federal permits
11 or authorizations are required for Project construction within the ARZC railroad right-
12 of-way.” The release continued: “With the receipt of this definitive determination by
13 the BLM, [Cadiz] will now turn its attention to final engineering design, contract
14 arrangements with its participating agencies and a conveyance agreement with the
15 Metropolitan Water District of Southern California.”

16 **FIRST CLAIM FOR RELIEF**

17 **(Violation of FLPMA, the 1875 Act, and the APA)**

18 65. Plaintiffs re-allege, as if fully set forth herein, each and every allegation
19 contained in the preceding paragraphs.

20 66. BLM’s October 13, 2017, determination with respect to the Cadiz Project
21 pipeline is a “final agency action” subject to judicial review under the Administrative
22 Procedure Act (APA). 5 U.S.C. § 704.

23 67. The APA provides that courts must “hold unlawful and set aside agency
24 action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of
25 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

26 68. The Supreme Court has clarified that an agency action is arbitrary and
27 capricious for purposes of the APA “if the agency has relied on factors which
28 Congress has not intended it to consider, entirely failed to consider an important
evidence before the agency, or is so implausible that it could not be ascribed to a

1 difference in view or the product of agency expertise.” *Motor Vehicles Mfrs v. State*
2 *Farm*, 463 U.S. 29, 43 (1983). The agency “must examine the relevant data and
3 articulate a satisfactory explanation for its action including a rational connection
4 between the facts found and the choice made.” *Id.* Moreover, “an agency changing
5 course” is “obligated to supply a reasoned analysis for the change” beyond what
6 would be required if the agency were operating on a clean slate. *Id.* at 42; *see also*
7 *Organized Vill. of Kake v. U.S. Dep’t of Agriculture*, 795 F.3d 956, 968 (9th Cir.
8 2015) (“[E]ven when reversing a policy after an election, an agency may not simply
9 discard prior factual findings without a reasoned explanation.”).

10 69. FLPMA prohibits BLM from authorizing or allowing anyone to construct
11 or operate a water pipeline on federal public land within its jurisdiction unless (1)
12 BLM grants a right-of-way in accordance with the procedural and substantive
13 provisions of FLPMA or (2) the water pipeline falls within the scope of a right-of-way
14 granted by the United States prior to FLPMA’s enactment. *See* 43 U.S.C. § 1770(a).

15 70. BLM’s October 13, 2017, determination that the Cadiz Project pipeline
16 falls within the scope of the 1875 Act rights-of-way held by ARZC and may proceed
17 in the absence of a new right-of-way issued by BLM in accordance with FLPMA is
18 arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law
19 within the meaning of the APA.

20 71. First, BLM’s October 13, 2017, determination is contrary to law, because
21 it is premised upon an erroneous interpretation of the 1875 Act. The 1875 Act grants
22 “only an easement for railroad purposes.” *United States v. Union Pac. R. Co.*, 353
23 U.S. 112, 119 (1957). Thus, ARZC may authorize or undertake activities within its
24 1875 Act rights-of-way only to the extent those activities derive from or further a
25 railroad purpose. BLM’s conclusion that ARZC has a legal right to authorize or
26 undertake any activity within its 1875 Act rights-of-way “as long as the activity is
27 incidental to and does not interfere with continued railroad operations” is not in
28 accordance with the law.

1 78. BLM’s failure to prepare an EIS prior to issuing its October 13, 2017,
2 determination regarding the Cadiz Project pipeline is arbitrary, capricious, an abuse of
3 discretion, and not in accordance with NEPA.

4 **REQUEST FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully request that this Court:

6 A. Find and declare:

7 (1) The Cadiz Project pipeline is beyond the scope of the 1875 Act
8 rights-of-way held by ARZC;

9 (2) BLM’s October 17, 2017, determination that the Cadiz Project
10 pipeline falls within the scope of the 1875 Act rights-of-way held by ARZC is
11 arbitrary, capricious, an abuse of discretion, and not in accordance with law;

12 (3) BLM violated FLPMA by allowing the Cadiz Project pipeline to
13 proceed in the absence of a right-of-way granted in accordance with FLPMA; and

14 (4) BLM violated NEPA by failing to prepare an EIS in connection
15 with its October 13, 2017, determination regarding the Cadiz Project pipeline;

16 B. Vacate and set aside BLM’s October 13, 2017, determination with regard
17 to the Cadiz Project pipeline;

18 C. Enjoin BLM from authorizing or otherwise allowing construction and
19 operation of the Cadiz Project pipeline to proceed pending compliance with FLPMA,
20 NEPA, and all other applicable laws and regulations;

21 D. Award Plaintiffs their costs of litigation, including reasonable attorneys’
22 fees and costs; and

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

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1 Respectfully submitted,

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3 Dated: February 28, 2018

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