



2400 E. Katella Avenue, Suite 570  
Anaheim CA 92806

Office: +1 (562) 483-2044  
Fax: +1 (562) 321-9737

November 29, 2021

The Honorable Tracy Stone-Manning  
Director, U.S. Bureau of Land Management  
60 Horizon Drive  
Grand Junction, CO 81506

RE: Cadiz gas pipeline conversion project

Dear Director Stone-Manning:

Having not received a response to our September 14, 2021, letter to then-Acting BLM Director Nada Wolff-Culver, the Rebuild SoCal Partnership (“Rebuild”) writes to you again today to express our urgent concern that BLM appears to be preparing to unwind right-of-way permits that allow a retired fossil fuel pipeline in California to be reused for potential future water conveyance.

This is a matter of importance to our organization, which represents 90,000 Southern California union workers and 2,750 infrastructure contractors that employ them, because we have seen first-hand the desperate water supply situation many communities in California face, and we recognize the issuance of this permit as a way to improve water infrastructure access in an underserved area of California in need of a safer, more reliable water supply. This 220-mile pipeline could improve service to more than 20 state-recognized disadvantaged communities without significant environmental impacts.

As you must be aware, California is in the midst of a systemic water crisis that underscores how important it is for California to adapt to climate change. The traditional water infrastructure systems in place today already cannot deliver to all communities, and it is our disadvantaged communities that often suffer most from inadequate infrastructure connectivity, exposing them to greater risk as climate change challenges water supplies. Rebuild engaged in this first-hand when we stepped in to protect the 5,000 residents of the disadvantaged California community of Needles, when water contamination and aged infrastructure left them with only one water well and one aged pump to keep their water supply flowing. Rebuild was able to provide materials and expert labor to rebuild the pump and is now working with the City to help them secure grants so it can stabilize its water supply. Please see the attached Los Angeles Times article of July 20, 2021, which chronicles this incident.





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There are hundreds of communities like Needles across California, and they often lack the resources to access and invest in clean, reliable water. That is why we’ve been so supportive of the concept of repurposing retiring oil and gas assets for water conveyance when feasible. These conversions are more affordable than new construction and less impactful to the environment, yet they still have positive job and economic benefits for the area and quickly provide improved access to infrastructure. Besides being a ready means for affordable water conveyance to poor, rural areas, these valuable but unused assets can provide a vast, already built network for the movement of clean hydrogen fuel, the extension of broadband internet to rural areas, and in-pipe hydroelectric generation, among other uses. These pipelines are, in short, valuable potential contributors to achieving the Administration’s climate goals and meeting its commitments to America’s disadvantaged communities.

Yet, despite this opportunity, it appears the BLM is prepared to jeopardize the advancement of these policies in California by aligning with opponents of infrastructure and unwinding the permissions already granted for a repurposing project. Indeed, we were extremely disappointed to read your October filing in federal court which indicates you intend to file a motion to remand right-of-way permits issued to Cadiz, Inc. in an effort to force a time-consuming new application process before this 220-mile retired fossil fuel pipeline can be used for needed water conveyance.

We urge you in the strongest terms to change course and mount a vigorous defense of the pipeline conversion permits. We believe a motion for remand of these permits would be a grave error given the minimal environmental impacts involved with this reuse, and the fact that delaying this project would be damaging to so many California communities in desperate need of help from the Administration.

All Americans, including those this pipeline could serve, deserve equal access to safe, reliable, and affordable water. With California in the midst of one of the most severe drought emergencies it has ever faced, and with both State Water Project and Colorado River supplies at risk, we expect the BLM to maintain the infrastructure options our state needs to meet the challenges ahead.

Sincerely,

Jon Switalski  
Executive Director





California League of United Latin American Citizens

LEAGUE OF UNITED LATIN  
AMERICAN CITIZENS

**LiUNA!** SOUTHERN CALIFORNIA  
DISTRICT COUNCIL  
OF LABORERS  
*Feel the Power*

October 11, 2021

Honorable Tommy Beaudreau  
Deputy Secretary, Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Dear Deputy Secretary Beaudreau,

We write to you today on behalf of the League of United Latin American Citizens California (LULAC) and the Southern California District Council of Laborers, Laborers International Union (LiUNA) in support of ongoing efforts by Cadiz Inc., a southern California agricultural company, to make water available to Californians in need via pipelines and infrastructure they own in the Eastern Mojave Desert. We have previously written to Ms. Nada Wolff Culver, Acting Director of the Bureau of Land Management (BLM), regarding Cadiz to express our concern about recent BLM engagement on Cadiz related matters. Unfortunately, a meeting has not yet been scheduled with either of us, nor have we received a substantive response to any of our inquiries.

As you are undoubtedly aware, California and the West are facing a severe and system-wide water crisis, and scientists predict that droughts like the current one will increase in severity and frequency because of climate change. Many California communities - particularly disadvantaged communities and communities of color - do not have equal access to a reliable or clean water supply. In times of drought, they also suffer disproportionately from higher rates and shortage. Our organizations have been fighting for these communities and all Californians to have improved access to safe and reliable water supply, storage and infrastructure. Yet, this problem continues to get worse.

Cadiz, Inc. is the largest agricultural operation in San Bernardino County, California and has sustainably managed the groundwater basin at their property for over 30 years. They've also worked for decades to develop opportunities to improve access to reliable water supply in California via an aquifer storage and conservation project at its agricultural property, and by increasing California's water transportation infrastructure.

We understand that several years ago Cadiz secured rights to a portion of a natural gas pipeline owned by El Paso Natural Gas (EPNG) to explore repurposing the pipeline for water conveyance. The pipeline segment is 220 -miles long and runs through or near several California water-short and disadvantaged communities. The BLM right-of-way for the natural gas pipeline was set to expire in 2015, and at that time EPNG initiated a renewal process for the right-of-way.

After a five-year process, in 2020, BLM renewed the right-of-way for EPNG, then assigned the rights to Cadiz and authorized water as a substance that could be moved in the pipeline. We do not believe BLM approved any specific project to transfer water, only that water could be moved in the line subject to additional permitting. Our organizations applauded BLM's decision to make this pipeline available for water, deeming the activity as an innovative use of existing infrastructure that would not cause any surface disturbance, but would improve optionality and have a positive economic impact in a disadvantaged area of California.

As more petroleum products pipelines go out of service, the conveyance of water and other renewable energy sources in these pipelines can create new access to infrastructure and economic development for

the communities we serve. Our organizations support this innovative use of retiring infrastructure to meet the demand for water conveyance especially in water-short areas of the country. We commend BLM California and Cadiz for recognizing this opportunity earlier than most others did.

However, in March, plaintiffs including environmental organizations that have long opposed several water projects in California, filed suit in Federal Court to challenge the conversion of this pipeline to water conveyance. Given the shortage of water infrastructure in California and the many benefits of the conversion of retiring fossil fuel lines, we assumed the BLM would defend these permits in any Court proceeding. Yet, we understand the BLM is instead considering requesting from the Court a remand and vacatur of the permits granted to Cadiz.

We believe such a decision would be a grave error, not only for the communities that would benefit from the conversion of this pipeline, but also for all of America, as such an action could establish a precedent limiting the government's ability to defend future beneficial conversion permits from similar challenges. We therefore urge the Department of Interior to defend these permits.

Our extensive membership has supported the Administration's efforts to Build Back Better and ensure equal access to infrastructure for all communities. Chilling a water pipeline conversion project that is environmentally benign, that would create jobs, and that could help thousands of Americans in water-short California gain access to needed water, is smart policy. We request a meeting with you as soon as possible to discuss this matter prior to any further action related to Cadiz. Please contact Jose Barrera, State Director for LULAC California at [jb.lulac@gmail.com](mailto:jb.lulac@gmail.com) to arrange a time convenient for you.

Sincerely yours,



Jose L. Barrera Novoa  
State Director  
California LULAC



Jon P. Preciado  
Business Manager  
Southern California District Council of Laborers - LiUNA

November 30, 2021

The Honorable Tracy Stone-Manning  
Director, U.S. Bureau of Land Management  
60 Horizon Drive  
Grand Junction CO 81506

RE: Cadiz Gas Pipeline Conversion Project

Dear Director Stone-Manning:

I write to you today on behalf of the Los Angeles County Business Federation (BizFed), a grassroots alliance of over 215 business organizations representing 410,000 employers with 5 million employees in Los Angeles County, advocating for policies and projects that strengthen of our regional economy.

Our organization is concerned about water insecurity, the stressed condition of our water supply infrastructure and the significant impacts these conditions have on the housing, job and educational opportunities necessary for our economy and communities to thrive. The risks posed by water insecurity, which has been heightened in the latest drought impacting our region, are of great concern to the businesses that our members represent, and we are particularly worried about the challenge of delivering safe, clean and reliable water to all our disadvantaged communities, many of which lack access to adequate water infrastructure.

The conversion of retiring fossil fuel pipelines to other uses, including water conveyance, is a smart, innovative strategy that supports California's water infrastructure needs. We were therefore encouraged that the U.S. Bureau of Land Management appeared to support a pipeline conversion in its recent action granting right-of-way permits to Cadiz Inc. authorizing the conveyance of water in a retired oil and gas pipeline. Conversions like this align with the nation's climate change response and drought resilience strategies, provide a second life for infrastructure that might otherwise be abandoned, and avoid the environmental impacts of new construction.<sup>1</sup>

In the Cadiz example, there are no surface impacts on federal lands required to convert this pipeline to water conveyance, and any future use of the pipeline for water conveyance is still subject to applicable local, state and federal environmental laws designed to protect the source of any water being conveyed. Conversion of the pipeline would provide job opportunities and critically needed new water infrastructure access for more than 20 state-recognized disadvantaged communities along the pipeline's route. The addition of this new pipeline asset in Southern California could also provide fresh ways to manage the state's water and groundwater resources by interconnecting new water providers previously limited in their supply options.

We are therefore concerned that the granting of the right-of-way permits to Cadiz is being challenged in federal court, and that the government appears to favor plaintiffs' position of unwinding the permits, casting an unfortunate shadow over this smart policy. If BLM continues with this legal position, it could lead to a do-over for these right-of-way permits adding years to this conversion project, not just to complete new review, but also to defend against the certain new legal challenge to any new permit issued. Yet, a new review is unlikely to identify any significant environmental impacts, as the pipeline is already in the ground and no surface disturbance is required to change its use. Thus, a do-over would only serve to limit and unnecessarily delay access to the water, job and economic benefits that could be created by this conversion project at a time when California is struggling to deliver on its promises to all communities.

In accordance with our organization's anti-poverty initiative, BizFed is committed to lifting one million Angelenos out of poverty by 2028. The Cadiz pipeline passes near several disadvantaged communities in

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<sup>1</sup> See Fast Company article, "[The American West is running out of water – and Big Oil, of all things, can help fix it](#)," and SoCal Gas study, "[The role of clean fuels and gas infrastructure in achieving California's net zero climate goal](#)."

eastern Los Angeles County, including Lancaster, Desert View Highlands and Rosemond, which could be benefitted by the pipeline. Converting the pipeline to water use will create employment opportunities, water access, and has the potential to augment fiber optic highspeed internet through co-location of the pipeline. Together, these benefits could open significant economic opportunities and quality of life enhancements for the disadvantaged communities along the pipeline's route.

Finally, and perhaps of greatest significance, we are deeply concerned about the precedent established by any BLM do-over of the Cadiz permits. The conversion of retiring fossil fuel pipelines to new beneficial uses should be encouraged, not chilled by federal policy, and a course change now will weaken the opportunity for future beneficial conversions of fossil fuel pipeline assets for the extension of water, hydrogen and broadband systems, and would harm the public interest in the many benefits of such re-use.

We strongly urge the BLM to continue to support the repurposing of oil and gas pipeline infrastructure across the country for water conveyance and other innovative uses, and to direct the Department of Justice to defend against legal challenges that would stymie this innovative way to increase water access in the drought-prone Western U.S. Our communities need your support.

Sincerely,



Donna Duperron  
BizFed Chair  
Torrance Area Chamber



David Fleming  
BizFed Founding Chair



Tracy Hernandez  
BizFed Founding CEO  
IMPOWER, Inc.

CC:  
Assistant Secretary Laura Daniel-Davis, Land & Minerals Management, Department of the Interior  
Deputy Secretary Tommy Beaudreau, Department of the Interior  
Secretary Deb Haaland, Department of the Interior

## BizFed Association Members

7-Eleven Franchise Owners Association of Southern California  
 Action Apartment Association  
 Alhambra Chamber of Commerce  
 American Beverage Association  
 Apartment Association of Greater Los Angeles  
 Apartment Association, CA Southern Cities, Inc.  
 Arcadia Association of Realtors  
 AREAA North Los Angeles SFV SCV  
 Armenian Trade and Labor Association  
 Associated Builders & Contractors, Inc. Southern California Chapter  
 Association of Club Executives  
 Association of Independent Commercial Producers  
 Azusa Chamber of Commerce  
 Bell Gardens Chamber of Commerce  
 Beverly Hills Bar Association  
 Beverly Hills Chamber of Commerce  
 Biocom California - Los Angeles  
 BICEPP  
 Black Business Association  
 BNI 4SUCCESS  
 Bowling Centers of Southern California  
 Boyle Heights Chamber of Commerce  
 Building Industry Association - Baldyview  
 Building Industry Association - LA/Ventura Counties  
 Building Industry Association - Southern California  
 Building Owners & Managers Association of Greater Los Angeles  
 Burbank Association of REALTORS  
 Burbank Chamber of Commerce  
 Business and Industry Council for Emergency Planning and Preparedness  
 Business Resource Group  
 CA Natural Resources Producers Assoc  
 CalAsian Chamber  
 Calabasas Chamber of Commerce  
 California Apartment Association- Los Angeles  
 California Asphalt Pavement Association  
 California Bankers Association  
 California Business Properties Association  
 California Business Roundtable  
 California Cannabis Industry Association  
 California Cleaners Association  
 California Construction Industry and Materials Association  
 California Contract Cities Association  
 California Fashion Association  
 California Gaming Association  
 California Grocers Association  
 California Hispanic Chamber  
 California Hotel & Lodging Association  
 California Independent Oil Marketers Association (CIOA)  
 California (CIGOMA)  
 California Independent Petroleum Association  
 California Life Sciences Association  
 California Manufacturers & Technology Association  
 California Metals Coalition  
 California Restaurant Association  
 California Retailers Association  
 California Small Business Alliance  
 California Self Storage Association  
 California Society of CPAs - Los Angeles Chapter  
 California Trucking Association  
 Carson Chamber of Commerce  
 Carson Dominguez Employers Alliance  
 Central City Association  
 Century City Chamber of Commerce  
 Chatsworth/Porter Ranch Chamber of Commerce  
 Citrus Valley Association of Realtors  
 Claremont Chamber of Commerce  
 Coalition for Renewable Natural Gas  
 Coalition for Small Rental Property Owners  
 Commercial Industrial Council/Chamber of Commerce  
 Construction Industry Air Quality Coalition  
 Construction Industry Coalition on Water Quality  
 Council on Trade and Investment for Filipino Americans  
 Covina Chamber  
 Crescenta Valley Chamber of Commerce  
 Culver City Chamber of Commerce  
 Downey Association of REALTORS  
 Downey Chamber of Commerce  
 Downtown Center Business Improvement District  
 Downtown Long Beach Alliance  
 El Monte/South El Monte Chamber  
 El Segundo Chamber of Commerce  
 Employers Group  
 Encino Chamber of Commerce  
 Energy Independence Now  
 Engineering Contractor's Association  
 EXP  
 F.A.S.T.- Fixing Angelenos Stuck in Traffic  
 Friends of Hollywood Central Park  
 FuturePorts  
 Gardena Valley Chamber  
 Gateway to LA  
 Glendale Association of Realtors  
 Glendale Chamber  
 Glendora Chamber  
 Greater Antelope Valley AOR  
 Greater Bakersfield Chamber of Commerce  
 Greater Lakewood Chamber of Commerce  
 Greater Leimert Park Village Crenshaw Corridor Business Improvement District  
 Greater Los Angeles African American Chamber  
 Greater Los Angeles Association of REALTORS  
 Greater Los Angeles New Car Dealers Association  
 Greater San Fernando Valley Regional Chamber  
 Harbor Association of Industry and Commerce  
 Harbor Trucking Association  
 Historic Core BID of Downtown Los Angeles  
 Hollywood Chamber  
 Hong Kong Trade Development Council  
 Hospital Association of Southern California  
 Hotel Association of Los Angeles  
 Huntington Park Area Chamber of Commerce  
 ICBWA  
 Independent Cities Association  
 Industrial Environmental Association  
 Industry Business Council  
 Inland Empire Economic Partnership  
 International Cannabis Business Women Association  
 Irwindale Chamber of Commerce  
 La Cañada Flintridge Chamber  
 LA Fashion District BID  
 LA South Chamber of Commerce  
 Lancaster Chamber of Commerce  
 Larchmont Boulevard Association  
 Latin Business Association  
 Latino Food Industry Association  
 Latino Restaurant Association  
 LAX Coastal Area Chamber  
 League of California Cities  
 Long Beach Area Chamber  
 Long Beach Economic Partnership  
 Los Angeles Area Chamber  
 Los Angeles County Board of Real Estate  
 Los Angeles County Waste Management Association  
 Los Angeles Economic Development Corporation  
 Los Angeles Gateway Chamber of Commerce  
 Los Angeles Gay & Lesbian Chamber of Commerce  
 Los Angeles Latino Chamber  
 Los Angeles Parking Association  
 MADIA Tech Launch  
 Malibu Chamber of Commerce  
 Marketplace Industry Association  
 Motion Picture Association of America, Inc.  
 MoveLA  
 Multicultural Business Alliance  
 NAIOP Southern California Chapter  
 Nareit  
 National Association of Tobacco Outlets  
 National Association of Waterfront Employers  
 National Association of Women Business Owners - CA  
 National Association of Women Business Owners - LA  
 National Federation of Independent Business  
 National Hookah Community Association  
 National Latina Business Women's Association  
 Orange County Business Council  
 Pacific Merchant Shipping Association  
 Pacific Palisades Chamber  
 Panorama City Chamber of Commerce  
 Paramount Chamber of Commerce  
 Pasadena Chamber  
 Pasadena Foothills Association of Realtors  
 PHRMA  
 Planned Parenthood Affiliates of California  
 Pomona Chamber  
 Rancho Southeast Association of Realtors  
 ReadyNation California  
 Recording Industry Association of America  
 Regional Black Chamber-San Fernando Valley  
 Regional Hispanic Chamber of Commerce  
 Regional San Gabriel Valley Chamber  
 Rosemead Chamber  
 San Dimas Chamber of Commerce  
 San Gabriel Chamber of Commerce  
 San Gabriel Valley Economic Partnership  
 San Pedro Peninsula Chamber  
 Santa Clarita Valley Chamber  
 Santa Clarita Valley Economic Development Corp.  
 Santa Monica Chamber of Commerce  
 Sherman Oaks Chamber  
 South Bay Association of Chambers  
 South Bay Association of Realtors  
 South Gate Chamber of Commerce  
 Southern California Contractors Association  
 Southern California Golf Association  
 Southern California Grantmakers  
 Southern California Leadership Council  
 Southern California Minority Suppliers Development Council Inc.  
 Southern California Water Coalition  
 Southland Regional Association of Realtors  
 Sunland/Tujunga Chamber  
 Sunset Strip Business Improvement District  
 The California Business & Industrial Alliance (CABIA)  
 Torrance Area Chamber  
 Tri-Counties Association of Realtors  
 United Cannabis Business Association  
 United Chambers – San Fernando Valley & Region  
 United States-Mexico Chamber  
 Unmanned Autonomous Vehicle Systems Association  
 US Green Building Council  
 US Resiliency Council  
 Valley Economic Alliance, The  
 Valley Industry & Commerce Association  
 Vermont Slauson Economic Development Corporation  
 Vernon Chamber  
 Veterans in Business Network  
 Vietnamese American Chamber  
 Warner Center Association  
 West Hollywood Chamber  
 West Hollywood Design District  
 West Los Angeles Chamber  
 West San Gabriel Valley Association of Realtors  
 West Valley/Warner Center Chamber  
 Western Electrical Contractors Association  
 Western Manufactured Housing Association  
 Western States Petroleum Association  
 Westside Council of Chambers  
 Whittier Chamber of Commerce  
 Wilmington Chamber  
 World Affairs/Town Hall Los Angeles  
 World Trade Center



The Honorable Tracy Stone-Manning  
Director, U.S. Bureau of Land Management  
60 Horizon Drive  
Grand Junction CO 81506

November 30, 2021

RE: Support for Vigorous Defense of Cadiz Pipeline Permit

Dear Director Stone-Manning:

On September 3, 2021, The Hispanic 100 wrote then-Acting Bureau of Land Management Director Nada Wolff Carver to express our support for the right-of-way permits issued by the Bureau of Land Management to Cadiz, Inc. for the conveyance of water in an existing but unused natural gas pipeline. Having received no acknowledgment of that letter and understanding that there is an important court deadline regarding these permits in December, we are writing to you to express again our interest in this matter.

Since our first letter, the severity of the current drought crisis has become more evident, especially as Southern California's water provider, the Metropolitan Water District, declared a drought emergency on November 9. Equitable water access in California's communities is becoming more challenging as the climate changes, and its traditional infrastructure cannot adequately serve all communities. In the lesser-served areas of California, the economic and societal impact of ongoing droughts and extreme weather will be greatest, as these communities often lack sufficient supplies of clean water even in good years and usually do not have access to alternative sources of water.

We became interested in this matter because we saw the potential for the creative re-use of this unused pipeline to improve access to water for the underserved and disadvantaged communities along its route. We therefore strongly urge the Bureau of Land Management to work with the Department of Justice to defend against legal efforts seeking to remand and re-do the permits, a process that could take years and slow down the smart re-use of this pipeline. The Hispanic communities we serve are disproportionately impacted by lack of water access in California and would be harmed by any backsliding of this policy.

In bringing this litigation, those who are challenging these permits do not appear to have considered the welfare and well-being of the disadvantaged and Hispanic communities the pipeline could serve. We are counting on BLM to be the defender of these underserved communities by vigorously defending the permits. Our communities turn to you and ask you to be their voice.

Sincerely,

A handwritten signature in black ink, appearing to read "Mario Rodriguez". The signature is fluid and cursive, written over a light blue horizontal line.

Mario Rodriguez  
Chairman, Hispanic 100



## California League of United Latin American Citizens

**Jose Barrera**  
State Director

**Yvonne Gonzalez Duncan**  
Immediate Past  
State Director

**Elizabet Gonzalez Zepeda**  
Deputy State Director

**Susie Flores**  
State Treasurer

**Miriam Aguilar Escobar**  
Deputy Director  
for Women

**Alyssa Mireles**  
Deputy Director  
for Young Adults

**Jaime Sonne-Diddi**  
Deputy Director  
for Youth

**Pete Placencia**  
Deputy Director  
for Seniors

**Beatriz Mendoza**  
District Director 1

**Euler Torres**  
District Director 11

**Andrew Sandoval**  
District Director 12

**Sylvia Alvarez**  
District Director 14

*The League of United Latin American Citizens (LULAC) is the nation's largest and oldest civil rights volunteer-based organization that empowers Hispanic Americans and builds strong Latino communities. Headquartered in Washington DC, with over 1000 councils around the United States and Puerto Rico, LULAC programs, services and advocacy address the most important issues for Latinos, meeting critical needs of today and the future.*

November 22, 2021

Honorable Tommy Beaudreau  
Deputy Secretary, Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Re: Cadiz gas pipeline conversion project

Dear Deputy Secretary Beaudreau,

It is with great urgency and concern that we write to you on behalf of the California League of United Latin American Citizens (LULAC). The California League of United Latin American Citizens (LULAC) is committed to advancing the economic condition, educational attainment, political influence, housing, health and civil rights of Latinos across the Golden State.

LULAC and other community organizations representing disadvantaged communities and communities of color in California have written to the Department of the Interior and the Bureau of Land Management several times over the last 4 months seeking an opportunity to discuss with the agency our serious concern about the Department's threats to unwind and delay a pipeline conversion project in Southern California that could provide critical access to clean, reliable water to many disadvantaged communities and small community water systems in California suffering under catastrophic drought conditions.

Disadvantaged communities in this region have endured toxic pollution and unreliable water resources for decades. Often, Californians who live in these communities are low income and people of color who are frequently asked to conserve, to do more with less water, while clean water continues to flow to affluent communities. Adding insult to injury, residents who are served by small water systems often pay more for their water than those who are served by larger systems.

Today, many small water systems serving disadvantaged communities rely on bottled water to hydrate, cook, bathe and even flush toilets while wealthy areas served by larger water districts barely acknowledge Governor Newsom's call for

voluntary water conservation [efforts](#)<sup>1</sup>. The issue of racial equity is front and center in understanding access to critical resources including water and housing. The California State Water Resources Control Board formally recognized the disparities in our system stating: “race is the strongest predictor of water and sanitation access,” and pledging to work toward equitable access to resources and services. We are hopeful that the Department will look carefully for ways to accelerate environmental review and permitting for projects that could assist disadvantaged communities during this drought emergency and most certainly avoid unnecessary delay whenever possible.<sup>2</sup>

The Biden administration has an opportunity to participate in solutions for and deliver relief to disadvantaged communities in California by supporting an innovative project that would convert an existing, retired natural gas pipeline from transporting gas to transporting water. The Bureau of Land Management (BLM) already approved Right of Way permits for this pipeline conversion project authorizing water as a substance in the line, creating a new opportunity for water conveyance in an area of California lacking reliable access to water.

Mr. Deputy Secretary, LULAC and our partners have written several letters to DOI and BLM to explain the urgency and importance of this project. Yet, we understand the Department is seeking to cancel these Right of Way permits, threatening the opportunity this pipeline conversion presents and harming the communities we serve.

It would be unacceptable for the Biden Administration to delay this project by unraveling the Right of Way permits and seeking new, overtly cumbersome layers of review based on specious claims of weakness in the environmental record. The pipeline is already in the ground and can safely be transitioned out of fossil fuels to the beneficial and urgently needed use of water conveyance.

President Biden just signed a \$1 trillion critical infrastructure bill that may be the hallmark achievement of his Administration. This innovative pipeline conversion project can be the epitome of “building back better” for a President that promised to deliver not only hope but action for communities that have been underserved for generations.

We request a meeting with you and critical staff at your agency as soon as possible and prior to any further action taken by the BLM against this pipeline conversion project. Proceeding further on the course of unwinding a decision that benefits disadvantaged communities without meeting with these communities would be an affront to our understanding of the partnership we have long shared. We look forward to hearing from you soon.

Sincerely yours,



Jose Luis Barrera Novoa  
State Director - California LULAC  
LULAC National Board of Directors- Member  
[Jb.lulac@gmail.com](mailto:Jb.lulac@gmail.com) | [calulac.org](http://calulac.org)

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<sup>1</sup> <https://www.latimes.com/environment/story/2021-11-16/californians-are-backsliding-in-water-conservation>

<sup>2</sup> [https://www.waterboards.ca.gov/racial\\_equity/the\\_initiative.html](https://www.waterboards.ca.gov/racial_equity/the_initiative.html)



September 14, 2021

The Honorable Nada Wolff Culver  
Deputy Director, Policy and Programs  
U.S. Bureau of Land Management  
60 Horizon Drive  
Grand Junction CO 81506

RE: Defense of litigation against Cadiz northern pipeline

Dear Deputy Director Wolff Culver:

The Rebuild Southern California Partnership, representing 90,000 Southern California union workers and the 2,750 infrastructure contractors that employ them, writes today to urge the US Bureau of Land Management (“BLM”) to support the repurposing of oil and gas pipeline infrastructure across the country for water conveyance other innovative and climate-friendly uses, and defend against challenges in Court that seek to create undue burdens for this innovative way to increase water access in the Western US.

We understand that a recent BLM right-of-way permit granted to Cadiz Inc. authorized the California company to convey water in an existing oil and gas pipeline and is now being challenged in federal court. We also believe that the Biden Administration is under pressure to reconsider this permit, risking months or years of delayed access to this pipeline for California communities while the federal government continues to debate how to treat right-of-way permits granted by the previous Administration.

While we recognize the Biden Administration’s desire to evaluate and reconsider many permits and policies of the previous administration, the current administration’s real and commendable commitment to uplifting the circumstances of disadvantaged communities and improving their access to infrastructure is threatened by this litigation. Cadiz’s conversion of this fossil fuel pipeline to water conveyance will potentially improve water supply access and water quality for more than 20 California-designated disadvantaged communities along the pipeline’s 220-mile route, and also provide new water storage opportunities for these communities.



This is a very real issue to the Rebuild Southern California Partnership as we recently saw first-hand what can happen when a disadvantaged community is suddenly at risk of losing its primary water supply – which all too often is the only water supply for these communities. As chronicled by the Los Angeles Times on July 20, 2021 (article attached), the 5,000 residents of the disadvantaged California community of Needles found themselves entirely dependent on just one water well with one aging pump, after three wells failed to meet water quality standards and were ordered by the State of California to be shut down. The Partnership stepped in to provide materials and labor to rebuild the one aging pump and is working with Needles to secure grants so the city can stabilize its water supply through installation of a new well and new treatment equipment.

More than 1,000 California communities face similar risks according to the U.C. Davis Center for Watershed Sciences, and these risks are heightened significantly by the current severe drought across the West. We therefore find it incomprehensible that there is any question as to whether the BLM will defend these rights-of-way in Court and fight for continued water access for California communities.

We note that the BLM’s right-of-way approval did not constitute an approval of the Cadiz Water Project. Cadiz will not be able to move water through the pipeline, even with your approval, until the project completes its environmental review and, thereafter, until parties opting to move water through the pipeline complete their own permitting process. But your agency can demonstrate support for enhanced water access by keeping open the potential for disadvantaged communities along the 220-mile route to use this infrastructure for their benefit and pursue meaningful improvements to their conditions.

The federal government should consider that a pipeline like this may also potentially be used for in-pipe hydropower generation and broadband distribution, and must fight any precedent that would signal that the repurposing of fossil fuel pipelines for the movement of needed clean power and clear water in underserved communities is not supported by the Biden Administration’s BLM. We urge you to mount a vigorous defense of the permits awarded to Cadiz against the litigation brought by the Sierra





2400 E. Katella Avenue, Suite 570  
Anaheim CA 92806

Office: +1 (562) 483 2044  
Fax: +1 (562) 321 9737

Club, the Center for Biological Diversity and others and clearly convey your support for innovation and equity of access.

Sincerely,

Jon Switalski  
Executive Director  
Rebuild SoCal Partnership



Southern California District Council of Laborers



Feel the Power



Associated General Contractors of California – AGC California | Southern California Contractors Association | Engineering Contractors' Association  
Southern California District Council of Laborers | Southwest Regional Council of Carpenters | The Operating Engineers (Local 12) | The Building Industry  
Association of Southern California (BIASC) | The Associated General Contractors of America San Diego Chapter | United Contractors (UCON)



# LIUNA!

July 19, 2021

**TERRY O'SULLIVAN**  
*General President*

**ARMAND E. SABITONI**  
*General Secretary-Treasurer*

*Vice Presidents:*

**TERRENCE M. HEALY**

**RAYMOND M. POCINO**

**JOSEPH S. MANCINELLI**

**ROCCO DAVIS**  
*Special Assistant to the  
General President*

**VINCENT R. MASINO**

**DENNIS L. MARTIRE**

**ROBERT E. RICHARDSON**

**RALPH E. COLE**

**JOHN F. PENN**

**OSCAR DE LA TORRE**

**SERGIO RASCON**

**ROBERT F. ABBOTT**

**SAMUEL STATEN, JR.**

**PAUL V. HOGROGIAN**

**THEODORE T. GREEN**  
*General Counsel*

HEADQUARTERS:  
905 16th Street, NW  
Washington, DC  
20006-1765  
202-737-8320  
Fax: 202-737-2754  
www.liuna.org

The Honorable Deb Haaland  
Secretary of the U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Dear Secretary Haaland:

On behalf of the 500,000 men and women of the Laborers' International Union of North America (LIUNA), I write to express our support for the repurposing of the Cadiz Northern Pipeline for water conveyance.

Last December, the Bureau of Land Management (BLM) granted rights-of-way to Cadiz Real Estate, authorizing the conveyance of water through the Northern Pipeline. This former oil and gas pipeline stretches two hundred and twenty (220) miles across the region and can provide vital access to clean and reliable water for disadvantaged communities.

Historic droughts are hitting communities across the Southwest that do not have the infrastructure to handle such conditions. More than one million Californians currently lack access to safe and reliable drinking water. The disparities in access and the inequalities exacerbated by lack of infrastructure will only get worse in the coming years if action is not taken.

In addition to expanding and supplementing access to water across California, this move would be a lifeline to working families in communities throughout the region who stand to benefit from the economic growth and job opportunities.

We thank you for your consideration on this matter and urge BLM to ensure that the use of this pipeline will not be subjected to any future delays.

With kind regards, I am

Sincerely yours,

**TERRY O'SULLIVAN**  
General President

rj  
opeiu2liuna

cc: Ms. Laura Daniel-Davis, Principal Deputy Assistant Secretary of  
Land and Mineral Management

*Feel the Power*



## California League of United Latin American Citizens

August 10, 2021

[Jose Barrera](#)  
State Director

[Yvonne Gonzalez Duncan](#)  
Immediate Past  
State Director

[Elizabet Gonzalez Zepeda](#)  
Deputy State Director

[Susie Flores](#)  
State Treasurer

[Miriam Aguilar Escobar](#)  
Deputy Director  
for Women

[Alyssa Mireles](#)  
Deputy Director  
for Young Adults

[Jaime Sonne-Diddi](#)  
Deputy Director  
for Youth

[Pete Placencia](#)  
Deputy Director  
for Seniors

[Beatriz Mendoza](#)  
District Director I

[Euler Torres](#)  
District Director II

[Andrew Sandoval](#)  
District Director 12

[Sylvia Alvarez](#)  
District Director 14

*The League of United Latin American Citizens (LULAC) is the nation's largest and oldest civil rights volunteer-based organization that empowers Hispanic Americans and builds strong Latino communities. Headquartered in Washington DC, with over 1000 councils around the United States and Puerto Rico, LULAC programs, services and advocacy address the most important issues for Latinos, meeting critical needs of today and the future.*

The Honorable Nada Wolff Culver  
Deputy Director, Policy & Programs  
U.S. Bureau of Land Management  
60 Horizon Drive  
Grand Junction, CO 81506

**RE: Support for Water Infrastructure in California**  
**Subj: Reject Challenges to BLM Right-of-Way Actions**

Dear Deputy Director Wolff Culver:

California is in the midst of a dramatic water crisis. The Colorado River system faces unprecedented shortages. The Central Valley Project and the State Water Project will contribute virtually no water to communities south of the San Francisco/San Joaquin Bay-Delta this year. These conditions will significantly impact California's communities.

The League of United Latin American Citizens (LULAC), California is committed to advancing the economic condition, educational attainment, political influence, housing, health and civil rights of Latinos across the Golden State. Our organization, which represents 35 council chapters across California, is particularly concerned about the systemic challenge of ensuring Latino communities have equal access to clean water and critical water infrastructure projects. Currently, estimates point to more than 300 Latino communities in California that lack access to reliable clean water. Californians in disadvantaged communities continue to suffer disproportionately from unreliable access to water.

We write to you because access to clean, affordable, reliable water is foundational to a fulfilling life. Communities that have access to clean water have the opportunity to thrive at home, at work, and as a community. That's why LULAC has been committed to supporting both policy proposals and local water infrastructure projects that will improve outcomes for disadvantaged communities. Currently, hundreds of water suppliers across the state are out of compliance with the state's drinking water standards – this is simply unacceptable. The current shortage conditions only make the prior unacceptable conditions worse.

We were pleased to see the US Bureau of Land Management (“BLM”) take a positive step by authorizing a permit that would repurpose an existing oil and gas pipeline across federal land and instead use it to convey water. We support repurposing this existing



## California League of United Latin American Citizens

pipeline, which can help avoid service interruptions in an historically underserved area of California and bring more water to rural and disadvantaged communities, while reducing potential environmental impacts associated with building new infrastructure.

We applaud the BLM's efforts to allow inclusion, better integration and improve level of service to disadvantaged communities in California's water infrastructure system. Unfortunately, we are now aware that litigation has been filed challenging the BLM's actions regarding the rights of way associated with the pipeline. We oppose these challenges and the tactics that delay progress and deny the delivery of water to disadvantaged communities. Consequently, we urge you to do all you can to support access to water for underserved communities in California and vigorously defend the BLM decision approving the use of this existing pipeline for water. Furthermore, we encourage your agency to continue to reject any efforts to undermine these permits or delay the use of this pipeline particularly by disadvantaged and underserved Latino communities.

Without stabilizing and investing in our water supply, our communities are susceptible to highly volatile prices for water or, worse, the prospect of relying on unclean and unsafe supplies. It is the responsibility of the Administration to help protect our communities from that burden by supporting supply and infrastructure diversity and ensuring California communities can pursue a sustainable water supply, studying and keeping all options on the table.

Thank you for your consideration and your leadership ensuring California Latino communities have equal access to water.

Sincerely,

Jose Luis Barrera Novoa  
State Director - California LULAC  
LULAC National Board of Directors- Member  
[Jb.lulac@gmail.com](mailto:Jb.lulac@gmail.com) | [calulac.org](http://calulac.org) |

CC:

Laura Daniel Davis, Principal Deputy Assistant Secretary, Land & Minerals Management  
Karen Mouritsen, California Director, U.S. Bureau of Land Management  
Andrew Archuleta, BLM Desert District Director  
Mike Ahrens, Needles Field Manager





August 18, 2021

The Honorable Nada Wolff Culver  
Deputy Director, Policy & Programs  
U.S. Bureau of Land Management  
60 Horizon Drive  
Grand Junction, CO 81506

Dear Deputy Director Wolff Culver:

**RE: Support for Water Infrastructure Innovation in California**

I write today to you as Executive Director of the California Association of Mutual Water Companies ("CalMutuals"), representing a statewide organization with over 300 members that serves as the voice for the State's small water systems. Serving over 1.3 million Californians, mutual water companies, provide water to many traditionally underserved people, farms and small businesses with limited public infrastructure overall. We are writing in support of repurposing existing infrastructure traversing California's high desert that can provide a back-up supply of water to many small water systems that are vulnerable to failure of their single supplies of water. To put it simply, there are no other identified affordable alternatives to the US BLM issued easements that could bring many underserved and isolated communities in California's high desert back-up water supplies.

We have been working with California's Department of Water Resources (DWR) in developing drought contingency plans for small water systems called upon by AB1668 and SB606 enacted in 2018. One of the fundamental items in such contingency plans is the listing of a back-up supply of water. Many of California's mutual water companies and small water systems provide water service in rural areas that often have only a single source of supply, and in some urban pockets that lack access to the state's traditional water delivery infrastructure. We recently learned that the US BLM issued easements that allow a lengthy oil and gas pipeline stretching across many underserved, drought-impacted communities in Inland California to be used instead for water transportation. This pipeline, owned by agribusiness Cadiz Inc., could potentially improve supply options for more than 20 state-designated disadvantaged communities and augment storage and infrastructure for the entire region. This region is also home to dozens of mutual water companies.

As we actively review the small water systems that could potentially gain a back-up supply of water from this source, we applaud BLM for supporting the innovative repurposing of this pipeline, and urge you to stay the course.

As the entire state struggles with climate change, extreme drought and wildfire, mutual water companies and small water systems are often at the front lines of meeting the needs of underserved, rural communities most impacted by these conditions. Small water systems typically have the least resources available to build large infrastructure projects on their own that could help people living in communities hard hit by drought and fire.

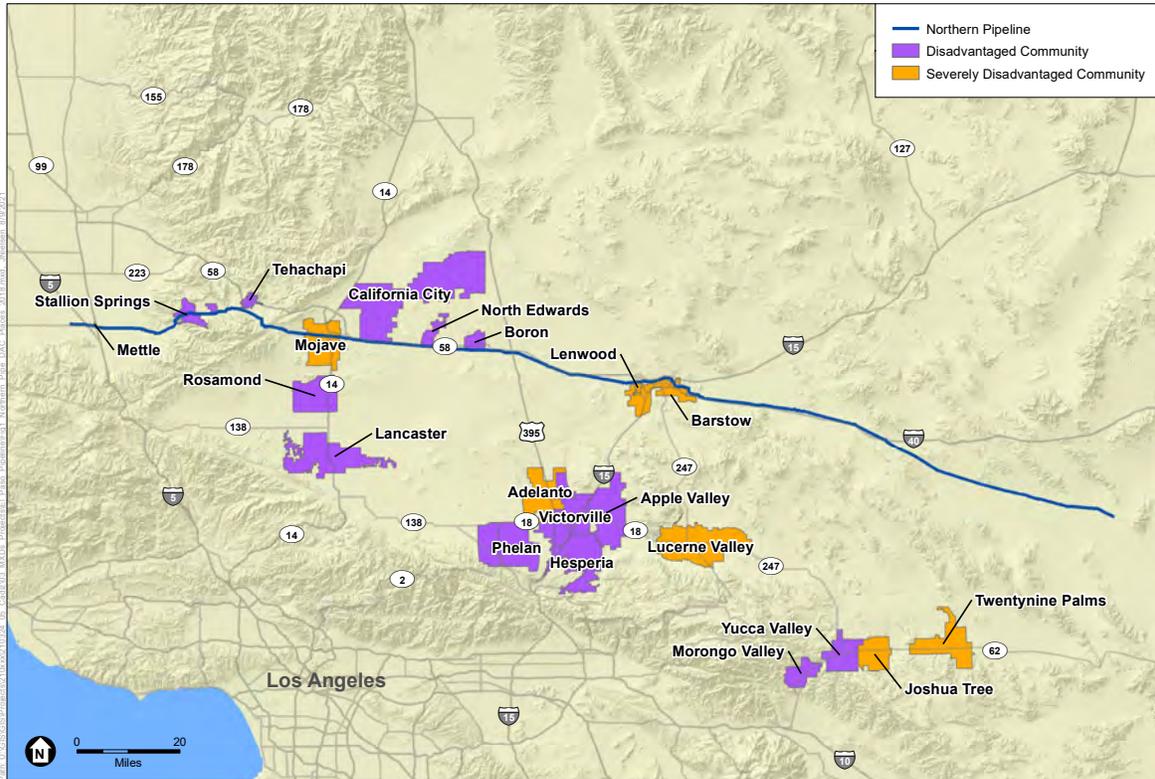
While no single solution can solve California's water crisis and serve all communities in need, our leaders and policy makers can encourage innovation and the prioritization of meeting the Human Right to Water. Repurposing infrastructure that is no longer needed for oil and gas is a strategy that can benefit many communities and adds the potential for new access in underserved and isolated communities. We urge you to continue to support the innovative use of this pipeline for water and do all you can to ensure communities can continue to explore the potential to utilize it to improve water access for those in need. Please feel free to contact me at 714 784-0001 if you have any questions or if we can be of any assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Ortega, Jr.", with a period at the end.

Adán Ortega, Jr.  
Executive Director

Enclosure



SOURCE: ESA, 2021; DWR, 2021.

Cadiz - Northern Pipeline

**Figure 1**  
Disadvantaged Communities - Places near the Northern Pipeline



The Honorable Nada Wolff Culver  
Deputy Director, Policy and Programs  
U.S. Bureau of Land Management  
60 Horizon Drive  
Grand Junction CO 81506



RE: Cadiz pipeline permit – support for BLM’s action

Dear Deputy Director Wolff Culver:

I write to you today as a result of the current drought crisis, and the additional challenge California and the West face in delivering safe, clean water to all communities, and particularly disadvantaged communities. In many areas, adequate infrastructure that can meet all demands for water is limited, which is the primary reason why there are more than 1 million people in California that lack reliable access to clean water. Our organization is concerned about the impacts water insecurity has on housing, job and educational opportunities necessary for our economy/our communities to thrive.

As a direct result of this need, I would like to encourage the Bureau of Land Management to support the repurposing of oil and gas pipeline infrastructure across the country for water conveyance and other innovative uses, and to work with the Department of Justice to defend against legal challenges that would stymie this innovative way to increase water access in the drought-prone Western US.

We support the BLM’s recent action in granting a right-of-way permit to Cadiz Inc. authorizing the conveyance of water in an existing oil and gas pipeline and are concerned that the granting of that permit is being challenged in federal court by plaintiffs who have been lobbying the Biden Administration to withdraw that permit.

Given these pressing factors, we need the support of the federal government to ensure solutions can be available, especially innovative solutions such as the conversion of an existing fossil fuel pipeline to water, which would limit community and environmental disturbance yet deliver needed water supply.

Therefore, we urge the Biden Administration to remain committed to the previously granted permits. When this pipeline is readied for water conveyance, several underserved communities along the pipeline’s route will have access to new supplies from a variety of sources that will, of course, be subject to all local, state and federal environmental laws.

We ask that the BLM support the existing right-of-way permits for the conveyance of water in this existing pipeline and defend the permits against challenges in Court. Our communities need your support.

Sincerely,

*Robert V. McDonald*

President, OC Black Chamber



The Honorable Nada Wolff Culver  
Deputy Director, Policy and Programs  
U.S. Bureau of Land Management  
60 Horizon Drive  
Grand Junction CO 81506

September 3, 2021

RE: Cadiz pipeline permit – support for BLM’s action

Dear Deputy Director Wolff Culver:

I write to you today as a result of the current drought crisis, and the additional challenge California and the West face in delivering safe, clean water to all communities, and particularly disadvantaged communities. In many areas, adequate infrastructure that can meet all demands for water is limited, which is the primary reason why there are more than 1 million people in California that lack reliable access to clean water. Our organization is concerned about the impacts water insecurity has on housing, job and educational opportunities necessary for our economy/our communities to thrive.

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We ask that the BLM support the existing right-of-way permits for the conveyance of water in this existing pipeline and defend the permits against challenges in Court. Our communities need your support.

Sincerely,

A handwritten signature in blue ink that reads "Mario Rodriguez". The signature is written in a cursive style with a long horizontal line extending to the right.

Mario Rodriguez  
Chairman

Congress of the United States  
Washington, DC 20515

August 24, 2021

The Honorable Nada Wolff Culver  
Deputy Director, Policy & Programs  
U.S. Bureau of Land Management  
60 Horizon Drive  
Grand Junction, CO 81506

RE: Support for Water Access in Southeastern California

Dear Deputy Director Wolff Culver:

As you are no doubt aware, California is confronting long-term systemic water challenges as a result of climate change that has been underscored by current extreme drought conditions and significant wildfires. A recent poll by the nonpartisan Public Policy Institute of California found that voters believe that drought and wildfires are the most important environmental issues facing the state. Last week, the Bureau of Reclamation issued its first ever shortage declaration on the Colorado River, signaling long-term challenges for all Western States that rely on this supply. To address these challenges, our offices have supported the Administration's efforts to ensure that California and the West have access to sustainable water supplies and reliable infrastructure for all communities, particularly disadvantaged communities that are often most impacted by drought conditions, rationing and associated rate hikes.

We were pleased to learn that in December of 2020 the Bureau of Land Management ("BLM") approved the assignment of an existing oil and gas pipeline right-of-way over federal land to Cadiz Inc. authorizing it to convey water in the pipeline once it is repurposed. The repurposing of this pipeline from natural gas to water would expand access to water service for disadvantaged communities along its 220-mile route within San Bernardino and Kern Counties, as well as other areas of southern California via interconnections with the State Water Project. Importantly, this pipeline could be made available without surface disturbance or environmental impacts often associated with new pipeline construction. The pipeline can also support job and economic development in the local communities that would undoubtedly benefit from additional water infrastructure options.

We understand that the issuance of the right-of-way permits is being challenged in Court by opponents of Cadiz and its unassociated groundwater management project ("Cadiz Water Project"). We note that the right-of-way permits were *not* approvals of the Cadiz Water Project. They authorized water as a substance to be conveyed in this pipeline over federal land. Any project to convey water within the pipeline would be subject to all state and federal laws governing the conveyance, treatment, distribution, and use of water.

Our constituents are worried about the reliability of their water supplies, because of the seriousness of the current drought and projections of increases in frequency and intensity of future droughts due to climate change. The pipeline presents a new, innovative opportunity to further augment water access opportunities for California communities. We urge you to reject any efforts to delay or disrupt the potential use of this pipeline and to continue to support the right-of-way permits, including in any future Court proceedings. Thank you for your leadership on this important issue and please continue to provide our offices updates on any developments.

Sincerely,

  
Tony Cárdenas  
Member of Congress

  
Jim Costa  
Member of Congress

cc: Laura Daniel Davis, Principal Deputy Assistant Secretary, Land & Minerals Management  
Nada Culver, Acting Director, U.S. Bureau of Land Management  
Karen Mouritsen, California Director, U.S. Bureau of Land Management  
Andrew Archuleta, BLM Desert District Director

# Holland & Knight

50 California Street, Suite 2800 | San Francisco, CA 94111 | T 415.743.6900 | F 415.743.6910  
Holland & Knight LLP | [www.hklaw.com](http://www.hklaw.com)

Jennifer L. Hernandez  
+1 415-743-6927  
[Jennifer.Hernandez@hklaw.com](mailto:Jennifer.Hernandez@hklaw.com)

November 15, 2021

*Via Email and Overnight Delivery*

Luther L. Hajek  
U.S. Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
999 18th Street, South Terrace, Suite 370  
Denver, CO 80202

Laura Daniel-Davis  
Principal Deputy Assistant Secretary - Land and Mineral Management  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240

Tracy Stone-Manning  
Director  
US Bureau of Land Management  
760 Horizon Drive  
Grand Junction, CO 81506

RE: Center for Biological Diversity, Defenders of Wildlife, and Sierra Club v. US Bureau of Land Management (2:21-cv-02507)

1. Objections to Reported “Sue-And-Settle” Strategy to Deprive Disadvantaged Communities of Sustainable Local Water Supply Adjudicated After Decades of Litigation to Have No Significant Adverse Environmental Impact
2. Freedom of Information Act Document Disclosure Request
3. Notice of Intent to File Amicus Curiae Pleading

Dear Mr. Hajek, Deputy Assistant Secretary Daniel-Davis and Director Stone-Manning:

We are proud to represent Groundswell, a project of Community Build, Inc. of Los Angeles California. Groundswell is a movement-driven coalition to demand social, economic and environmental justice in Black, Latino and disadvantaged communities in California with a primary and urgent focus on access to clean, sustainable water.

Access to new supplies of clean water is urgent and critical to solving the region's drought emergency and acute housing crisis – a shortfall of over 1.3 million housing units which has disproportionately made members of our clients' communities poor (highest poverty rate in the nation once housing costs are taken into account) and homeless (both the highest rate and highest number of homeless in the nation and lowest rate of homeownership on mainland). This ongoing housing catastrophe further exacerbates the wealth gap that was inflicted on Communities of Color by more than a century of redlining, "urban renewal" neighborhood destruction, and other housing discrimination.

Our client stands in solidarity with small water system operators throughout the state, many serving low-income communities as well as people of color, which have suffered for decades from toxic pollution, unsafe and unreliable drinking water that flows through their taps, as explained by the California Association of Mutual Water Companies Executive Director Adan Ortega in his separate letter dated August 18, 2021 (included for ease of reference as Attachment A hereto).

### **Communities of Color are the primary victims of California's endless water wars**

For too long, our clients have been the nameless victims of the endless litigation and "stakeholder" battles among California's warring water factions. Like all wartime civilians, our clients' have been forced to live with poor quality, as well as expensive, insufficient, and insecure water supplies. Meanwhile, the science and adverse health consequences suffered by the victims of these water wars are indisputable – and shameful. As recently reported by the Environmental Working Group in 2021, "[p]eople living in underserved communities, especially those with higher Black or Latino populations, likely run a greater collective risk of chronic illness from contaminated drinking water than people in other communities."

<https://capitalandmain.com/disparities-in-californias-tap-water-quality-persist-new-data-shows>.

And as the New York Times reported, many in our Central Valley communities "grow the nation's food, but they can't drink the water."

<https://www.nytimes.com/2019/05/21/us/california-central-valley-tainted-water.html>. Here in Los Angeles, as a UCLA study reported, although the state's goals include ensuring that "all residents have access to clean, affordable drinking water," these goals remain "largely aspirational for many communities, particularly those that depend on small water systems in Los Angeles County and throughout California." <https://law.ucla.edu/news/ensuring-safe-drinking-water-los-angeles-countys-small-water-systems>. In the midst of another drought crisis, California's water authorities demand that a predominantly Latino and lower income Central Valley town choose between water for their homes and water for their jobs – in the fifth largest economy in the world! <https://sjvwater.org/drought-could-dry-up-popular-i5-oasis/>

Unlike the well-funded army of lobbyists, lawyers and advisors paid by the warring special interests and bureaucrats that have long dominated California's water wars, our clients'

communities have been largely unrepresented - and ignored. Our clients' advocacy efforts focused on social justice and civil rights, protecting and advancing the rights of members of these communities to vote, to work for fair wages under fair conditions, and to demand and achieve equity and justice in education, medical care, the justice system, and housing. California's social justice and civil rights organizations should not, in 2021, have to become a water war combatant.

### **Access to clean water is foundational to social justice**

The fact is, however, that none of our clients' social justice priorities can be achieved without a safe, affordable, and reliable water supply. Most Californians live in or south of the City of Los Angeles, but for many decades the SoCal region has relied on imported water. Our clients can no longer stand by while litigious environmental activists pursue their longtime no-growth agenda by blocking water storage, conveyance and supply solutions that would serve our communities.

According to Governor Newsom, California has a shortfall of 3.5 million homes. Housing costs are completely unaffordable to working families, and communities of color are (by far) the most victimized by the housing crisis, with 41% of Black, 52% of Latino, and 39% of Native American households unable to pay for housing and other basic monthly costs – even though 97% of such households have at least one working adult, and even after taking into account government assistance benefits. <https://www.unitedwaysca.org/realcost>. Under state law, the Southern California region is obligated to plan for and approve over 1.3 million new housing units in the next eight years. <https://www.oregister.com/2021/03/04/southern-california-adopts-plan-to-build-1-3-million-new-homes-by-2029/>. These homes cannot be built without water (and even existing homes are at risk based on our historic drought), nor can they be delayed by years of still-more elaborate studies and lawsuits that employ no union workers, and create no new homes, to serve Communities of Color.

Our clients are committed to a safe and sustainable environment. We support federal and California environmental protection laws and regulations, augmented by community monitoring and enforcement measures such as the California Environmental Quality Act (CEQA), that assure protection of the environment. Unfortunately, no legal, regulatory, or litigation structure exists to protect disadvantaged communities from endless water supply lawsuits brought by the losers in a fair and transparent regulatory process. Further, longstanding political alliances between “green” groups and our communities can no longer cede the playing field to extremist no-growth environmental litigation activists waging a relentless war against water solutions that are foundational to social justice priorities such as housing, ending poverty, and restoring upward mobility in our clients' communities.

Our clients' have joined forces with the League of United Latin American Citizens, California Association of Mutual Water Companies, San Gabriel Valley Coalition for Secure Water, Rebuild Southern California Partnership, Laborers International Union of North America and other organizations representing disadvantaged communities in fighting for access to water supplies that are safe, affordable, reliable and climate resilient. As explained in numerous letters

from our water justice coalition partners, disadvantaged communities are in a water crisis: they need more water, not more water lawsuits.

### **Clean water - the most critical of critical infrastructure**

One project of immediate concern is the Cadiz effort to repurpose an existing natural gas pipeline to transport water - an innovative water infrastructure project that could deliver up to 30,000 acre feet per year of safe, sustainable, reliable and affordable water to disadvantaged communities with NO significant adverse impacts to the environment.

Unlike other water infrastructure projects in California that will take decades to build and involve major new construction, this Project involves only the routine transfer of Right of Way (“ROW”) permits for an EXISTING pipeline formerly used to transport natural gas. The use of this existing pipeline requires NO disturbance of land and NO adverse impacts to the environment, as determined by career professionals at Bureau of Land Management (BLM) who began reviewing this project during the administration of President Barack Obama before ultimately and lawfully approving these ROW permits in 2020.

However, rather than expedite access to innovative clean water infrastructure as called for in President Biden’s “Build Back Better” plan, environmental extremists are attempting to block existing pipeline re-use permits with still more endless, meritless litigation. These same environmental activists have relentlessly opposed affordable housing and water supply projects that would benefit disadvantaged communities throughout California by claiming environmental harm even where the science has proven that no harm exists. In fact, many of these same opponents have opposed groundwater storage and conservation projects that could be serving disadvantaged communities TODAY – by continuing to assert debunked claims of environmental harm.

For the Cadiz project specifically, California’s appellate courts have rejected meritless claims filed by the Center for Biological Diversity (“CBD”), the Sierra Club (local chapter) and others that the Cadiz project would harm the environment, human health or safety, or any other protected resource. These SIX appellate court decisions were the outcome of tens of thousands of pages of documentation, and weeks of trial court proceedings. CBD and the Sierra Club lost every single claim in their lead lawsuit; every other project opponent lost every one of their meritless claims as well. The fact is that California’s trial and appellate courts have already done the fact-finding and legal analysis on the Cadiz project, and confirmed that the Project has ZERO significant adverse environmental effects even under the notoriously stringent California Environmental Quality Act (“CEQA”), that the studies conducted were comprehensive and provided substantial evidence in support of this conclusion, that the review was completed by the appropriate lead agency under CEQA, and that all other arguments raised by challengers were without merit. The appellate court concluded:

We conclude that the Project is consistent with the EIR’s purpose and objectives because it *will conserve water otherwise lost to brine and evaporation, and will improve water supplies throughout many areas of the State of California.*

*Center for Biological Diversity v. County of San Bernardino*, 247 Cal.App.4<sup>th</sup> 326, 332 (2016) (emphasis added), attached for ease of reference hereto as Attachment B. The Cadiz project is an entirely in-state project for which comprehensive studies, and judicial findings of fact and conclusions of law, have already been exhaustively litigated – and are not pending before your agency.

It is also entirely clear that no judicial or administrative agency outcome can persuade certain no-growth environmental activists with a long track record of overt racism to accept the new water supply or new housing needed for our clients' communities – so they persist with phantom “environmental” objections no matter how many courts, and how many California agencies, determine that their objections have no scientific or legal merit. The Cadiz project is not the federal action at issue here: the challenged project is a re-purposed existing natural gas pipeline. ROW permits authorizing no new construction for the conveyance of an entirely benign water supply simply do not trigger NEPA, and were appropriately determined by career federal agency staff to be categorically excluded from NEPA consistent with longstanding agency practice (and common sense).

### **Pervasive racism infects these extremists' no-growth litigation strategy**

No matter how often pervasive racism is identified in environmental advocacy groups, such groups have the unquestioned fealty of employees in many state and federal agencies – just as persistent racism by private realtors and bankers leaned for decades on stalwart supporters and allies in the staff of financial agencies.

Environmental and public lands agency staff too often turn a blind eye to the documented racism among environmental activists, and simply ignore (as “not in my lane” or “outside my agency's mission”) Constitutional and statutory civil rights laws prohibiting agency actions that cause racially disparate impacts. Wealthy white households can import their own water; members of our clients' communities must rely on the tap – and on the availability of additional water supplies to solve the housing and homelessness crises that also disparately harms Communities of Color.

Racially unjust advocacy and outcomes is an acute problem today – not 50 years ago.

For example, in 2020, National Geographic reported that “environmental groups have [only] just begun publicly examining their role in perpetuating systemic racist policies and practices” <https://www.nationalgeographic.com/history/article/environmental-movement-very-white-these-leaders-want-change-that>.

In 2021, NBC News reported on yet another failing diversity grade judgment of Green 2.0, which concluded that environmental organizations and foundation funders “remain overwhelming white” and “failed to react to systematic disparities that people of color have been subjected to in the United States.” <https://www.nbcnews.com/news/us-news/numbers-don-t-lie-green-movement-remains-overwhelmingly-white-report-n1253972>.

The Green 2.0 report was issued after George Floyd's murder, after countless environmental groups pledged to do better. They failed:

- The lead plaintiff in this lawsuit is the organization that has sued – mostly unsuccessfully - to block the largest number of housing units in Southern California, the Center for Biological Diversity (“CBD”).
- The next plaintiff is the admittedly racist Sierra Club, where pervasive racism was recently well documented by the Los Angeles Sierra Club chapter. [https://angeles.sierraclub.org/news\\_volunteer/blog/2020/07/addressing\\_racism\\_in\\_the\\_sierra\\_club\\_past\\_and\\_present](https://angeles.sierraclub.org/news_volunteer/blog/2020/07/addressing_racism_in_the_sierra_club_past_and_present). The Sierra Club's national president himself acknowledged in 2020 that “only people insulated from systemic racism and brutality can afford to focus solely on preserving wilderness.” <https://www.sierraclub.org/michael-brune/2020/07/john-muir-early-history-sierra-club> (emphasis added).
- That is in fact the “sole focus” of the third plaintiff, the Defenders of Wildlife, as they explain on their website, and then double-down in a tweet that the “systemic injustices people of color face are unspeakable acts that have no place in our country and do not reflect the American we seek to create through our work, saving wildlife and special places.” <https://twitter.com/defenders/status/1266780168653352961> (emphasis added).

We recognize and applaud your administration's commitment to environmental justice, but note that environmental justice is an important component of the entirety of the civil rights agenda – which includes housing, and water, as foundational equity mandates alongside environmental justice.

### **The Biden Administration should not engage in back room “sue-and-settle” tactics**

Our clients are well aware of the hyper-partisan political environment in your agency, and of the favored “sue-and-settle” tactic used by losers in the last administration to secure political reversals of prior agency actions. This sue-and-settle tactic, however, is a quintessential insider game that deprives our clients of the opportunity – finally – to gain access to this sustainable new local water supply after decades of studies, delays, and lawsuits.

We urge you to reject demands by litigious no-growth environmental activists that you use “sue-and-settle” back room tactics to summarily revoke previously-issued permits to use an idle gas pipeline to give California's Communities of Color access to water – the non-negotiable infrastructure needed to build the state-mandated housing that is the lynchpin our clients' working families need to avoid displacement and gentrification, and that the region needs to make progress in overcoming poverty and homelessness challenges.

### **The Federal role challenged in this lawsuit is limited to allowing water instead of hydrocarbons to be transported through an existing pipeline**

We are in the process of engaging our own scientific expert, but a review of the many LOSING court cases filed by those now seeking to persuade you to block progress on this water supply

project demonstrates that this pipeline re-use project would facilitate access to tens of thousands of acre feet of clean water to disadvantaged communities. The federal agency role in this local pipeline conversion project is limited to allowing water instead of hydrocarbons to be transported through an existing pipeline, with no new construction, for segments of this existing pipeline that cross federal land, and before reaching Southern and Central Valley water distribution infrastructure.

Authorizing with ROW permits the continued use, for clean water conveyance, of an existing pipeline is a poster child “small handle” issue under the National Environmental Policy Act. As the BLM NEPA Handbook explains, NEPA applies to federal agency actions only to the extent the federal agency is taking an actions that is BOTH “major” and “have a significant environmental impact.” BLM NEPA Handbook, p. 24

[https://www.ntc.blm.gov/krc/uploads/366/NEPAHandbook\\_H-1790\\_508.pdf](https://www.ntc.blm.gov/krc/uploads/366/NEPAHandbook_H-1790_508.pdf). ROW permits to use an existing pipeline are under no scenario “major,” and since no pipeline construction activities are needed there is also no federal action that would “have a significant environmental impact.” The ROW permits do not authorize a water source, or water recipient, for the water that would flow through the converted pipeline. The ROW permits do not authorize the extraction or draw down of any groundwater table.

Instead, as discussed above, in already-concluded appellate court litigation, the water supply source has also already been determined to result in ZERO adverse impacts to any federally-protected species or other resource.

The simple fact is that there are NO environmental impacts whatsoever associated with the lawful issuance of permits to convert the use of an existing pipeline from natural gas to water. Phantom environmental objections raised by opponents are wholly designed to deny access to new, sustainable, local clean water resources for disadvantaged Communities of Color – communities that rarely have the capacity to fight these expensive legal battles. We are honored to represent the interests of these communities, as part of our long track record in assuring that environmentalist extremists and their agency allies stop trampling the civil rights of Communities of Color, including this shocking effort to deprive our clients’ communities of water, that most fundamental need of all humans.

It bears repeating that the people that would be served by this pipeline conversion project include those suffering from the nation’s highest poverty and most severe homeless rates, and near-highest income inequality. An overwhelming proportion of new jobs created in the region consist of lower wage service jobs, based on the longtime erosion of higher wage jobs in manufacturing and other sectors dependent on safe, reliable, and affordable water supplies.

### **Intent to file amicus curiae briefs**

We intend to file an amicus curiae brief in the latest lawsuit, which as confirmed above are filed by organizations who have already admitted their shameful history, while denying their ongoing pattern) of anti-housing lawsuits - and racial discrimination.

Depriving our clients' communities of critical, local, sustainable water supplies through a re-purposed pipeline does in fact deprive Communities of Color of housing, and it further exacerbates the racial wealth gap, poverty and homelessness crisis. These wealthy advocacy organizations persist in these "unspeakable acts" even after their phantom, meritless legal and scientific arguments and legal challenges failed – repeatedly - under California's notoriously stringent environmental laws and courtrooms.

The most recent of the "unspeakable acts" is these groups' attempt to persuade the federal courts – and your agency – to rescind lawfully issued ROW authorizations to re-purpose an existing surplus natural gas pipeline to serve as a water supply pipeline to desperate California communities. Neither civil rights nor environmental laws matter to these extremist groups, **because as their racist histories and ongoing efforts to block housing demonstrates, they oppose the development of new water resources that would subvert their extreme no-growth agenda.** Our clients' vehemently disagree that this agenda is lawful, or that these exceptionally racially-discriminatory anti-housing/anti-water supply litigation tactics should be tolerated let alone advanced by the Biden administration.

This administration has promised the nation that we will Build Back Better – including restoring the nation's infrastructure *and* repurposing infrastructure away from fossil fuels to support the new generation of infrastructure needed to address climate change. This natural gas re-repurposing pipeline ROW approval to bring in-state water to California's Communities of Color is the poster child for whether "Build Back Better" means actually providing climate-sustaining union jobs and improved infrastructure for Americans such as our clients' communities, or whether this administration will just enable the next generation of non-union consultant studies, bureaucratic taxpayer-funded task forces, and meritless lawsuits by extremists intent on causing more pain in our clients' communities in furtherance of their exclusive (and exclusionary) no-growth and anti-housing policy agenda.

### **Freedom of Information Act Disclosure Request**

We realize it is common practice to include an attorney in "sue-and-settle" partisan political tactics, and to assert that the presence of an attorney shields such communications from the disclosure mandates of FOIA. We disagree.

Please be advised that agency undertakings that include conspiring to deny our clients' communities access to safe, secure and sustainable water supplies very likely also constitutes violations of the Constitutional and statutory civil rights of our clients. We do not believe this is your intended policy objective, but it appears to be very likely the policy outcome of a decision by your agency to simply yield – in classic "sue-and-settle" fashion - to this latest lawsuit demanding rescission of the contested ROW approvals. Intra-agency communications, even if an attorney is present, that further an agency's planned intentional deprivation of disadvantaged communities' access to safe, reliable, and affordable water supplies to appease political allies with a track record of racism cannot lawfully be shielded from disclosure under FOIA.

We also note that "sue-and-settle" is a tactic that was abused by the prior administration in its unsuccessful rescission of the Deferred Access to Childhood Arrivals (DACA) Obama program

based the threat of third-party litigation. This “sue-and-settle” Trump tactic to exclude the voice of communities that would be harmed by its unilateral DACA rescission was soundly rejected by the Supreme Court. (See <https://www.nyulawreview.org/wp-content/uploads/2020/04/NYULAWREVIEW-95-1-Duncheon.pdf>). We see no differences, and troubling similarities, in CBD’s efforts to persuade your agency to “sue-and-settle” by summarily vacating the Cadiz project ROW permit while depriving disadvantaged communities and others who need this water supply from applicable administrative procedures required to rescind or modify the existing ROW reports. Our clients are also shocked by reports that your administration would engage in the Trumpian tactic of “friendly” capitulation to the lawsuit demands of political allies, which silence the voices of those who urgently need this infrastructure to access clean, affordable water for health, safety, housing and economic security.

We do not know what information your agency has, or has considered, in contemplating this “sue-and-settle” tactic to deprive our clients’ of access to clean, reliable, local water supplies. We hope the information fails to disclose the profound anti-housing, and disparate impacts to Communities of Color, that the litigants in this lawsuit demand be caused by your agency if you yield to their demand that revocation (in whatever form) of these lawful, existing ROW permits.

We are concerned, however, that your agency may be aware of these racially disparate consequences and are nevertheless elevating the interests of these extremists above the interests of our clients’ right to civil rights and social justice. Our clients’ do not longer tolerate agency “silos” controlled by special interests that result in racial injustice, even if pursued in the name of the environment.

Accordingly, this letter also serves as document disclosure request under the Freedom of Information Act. Please provide all documents, including but not limited to electronic documents such as files, emails and texts, referencing or related to the Cadiz project beginning on November 1, 2020 and continuing through today’s date. By way of illustration, and not as an exclusive list, this document list encompasses:

- Documents, including electronic communications such as emails and texts, that include the term “Cadiz” and were sent or received by an appointee, employee, or contractor to your agency.
- Documents, including electronic communications such as emails and texts, that include the term “Center for Biological Diversity,” “Sierra Club,” or “Defenders of Wildlife” and were sent or received by an appointee, employee, or contractor to your agency.
- Documents, including electronic communications such as emails and texts, that include the term “El Paso Natural Gas” or any derivative thereof such as “gas pipeline” or “natural gas” or “El Paso,” that also include or reference California or any California state or local agency or location.
- Documents, including electronic communications such as emails and texts, that include “disadvantaged communities” or “environmental justice,” refer or relate to water quality

or water supply or infrastructure, and that include or reference California or any California state or local agency or location.

- Starting on January 6, 2021, documents, including electronic communications such as emails and texts, that include the term “meeting” or “task force” or “committee” or “group” and relate to Cadiz. This component of our request specifically includes the list of attendees and invitees, the agendas, meeting notes taken by any and all invitees and attendees, and documents prepared for or following such meetings.

## Conclusion

We request the opportunity to meet with your representatives on this project as early as feasible. Just as it is easy for agencies to deny housing based on anti-growth NIMBYs because those who need new housing simply aren't at the table, our clients' absence – and their critical need for water now – can too easily be ignored because we have not been invited to, and until very recently have not even known about, the Cadiz “table” which has been set by your agencies and anti-housing/anti-growth extremists.

With this letter, FOIA request, and upcoming amicus filing, we are now at the table and request a meeting date as soon as possible. Our goal is to work with you to promptly achieve this historic opportunity to address our water crisis, which we believe to be in full alignment with the Biden administration.

Thank you for your time and consideration.

Sincerely,



Jennifer Hernandez  
Partner, Holland & Knight

Cc: Honorable Deb Haaland, United States Secretary of the Interior  
Honorable Tommy Beaudreau, Deputy Secretary for the Department of Interior  
Ms. Heather Gottry, Director and Designated Agency Ethics Official, U.S. Department of Interior  
Honorable Mark Lee Greenblatt, Inspector General, US Department of the Interior  
Richard Lambros, On Behalf of the Members of the San Gabriel Valley Coalition for a Secure Water Future  
Jon Switalski, Rebuild Southern California Partnership  
Jose Barrera, League of United Latin American Leaders  
Adan Ortega, California Association of Mutual Water Companies  
Robert Sausedo, Community Build, Inc.  
Martin Ludlow, Bridge Street, Inc.

# Attachment A



August 18, 2021

The Honorable Nada Wolff Culver  
Deputy Director, Policy & Programs  
U.S. Bureau of Land Management  
60 Horizon Drive  
Grand Junction, CO 81506

Dear Deputy Director Wolff Culver:

**RE: Support for Water Infrastructure Innovation in California**

I write today to you as Executive Director of the California Association of Mutual Water Companies ("CalMutuals"), representing a statewide organization with over 300 members that serves as the voice for the State's small water systems. Serving over 1.3 million Californians, mutual water companies, provide water to many traditionally underserved people, farms and small businesses with limited public infrastructure overall. We are writing in support of repurposing existing infrastructure traversing California's high desert that can provide a back-up supply of water to many small water systems that are vulnerable to failure of their single supplies of water. To put it simply, there are no other identified affordable alternatives to the US BLM issued easements that could bring many underserved and isolated communities in California's high desert back-up water supplies.

We have been working with California's Department of Water Resources (DWR) in developing drought contingency plans for small water systems called upon by AB1668 and SB606 enacted in 2018. One of the fundamental items in such contingency plans is the listing of a back-up supply of water. Many of California's mutual water companies and small water systems provide water service in rural areas that often have only a single source of supply, and in some urban pockets that lack access to the state's traditional water delivery infrastructure. We recently learned that the US BLM issued easements that allow a lengthy oil and gas pipeline stretching across many underserved, drought-impacted communities in Inland California to be used instead for water transportation. This pipeline, owned by agribusiness Cadiz Inc., could potentially improve supply options for more than 20 state-designated disadvantaged communities and augment storage and infrastructure for the entire region. This region is also home to dozens of mutual water companies.

As we actively review the small water systems that could potentially gain a back-up supply of water from this source, we applaud BLM for supporting the innovative repurposing of this pipeline, and urge you to stay the course.

As the entire state struggles with climate change, extreme drought and wildfire, mutual water companies and small water systems are often at the front lines of meeting the needs of underserved, rural communities most impacted by these conditions. Small water systems typically have the least resources available to build large infrastructure projects on their own that could help people living in communities hard hit by drought and fire.

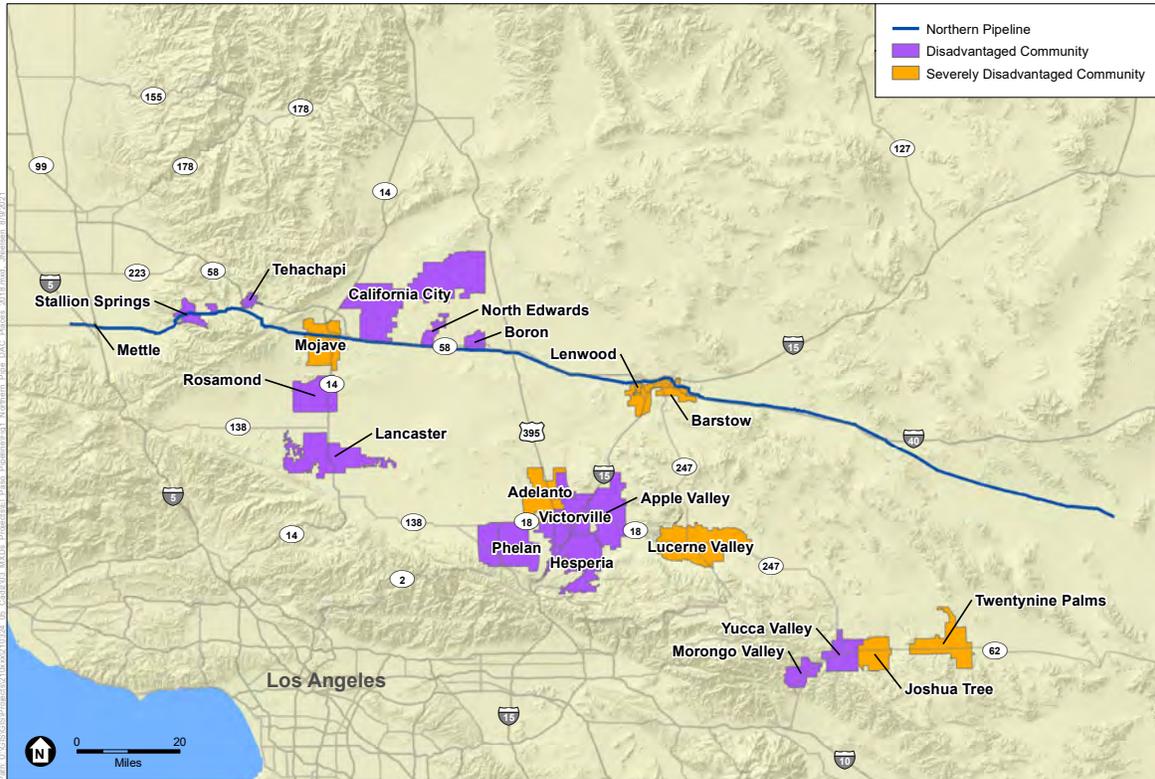
While no single solution can solve California's water crisis and serve all communities in need, our leaders and policy makers can encourage innovation and the prioritization of meeting the Human Right to Water. Repurposing infrastructure that is no longer needed for oil and gas is a strategy that can benefit many communities and adds the potential for new access in underserved and isolated communities. We urge you to continue to support the innovative use of this pipeline for water and do all you can to ensure communities can continue to explore the potential to utilize it to improve water access for those in need. Please feel free to contact me at 714 784-0001 if you have any questions or if we can be of any assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Ortega, Jr.', with a period at the end.

Adán Ortega, Jr.  
Executive Director

Enclosure



SOURCE: ESA, 2021; DWR, 2021.

Cadiz - Northern Pipeline

**Figure 1**  
Disadvantaged Communities - Places near the Northern Pipeline



# Attachment B

**CENTER FOR BIOLOGICAL DIVERSITY et al., Plaintiffs and Appellants,**

**v.**

**COUNTY OF SAN BERNARDINO et al., Defendants and Respondents;**

**CADIZ, INC., et al., Real Parties in Interest and Respondents.**

No. G051058.

**Court of Appeals of California, Fourth District, Division Three.**

May 10, 2016.

330 \*330 Appeals from a judgment of the Superior Court of Orange County, Super. Ct. No. 30-2012-00612947, Gail Andrea Andler, Judge. Affirmed. Respondents' request for judicial notice. Granted in part and denied in part.

Aruna M. Prabhala, Adam F. Keats, Chelsea Tu; Center for Food Safety and Adam F. Keats for Plaintiffs and Appellants Center for Biological Diversity, San Bernardino Valley Audubon Society and Sierra Club, San Gorgonio Chapter.

University of California, Irvine School of Law Environmental Law Clinic, and Michael Robinson-Dorn for Plaintiff and Appellant National Parks Conservation Association.

Downey Brand, Christian L. Marsh, Kevin M. O'Brien and Rebecca R.A. Smith for Defendants and Respondents County of San Bernardino and Board of Supervisors of County of San Bernardino.

331 \*331 Best Best & Krieger, Michelle Ouellette and Sarah E. Owsowitz for Defendants and Respondents Santa Margarita Water District and Board of Directors of Santa Margarita Water District.

Alston & Bird, Edward J. Casey and Andrew Brady for The Association of California Water Agencies as Amicus Curiae on behalf of Defendants and Respondents.

Remy Moose Manley, James G. Moose, Sabrina V. Teller and Gwynne B. Hunter for California State Association of Counties and California Association of Sanitation Agencies as Amici Curiae on behalf of Defendants and Respondents.

Brownstein Hyatt Farber Schreck, Diane C. De Felice, Amy M. Steinfeld; Woodruff, Spradlin & Smart and M. Lois Bobak for Real Parties in Interest and Respondents Cadiz, Inc., and Fenner Valley Mutual Water Company.

Cox, Castle & Nicholson, Michael H. Zischke and Andrew B. Sabey for California Building Industry Association, Building Industry Legal Defense Foundation, Building Industry Association of the Bay Area, California Business Properties Association, California Chamber of Commerce and Southern California District Council of Laborers as Amici Curiae on behalf of Defendants and Respondents and Real Parties in Interest and Respondents.

## **OPINION**

FYBEL, J. —

## **INTRODUCTION**

A proposed project to pump fresh groundwater from an underground aquifer located below real property owned by Cadiz, Inc. (Cadiz), in the Mojave Desert (the Project) spawned six related cases. The Project is a public/private partnership, the purposes of which are to prevent waste of the water in the aquifer, and to ultimately transport the water to customers in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties.

In this case, the Center for Biological Diversity, San Bernardino Valley Audubon Society, and Sierra Club, San Gorgonio Chapter (collectively, CBD), and the National Parks Conservation Association (National Parks) filed a petition for a writ of

332 mandate in the trial court, challenging the approval of the Project under the California Environmental Quality Act \*332 (CEQA) (Pub. Resources Code, § 21000 et seq.).<sup>[1]</sup> The named respondents were the Santa Margarita Water District (Santa Margarita) as the lead agency for the Project; the Board of Directors of the Santa Margarita Water District; the County of San Bernardino, a responsible agency for the Project (the County); and the Board of Supervisors of the County. The trial court denied the petition for a writ of mandate, and Appellants raise several issues in this appeal.

First, Appellants contend that Santa Margarita was improperly designated as the lead agency for the Project, and that this error so tainted the environmental review process that such designation requires preparation of a new environmental impact report (EIR). We disagree. Santa Margarita was properly designated as the lead agency because it is jointly carrying out the Project with the property owner, Cadiz, and because it is the agency with the principal authority for approving and supervising the Project as a whole. Because we find no error in the designation of Santa Margarita as the lead agency, we need not address the issue of prejudice.

Second, Appellants argue that the EIR's project description was inaccurate and misleading because the Project was described as a means of conserving water, but will not save from evaporation an amount of water equal to the amount being pumped from the aquifer over the life of the Project. We conclude that the Project is consistent with the EIR's purpose and objectives because it will conserve water otherwise lost to brine and evaporation, and will improve water supplies throughout many areas of the State of California.

Third, Appellants argue that the EIR is misleading because it does not provide an accurate duration for pumping by the Project. We disagree. The EIR sets a definite length of time during which pumping under the Project may occur. The additional time permitted for pumping if contingencies require that the pumping be extended do not alter the total amount of water that may be withdrawn. Although the EIR and other documents included as part of the environmental review contemplate that the parties might wish to extend the pumping for an additional term of years after the stated completion date of the Project, any further term is not reasonably foreseeable at this time. Indeed, the EIR specifically provides that any extensions of the Project term would require further, separate environmental review.

Fourth and finally, Appellants contend that the Project will pump more water from the aquifer than is contemplated by and discussed in the EIR. Having reviewed the EIR and related documents, we conclude that they do not permit withdrawal of water in excess of the amounts specified in the EIR, so there is nothing inaccurate or misleading about the Project description.

333 \*333 In sum, when the appropriate standard of review is applied, we conclude there was no prejudicial abuse of discretion in approving the Project and certifying the EIR. Therefore, we affirm the trial court's judgment denying Appellants' petition for a writ of mandate.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

Cadiz owns land in the County, which overlies the Cadiz Valley and Fenner Valley aquifer system in the Mojave Desert. The aquifer is estimated to hold 17 to 34 million acre-feet of fresh groundwater. Currently, this groundwater flows downward to dry lakes, where it mixes with highly salinated groundwater before evaporating. Once the groundwater reaches the dry lakes, it becomes unusable as fresh water. The stated "fundamental" purpose of the Project is to save "substantial quantities of groundwater" that are being lost to evaporation and excess salinity.

The Project would have two distinct but related components: (1) groundwater conservation and recovery and (2) imported water storage. In the first part of the Project (phase 1), approximately 34 new wells will be constructed on Cadiz's land to extract an average of 50,000 acre-feet of groundwater from the aquifer every year for 50 years; as many as 75,000 acre-feet of groundwater may be extracted in any given year.<sup>[2]</sup> Cadiz must pump the groundwater "in accordance with agreements with Cadiz Inc. and the Cadiz Groundwater Management, Monitoring and Mitigation Plan (GMMMP)."

The water will be transported via a 43-mile underground water conveyance pipeline to the Colorado River Aqueduct; the aqueduct will then transport the water to the Project participants, including Santa Margarita. Twenty percent of the Project's groundwater yield will be reserved for users in the County; the remaining 80 percent will be delivered to other water providers with whom Cadiz has contracted.

The Project participants will use the water from the Project for their customers located in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties. The Project will be managed and operated by a private, nonprofit entity, Fenner Valley Mutual Water Company (Fenner Valley), formed by Cadiz.

334 In the second part of the Project (phase 2), the Project participants will be able to send any surplus surface water supplies back to the Project site, to be held in storage in spreading basins until they are needed. Phase 2 is not \*334 currently under consideration; additional environmental review will be required before phase 2 proceeds.

Santa Margarita posted a notice of preparation of a draft EIR for the Project in March 2011. In June 2011, the County and Santa Margarita executed a memorandum of understanding that provided that Santa Margarita would act as the lead agency, and the County would act as a responsible agency (the 2011 Memorandum). In December 2011, Santa Margarita released the draft EIR for public review and comment.

Santa Margarita, the County, Cadiz, and Fenner Valley executed a memorandum of understanding in 2012 (the 2012 Memorandum), under the terms of which the signing parties agreed that a groundwater management, monitoring, and mitigation plan would be developed in connection with the finalization of the draft EIR, which would "govern the operation and management of the Project by [Fenner Valley] during the operational phase of the Project, the currently anticipated term of which is 50 years." In the 2012 Memorandum, the parties agreed that "compliance by [Santa Margarita], [Fenner Valley], and Cadiz with the provisions of th[e 2012 Memorandum] and the [plan] will satisfy the requirements for an exclusion from the permitting requirements" of the County's Desert Groundwater Management Ordinance (County Ord. No. 3872, adding art. 5, § 33.06551 et seq., Desert Groundwater Management, to County Code, tit. 3, div. 3, ch. 6) (the Ordinance). The 2012 Memorandum provided that the Project could not proceed unless the parties finalized the groundwater management, monitoring, and mitigation plan (the Plan) based on information provided during the process of finalizing the draft EIR.

On July 31, 2012, Santa Margarita certified the final EIR and approved an updated version of the Plan. A month later, Appellants filed a verified petition for a writ of mandate challenging the approval of the Project and the certification of the EIR. The petition was originally filed in the San Bernardino County Superior Court, but was transferred to the Orange County Superior Court by stipulated order, as two related cases were pending in Orange County. A bench trial was held, after which the trial court issued a detailed statement of decision outlining its findings of fact and conclusions of law. The court denied the petition with prejudice and entered judgment against Appellants. Appellants timely filed notices of appeal.

## 335 \*335 **DISCUSSION**

### **I.**

#### **CALIFORNIA WATER LAW**

(1) The California Constitution and the Water Code make clear that the policy of this state is to put water resources to reasonable and beneficial use. The Constitution provides: "It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare." (Cal. Const., art. X, § 2.)

The Water Code states, in relevant part:

— "It is hereby declared that the people of the State have a paramount interest in the use of all the water of the State and that the State shall determine what water of the State, surface and underground, can be converted to public use or controlled for public protection." (Wat. Code, § 104.)

— "It is hereby declared that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit." (Wat. Code, § 105.)

— "It is the policy of the state that groundwater resources be managed sustainably for long-term reliability and multiple economic, social, and environmental benefits for current and future beneficial uses. Sustainable groundwater management is best achieved locally through the development, implementation, and updating of plans and programs based on the best available science." (Wat. Code, § 113.)<sup>[3]</sup>

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— The Legislature's stated intent in enacting the Sustainable Groundwater Management Act was "to do all of the following: [¶] (a) To provide for the \*336 sustainable management of groundwater basins. [¶] (b) To enhance local management of groundwater consistent with rights to use or store groundwater and Section 2 of Article X of the California Constitution. It is the intent of the Legislature to preserve the security of water rights in the state to the greatest extent possible consistent with the sustainable management of groundwater. [¶] (c) To establish minimum standards for sustainable groundwater management. [¶] (d) To provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater. [¶] (e) To avoid or minimize subsidence. [¶] (f) To improve data collection and understanding about groundwater. [¶] (g) To increase groundwater storage and remove impediments to recharge. [¶] (h) To manage groundwater basins through the actions of local governmental agencies to the greatest extent feasible, while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner." (Wat. Code, § 10720.1, subds. (a)-(h).)

(2) Groundwater belongs to the state, not any person or entity, but may be extracted by those with the right to do so, including those whose land overlies the groundwater source. "At least since 1928 when the predecessor to article X section 2 of the California Constitution was adopted, there is no private ownership of groundwater. [Citation.] The State of California owns all of the groundwater in California, not as a proprietary owner, but in a manner that empowers it to supervise and regulate water use. [Citation.] Water rights holders have the right to 'take and use water,' but they do not own the water and cannot waste it. [Citation.] [¶] A person obtains a right to extract groundwater by owning specific land, by appropriating water [citation], or by inheriting a pueblo right. [Citation.] Ownership of land appurtenant to groundwater engenders an 'overlying right.' [Citation.] Under the 'correlative rights doctrine,' 'as between the owners of land overlying strata of percolating waters, the rights of each to the water are limited, in correlation with those of others, to his "reasonable use" thereof when the water is insufficient to meet the needs of all. [Citations.] [Citation.] An appropriative right is based on the taking of groundwater. [Citation.]" (*Central and West Basin Water Replenishment Dist. v. Southern Cal. Water Co.* (2003), 109 Cal.App.4th 891, 905-906 [135 Cal.Rptr.2d 486].)

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(3) State agencies have consistently concluded that flexibility is necessary in managing groundwater supplies. "Groundwater management must be adapted to an area's political, institutional, legal, and technical constraints and opportunities. Groundwater management must be tailored to each basin or subbasin's conditions and needs. Even within a single basin, the management objectives may change as more is learned about managing the resource within that basin. Flexibility is the key, but that flexibility must operate within a framework that ensures public participation, monitoring, evaluation, \*337 feedback on management alternatives, rules and regulations, and enforcement." (Dept. of Water Resources, California's Groundwater: Bulletin 118 — Update 2003 (Oct. 2003) p. 38 [as of May 10, 2016].)

## II.

### **CEQA STANDARDS AND STANDARD OF REVIEW**

(4) "CEQA is a comprehensive scheme designed to provide long-term protection to the environment." (*Mountain Lion Foundation v. Fish & Game Com.* (1997), 16 Cal.4th 105, 112 [65 Cal.Rptr.2d 580, 939 P.2d 1280].) "Its purposes are manifold, but chief among them is that of providing public agencies and the general public with detailed information about the effects of a proposed project on the environment." (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 72 [198 Cal.Rptr. 634].) Environmental protection is the guiding concept in interpreting CEQA. "The foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.'" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 [253 Cal.Rptr. 426, 764 P.2d 278] (*Laurel Heights*)).

(5) "The EIR is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to `take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.'" (Laurel Heights, supra, 47 Cal.3d at p. 392.) The EIR is therefore the "'heart of CEQA'" and an "'environmental "alarm bell" whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.'" (*Ibid.*) "The EIR is also intended `to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.'" (*Ibid.*) Thus, the EIR is an accountability document and the EIR process "protects not only the environment but also informed self-government." (*Ibid.*)

(6) An EIR must identify the significant effects on the environment of a project, identify alternatives to the project, and indicate the manner in which those significant effects can be mitigated or avoided. (Pub. Resources Code, § 21002.1, subd. (a).) A project might also have a significant effect on the environment where the project's environmental effects are "individually limited but cumulatively considerable." (Cal. Code Regs., tit. 14, § 15065, \*338 subd. (a)(3).) (The administrative guidelines adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et seq), the agency with primary responsibility for statewide implementation of CEQA (California Building Industry Assn. v. Bay Area Air Quality Management Dist. (2015) 62 Cal.4th 369, 378 [196 Cal.Rptr.3d 94, 362 P.3d 792]), will be referred to herein as the "Guidelines.") A public agency may not approve a project as proposed if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen or avoid the project's significant environmental effects. (Pub. Resources Code, § 21001; Guidelines, § 15065, subd. (c)(3).)

"In reviewing a petition challenging the legality of a lead agency's actions under CEQA, our role is the same as the trial court's. We review the agency's actions, not the trial court's decision, and our inquiry extends `only to whether there was a prejudicial abuse of discretion' on the part of the agency. [Citations.]" (Rialto Citizens for Responsible Growth v. City of Rialto (2012) 208 Cal.App.4th 899, 923 [146 Cal.Rptr.3d 12]; see Center for Biological Diversity v. Department of Fish & Wildlife (2015) 62 Cal.4th 204, 214-215 [195 Cal.Rptr.3d 247, 361 P.3d 342].) "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (Pub. Resources Code, § 21168.5; see Center for Biological Diversity v. Department of Fish & Wildlife, supra, at p. 215; Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 426-427 [53 Cal.Rptr.3d 821, 150 P.3d 709].) "For purposes of CEQA, substantial evidence `means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.' [Citation.]" (Rialto Citizens for Responsible Growth v. City of Rialto, supra, at p. 923.)

"Questions concerning the proper interpretation or application of the requirements of CEQA are matters of law. [Citation.] CEQA requires that an EIR include detailed information concerning, among other things, the significant environmental effects of the project under consideration. [Citations.] When the informational requirements of CEQA are not met but the agency nevertheless certifies the EIR as meeting them, the agency fails to proceed in a manner required by law and abuses its discretion. [Citation.] "The EIR is the heart of CEQA," and the integrity of the process is dependent on the adequacy of the EIR. [Citations.]' [Citation.] [¶] In reviewing the lead agency's actions under CEQA, we do not ""pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." [Citation.] We may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. `Our limited function is consistent with the principle that "[t]he purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences \*339 in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations.'" [Citations.]"" (Rialto Citizens for Responsible Growth v. City of Rialto, supra, 208 Cal.App.4th at pp. 923-924.)

### III.

## **THE DESIGNATION OF SANTA MARGARITA AS THE LEAD AGENCY FOR THE PROJECT IS IN COMPLIANCE WITH CEQA.**

In the 2011 Memorandum, Santa Margarita and the County agreed that Santa Margarita would serve as the lead agency for the Project, and the County would be a responsible agency. In its statement of decision, the trial court found: "[Santa Margarita] should not have been designated the lead agency for the Project. CEQA's underpinnings of accountability and stewardship support the conclusion that the County should have instead served as lead agency. The County was in the best

position to objectively balance the benefits and risks of the project rather than the purchaser of the water, [Santa Margarita]." The court further found, however, that the error in designating Santa Margarita as the lead agency was not prejudicial: "[T]he Court is unable to conclude that the failure to designate the County as Lead Agency, without more, constitutes a CEQA violation where [Santa Margarita] may be considered to have a substantial claim to be the lead agency." For the reasons we explain, and as summarized in part III.B. of the Discussion section, we conclude that the designation of Santa Margarita as the lead agency for the Project complied with CEQA.

## A.

### ***Relevant Legal Standards***

Public Resources Code section 21067 defines a "[l]ead agency" as "the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." Appellants contend that Santa Margarita was improperly designated as the lead agency for the Project, and that the County, which was designated as a responsible agency, should have been the lead agency.

Both Santa Margarita and the County are public agencies within the meaning of CEQA. "'Public agency' includes any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision." (Pub. Resources Code, § 21063.) "'Responsible agency' means a public agency, \*340 other than the lead agency, which has responsibility for carrying out or approving a project." (*Id.*, § 21069.)

All the parties to this action agree that in determining whether Santa Margarita was the appropriate lead agency for the Project, we must consider section 15051 of the Guidelines, which sets forth the following criteria to use in determining which of two or more agencies should be designated as the lead agency for a project: "Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria: [¶] (a) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency. [¶] (b) If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole. [¶] (1) The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project. [¶] ... [¶] (c) Where more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question shall be the lead agency. [¶] (d) Where the provisions of subdivisions (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices."

## B.

### ***Summary of Holdings***

Santa Margarita was correctly designated as the lead agency for the Project under Guidelines section 15051, subdivision (a), (b), or (d). We publish this opinion to address the issue of how a public/private partnership should be analyzed under Guidelines section 15051.

(7) We hold that, under Guidelines section 15051, if a project will be carried out jointly in a partnership between a public agency and a nongovernmental person or entity, the agency that will serve as the lead agency for purposes of the environmental review for the project may be (1) the public agency that is a part of the public/private partnership, or (2) the public agency with the greatest responsibility for supervising or approving the project as a whole. We further hold that Santa Margarita was correctly designated as the lead agency for the Project under either prong of this test.

341 \*341 The Project will be carried out, in part, by a public agency — Santa Margarita — and, therefore, Santa Margarita was properly designated as the lead agency under Guidelines section 15051, subdivision (a). The Project is also being carried out, in part, by a nongovernmental entity — Cadiz — and Santa Margarita has the greatest responsibility for supervising the

Project as a *whole*. Therefore, Santa Margarita was also properly designated as the lead agency under Guidelines section 15051, subdivision (b). It bears emphasis here that the Project consists of more than just the installation of wells that will draw water from the aquifer. The Project also involves activities such as the construction of pipelines and monitoring facilities, and the overseeing of the transfer of water to many of the Project participants for distribution to customers in at least five Southern California counties. Further, phase 2 of the Project would involve the overseeing of the transfer of water back to the aquifer for storage.

We also hold that, under Guidelines section 15051, subdivision (d), Santa Margarita and the County properly entered into the agreement for Santa Margarita to act as the lead agency. Santa Margarita has at least a substantial claim to be the lead agency under Guidelines section 15051, subdivision (d).

## C.

### ***Under Guidelines Section 15051, Subdivisions (a) and (b), Santa Margarita Will Carry Out the Project and Has the Greatest Responsibility — Vis-à-vis the County — for Supervising or Approving the Project as a Whole.***

#### **1. Santa Margarita's Responsibilities**

The final EIR provides sufficient evidentiary support for the designation of Santa Margarita as the lead agency based on its cooperative partnership with Cadiz in implementing, carrying out, supervising, and approving the Project as a whole. Among Santa Margarita's responsibilities with regard to the Project are the following:

- Obtaining financing for the costs involved in pumping and transporting water from the pumping site to the Colorado River Aqueduct for transfer to the Project participants;
- Approving the design and construction of the wells, pipelines, and conveyance facilities for the Project;
- Managing and overseeing the operation of the Project;
- Acquiring real property interests necessary for the Project;
- Negotiating, reviewing, and approving the terms for the conveyance of water;
- Carrying out and supervising the Project as the managing member of Fenner Valley;
- Overseeing all actions of Fenner Valley, including, but not limited to, collecting payments received for the sale of water, complying with all regulatory requirements, and implementing the mitigation measures contained in the EIR and the corrective measures contained in the Plan;
- Controlling and operating the "Fenner Joint Powers Authority," which will review and approve the Project designs and specifications, manage and oversee the operation of the Project facilities in coordination with Fenner Valley, and oversee compliance with the Plan;
- Holding an undivided interest in the Project facilities and an easement over the Project facilities which gives Santa Margarita the priority right to use the Project facilities to take its contracted share of water;
- Ensuring that Fenner Valley fully implements all regulatory permits and mitigation measures under the Plan;
- Providing staffing for the day-to-day operation and maintenance of the Project, as well as bookkeeping and administration through the joint powers authority;
- Using its discretion to determine if the Project has triggered a potential adverse impact or undesirable result, and determining whether corrective measures are necessary; and

— Serving as the contracting entity, through Fenner Valley, for storage participation in phase 2 of the Project.

## **2. Guidelines Section 15051, Subdivisions (a) and (b)**

Accordingly, pursuant to Guidelines section 15051, subdivision (a), the evidence supports a finding that the Project is being carried out by Santa Margarita. Pursuant to Guidelines section 15051, subdivision (b), the evidence supports a finding that Santa Margarita is "the public agency with the greatest responsibility for supervising or approving the project as a whole."

343 \*343 Under either subdivision of Guidelines section 15051, Santa Margarita was properly designated as the lead agency for the Project.

### **D.**

#### ***Pursuant to Guidelines Section 15051, Subdivision (d), Santa Margarita and the County Properly Entered into the Agreement for Santa Margarita to Act as the Lead Agency.***

We also hold Santa Margarita was properly designated as the lead agency for the Project under Guidelines section 15051, subdivision (d). That subdivision provides, in relevant part: "Where the provisions of subdivisions (a), (b), and (c) leave two or more public agencies *with a substantial claim to be the lead agency*, the public agencies may by agreement designate an agency as the lead agency." (Guidelines, § 15051, subd. (d), italics added.)

(8) The County does have general governmental powers, which would make the County an appropriate candidate for lead agency if the Project were solely being carried out by a nongovernmental entity or person. (Guidelines, § 15051, subd. (b) (1).) Cases interpreting Guidelines section 15051 uniformly hold that we must closely analyze the various agencies' responsibilities to determine whether the correct lead agency was chosen. "[C]ourts have concluded that the public agency that shoulders primary responsibility for creating and implementing a project is the lead agency, even though other public agencies have a role in approving or realizing it. (Eller Media Co. v. Community Redevelopment Agency (2003) 108 Cal.App.4th 25, 45-46 [133 Cal.Rptr.2d 324] [community agency charged with responsibility for redevelopment measures within designated area was lead agency regarding billboard placement, even though city issued building permits for billboards]; Friends of Cuyamaca Valley v. Lake Cuy[a]maca Recreation & Park Dist. (1994) 28 Cal.App.4th 419, 426-429 [33 Cal.Rptr.2d 635] [state agency that determined duck hunting policy, rather than wildlife district that enforced it, was lead agency regarding duck hunting policy]; City of Sacramento v. State Water Resources Control Bd. (1992) 2 Cal.App.4th 960, 971-973 [3 Cal.Rptr.2d 643] [state agency that created pesticide pollution control plan, rather than water district that enforced it, was lead agency regarding plan].)" (Planning & Conservation League v. Castaic Lake Water Agency (2009) 180 Cal.App.4th 210, 239 [103 Cal.Rptr.3d 124].)

344 (9) Appellants contend primarily that because the County must either approve or exempt the Project from the Ordinance before any pumping may occur, it has the greatest responsibility for approving and supervising the Project. This argument, however, myopically and improperly considers only the pumping portion of the Project. As explained in detail *ante*, the Project as \*344 a whole encompasses much more than simply pumping water, and Santa Margarita has far more authority over the Project as a *whole* than does the County.

Other than its approval or exemption of the Project's water pumping wells, the County's primary supervisory responsibilities over the Project would be:

— Approval of the Plan following certification of the final EIR, and discretionary authority to determine whether the Plan conforms to the 2012 Memorandum and the Ordinance.

— Consideration of the final EIR as a responsible agency and the authority to require mitigation measures or alternatives as set forth in the final EIR.

— Reporting and monitoring responsibilities for the mitigation measures in the Plan, pursuant to Santa Margarita's delegation of that authority. (Guidelines, § 15097, subd. (a).)

— Decisionmaking authority if review and corrective actions are necessary to avoid undesirable results during the term of the Project, in concert with Santa Margarita.<sup>[4]</sup>

The Project involves a well field, piping system, 43-mile pipeline, monitoring features, and a fire suppression system, among other things. Although the County has a supervisory role over groundwater pumping under the Plan, Santa Margarita has broader approval and supervisory power over the Project as a whole, both directly and through its role as the "lead participant" in controlling Fenner Valley. That the County has some discretionary authority for carrying out or approving the Project does not mean it should have been designated as the lead agency rather than as a responsible agency. (Pub. Resources Code, § 21153, subd. (c); RiverWatch v. Olivenhain Municipal Water Dist. (2009) 170 Cal.App.4th 1186, 1201 [88 Cal.Rptr.3d 625].)

345 (10) CBD suggests that the lead agency should be the agency that is in the best position to objectively balance the benefits and risks of the Project, in order to fulfill CEQA's underpinnings of accountability and stewardship. \*345 Several amici curiae submitted briefs to this court, challenging that assertion. We conclude that the relevant portions of the Public Resources Code and the Guidelines set forth the applicable criteria for determining which agency involved in a project should be the lead agency. That agency need not be free from receiving any benefit from the project, as long as that agency is able to fully and fairly provide the necessary environmental information required by CEQA's processes. Santa Margarita's interest in the Project did not automatically make it an improper lead agency. Indeed, the language of Guidelines section 15051, subdivision (a) requires a public agency to take on the role of lead agency when it is carrying out the project in question. Case law amply supports this proposition. (See, e.g., North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors (2013) 216 Cal.App.4th 614, 620-621 [157 Cal.Rptr.3d 240].)

(11) CBD argues that the County and Santa Margarita could only enter an agreement for the latter to act as the lead agency, pursuant to Guidelines section 15051, subdivision (d), if they had "equal responsibility for supervising or approving the project as a whole." We reject this argument. The predecessor of section 15051, subdivision (d) read: "Where the provisions of subsections (a), (b), and (c) leave two or more public agencies *with an equal claim to be the lead agency*, the public agencies may by agreement designate which agency will be the lead agency." (Guidelines, former § 15065, subd. (d), italics added.)<sup>[5]</sup> The change in the language of the Guidelines to "substantial claim to be the lead agency" (Guidelines, § 15051, subd. (d)) means equality of the claims is not necessary.

## IV.

### **THE EIR'S PROJECT DESCRIPTION WAS NEITHER INACCURATE NOR MISLEADING, AND DID NOT VIOLATE CEQA.**

346 Appellants argue that the EIR contained "a misleading, legally deficient project description that is inaccurate, unstable, and not finite. In particular, the Project description fails to disclose and analyze likely extensions of the Project beyond the 50 year-term claimed by the EIR and the likely additional groundwater extractions beyond the claimed 50,000 [acre-feet per year] average. Reasonably foreseeable Project expansions regarding the duration \*346 and rate in which groundwater will be pumped will result in further drawdown of the aquifer, significantly changing both the scope and environmental effects of the Project. The EIR's failure to describe these likely expansions prevents the public and decisionmakers from properly evaluating the true scope and environmental impacts of the Project."

## A.

### **The EIR's "Conservation" Objective Is Neither Inaccurate nor Misleading.**

The Guidelines specify that the purpose and objective of a project must be included in an EIR. "The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact. [¶] ... [¶] ... A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR

and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project." (Guidelines, § 15124, subd. (b).)

The draft EIR identifies its purpose as follows: "*The fundamental purpose of the Project is to save substantial quantities of groundwater that are presently wasted and lost to evaporation by natural processes.*" The EIR also includes the following list of objectives: "The objectives for this Project are as follows: [¶] ... Maximize beneficial use of groundwater in the Bristol, Cadiz, and Fenner Valleys by conserving and using water that would otherwise be lost to brine and evaporation; [¶] ... Improve water supply reliability for Southern California water providers by developing a long term source of water that is not significantly affected by drought; [¶] ... Reduce dependence on imported water by utilizing a source of water that is not dependent upon surface water resources from the Colorado River or the Sacramento-San Joaquin Delta; [¶] ... Enhance dry-year water supply reliability within the service areas of [Santa Margarita] and other Southern California water provider Project Participants; [¶] ... Enhance water supply opportunities and delivery flexibility for [Santa Margarita] and other participating water providers through the provision of carry-over storage and, for Phase [2,] imported water storage; [¶] ... Support operational water needs of the Arizona and California Railroad (ARZC) in the Project area; [¶] ... Create additional water storage capacity in Southern California to enhance water supply reliability; [¶] ... Locate, design, and operate the Project in a manner that minimizes significant environmental effects and provides for long-term sustainable operations."

347 \*347 CBD's argument is that the Project will not fulfill the fundamental purpose of conservation because "[i]n order for the Project to be a legitimate 'conservation' project, groundwater extraction should have a fairly direct impact on evaporation; for every acre-foot of groundwater extracted, an acre-foot less should evaporate. Otherwise, the project would be merely extracting water that would not have evaporated, failing its supposed 'conservation' purpose." By reviewing the objectives for the Project in totality, rather than merely the Project's fundamental purpose, it is clear that the Project was not intended solely to conserve water that would be lost to evaporation, but to "save substantial quantities of groundwater," including fresh groundwater in the basin, which is not reachable and not yet drained to the dry lakes and becomes nonpotable.

CBD argues that the EIR's assertions regarding the savings of water that would evaporate are not substantiated because they are "based on unjustified and conflicting evaporation rates of the basin." Studies included in the final EIR, however, provide substantial evidentiary support for the evaporation rates that form the basis of the Project objectives and the EIR.

CBD also argues that Santa Margarita misrepresented the amount of water that would be saved from evaporation by showing the savings over a 100-year period, rather than the 50-year period in which water will be extracted. The EIR explains how more water must be extracted in the earlier years of the Project in order to establish a "cone of depression" that will ultimately result in no water from the groundwater basin being lost by draining into the dry lakes. Therefore, to express the total amount of water that will be recaptured from excess salinity or evaporation, it is appropriate to consider the savings in the period after the initial 50-year period, after which the evaporation rates will continue to be lower, unless and until the natural recharge causes the groundwater basin to reach an amount above the cone of depression, allowing the water to again flow into the dry lakes.

In the absence of the Project, the water recharge will simply flow downgradient from the groundwater basin, become hypersalinic, and eventually be lost to evaporation. Pumping the water out of the basin to a sufficient level means that the water will no longer flow downgradient. This explains why the reduction in evaporation losses in the earliest years would be lower than those in later years.

348 CBD is correct in noting that the amount of water saved from evaporation is a percentage of the total water removed from the aquifer by the Project. This does not, however, make the objectives misleading or inaccurate. Under the worst case scenario set forth in the EIR, with the lowest rate of natural recharge of the aquifer, the Project would extract significantly more water \*348 than would be lost to evaporation because there would be less water to evaporate, and the Project would be creating the cone of depression more quickly.

We therefore reject CBD's contention that the EIR's objective was inaccurate or misleading.

## **B.**

***The EIR's Description Regarding the Total Duration of the Project Is Stable and Finite, and Is Not Misleading.***

CBD argues that the EIR's description regarding the total duration of the Project is unstable, not finite, and misleading. Although the EIR analyzes the environmental impacts of pumping water from the aquifer for 50 years, CBD contends that there are several circumstances under which the Project will continue beyond 50 years.

First, the EIR states that the imported water storage component of the Project will be limited to the same 50-year period as the conservation and recovery component. CBD contends that the EIR also states that phase 2 will be implemented after the completion of phase 1. In fact, the EIR states only that phase 2 will begin after phase 1 has become operational, not that phase 2 will begin after phase 1 has been working for 50 years. The EIR states: "[T]he Imported Water component is proposed to be implemented after the Conservation and Recovery Project. Therefore, the Imported Water Storage Component would not adversely affect groundwater supplies or impede naturally occurring groundwater recharge. Therefore, there would be no impact." The purpose of implementing phase 1 before phase 2 is to ensure that when water is added to recharge the aquifer, the cone of depression will already exist, ensuring that the water added for recharge will not flow downward and be lost to hypersalinity and evaporation.

349 Second, CBD contends that the term of the Project is unclear. Although the EIR specifies that the term of the Project is 50 years, it also provides: "In the event that circumstances beyond the control of the Project operator required additional time to complete contracted water deliveries, the Project term may be extended for a limited time under the terms of the agreements." The final EIR and the option agreement provide that the 50-year term of phase 1 of the Project may be extended in order to complete contracted-for water deliveries. A short extension of time to fulfill the water delivery contracts does not violate CEQA, and does not make the term of the Project infinite. The EIR specifies that pumping water as part of the Project is limited to the average of 50,000 acre-feet per year for 50 years. In the event that weather conditions or \*349 other circumstances prevent the average amount of water from being withdrawn, there is a possibility that water will continue to be pumped after the expiration of 50 years. However, the total amount that may be pumped — 2.5 million acre-feet — will not change.

The relevant documents also provide that the Project participants may agree to an additional term beyond the 50-year term currently specified. If an additional term is agreed to, new agreements and a new environmental analysis would be required, including the development of a new groundwater management, monitoring, and mitigation plan.

(12) CBD argues that the EIR is flawed because the Project could be indefinitely expanded. "[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project. Of course, if the future action is not considered at that time, it will have to be discussed in a subsequent EIR before the future action can be approved under CEQA. [¶] This standard is consistent with the principle that 'environmental considerations do not become submerged by chopping a large project into many little ones — each with a minimal potential impact on the environment — which cumulatively may have disastrous consequences.' [Citation.] The standard also gives due deference to the fact that premature environmental analysis may be meaningless and financially wasteful. Under this standard, the facts of each case will determine whether and to what extent an EIR must analyze future expansion or other action." (*Laurel Heights, supra*, 47 Cal.3d at p. 396.)

For the Project to be extended beyond its 50-year term, the parties would, 50 years from the date the Project begins pumping, have to agree to extend the pumping for a further 30 years, and then pursue a new environmental analysis. Under the circumstances of the Project, we find the possibility of an extension of the term of the Project to be far too speculative to require environmental analysis at this point.

350 (13) The EIR does not need to address a future action "that is merely contemplated or a gleam in a planner's eye." (*Laurel Heights, supra*, 47 Cal.3d at p. 398.) *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438 [263 Cal.Rptr. 340], cited by CBD, does not require a different result. In that case, the EIR for a temporary expansion of a detention facility was determined to be inadequate "because: (1) it fails to accurately describe the project and discuss the anticipated future uses of the 'temporary' project and the environmental effects of those uses, and (2) the discussion of the alternatives is inadequate under CEQA." (*Id.* at pp. 1440-1441.) The project at issue was \*350 an interim detention facility to serve the county's emergency needs until new detention facilities could be completed; the interim period had no time limit. (*Id.* at pp. 1450-1451.) In response to comments to the draft EIR, the county set a defined time limit of seven years, but that time limit applied only to one part of the interim facility, and the draft EIR did not discuss what would happen to the interim facility at the end of that time period. (*Id.* at p. 1451.) In the present case, by contrast, the Project has a defined time period, and the

EIR explains what will happen after pumping stops, in terms of well field closure, decommissioning, and postpumping monitoring.

## C.

### ***The EIR's Descriptions of the Rate and Total Quantity of Groundwater Withdrawal Are Stable and Finite, and Are Not Misleading.***

CBD also challenges the EIR based on claimed inaccuracies in the descriptions of the total quantity of groundwater that may be withdrawn from the aquifer, and of the rate at which the water will be withdrawn. The Project's EIR permits a total of 2.5 million acre-feet of groundwater to be withdrawn, at an average rate of 50,000 acre-feet per year over 50 years. The actual amount withdrawn during a given year may be as much as 75,000 acre-feet.

351 The 2012 Memorandum provides that 20 percent of the total annual yield from the Project shall be reserved for the benefit of the County's water users, and that 25,000 acre-feet of groundwater shall be reserved for the County. These amounts are not included in exhibit A to the water purchase and sale agreement, entered into among Cadiz, Fenner Valley, and Santa Margarita.<sup>[6]</sup> However, Santa Margarita cites to the water purchase and sale agreement, \*351 which provides that if full allotments cannot be provided within the limits of the annual groundwater withdrawal, the Project participants (the various water districts taking water from the Project) must reduce their shares pro rata. (Santa Margarita's base allotment of 5,000 acre-feet per year is excluded from the pro rata reductions.)

CBD also argues that average annual groundwater withdrawal in excess of 50,000 acre-feet is reasonably foreseeable and indeed anticipated for two reasons. First, the conveyance pipeline to be used as part of the Project has a maximum capacity of 105,000 acre-feet. CBD does not acknowledge that the 105,000 acre-feet capacity is only reached when two pipelines are in use. The capacity of the phase 1 pipeline is 75,000 acre-feet annually, which is consistent with the maximum amount of groundwater that may be extracted in a given year. If phase 2 of the Project were to be undertaken, a natural gas pipeline could be converted, which would provide an additional 30,000 acre-feet per year capacity, so that water could be sent back to the Project site to be stored.

Second, CBD notes that the option agreement, the 2012 Memorandum, and the water purchase and sale agreement do not place any limits on the amount of groundwater extracted. CBD fails to note, however, that the Plan, which was referenced in the 2012 Memorandum and the water purchase and sale agreement, specifically states the average and maximum annual withdrawal rates of 50,000 acre-feet and 75,000 acre-feet, respectively.

## **DISPOSITION**

The judgment is affirmed. Respondents to recover costs on appeal.

Aronson, Acting P. J., and Ikola, J., concurred.

On May 18, 2016, the opinion was modified to read as printed above.

[1] CBD and National Parks will be collectively referred to as Appellants.

[2] An acre-foot is the volume of water that would cover one acre to a depth of one foot. (Webster's 3d New Internat. Dict. (2002) p. 19, col. 1.) Fifty thousand acre-feet is equivalent to 16.3 billion gallons.

[3] Water Code section 113, as well as other provisions of the Sustainable Groundwater Management Act (Wat. Code, § 10720 et seq.), became effective January 1, 2015, after the trial court entered judgment in this case. (Stats. 2014, ch. 346, § 2.) In supplemental briefing, the parties agreed that the legislation does not currently have any direct impact on the issues raised by this appeal, but that it is consistent with state and local groundwater management policy.

[4] Counterintuitively, one area in which the County would not have authority to approve or supervise the Project is in building and zoning regulation. As noted in the final EIR, "State agencies, such as [Santa Margarita], have sovereign immunity from local regulation, such as the County's local building and zoning ordinances, unless such immunity has been waived. Specifically, Government Code sections 53091(d) and (e) and section 53096 provide an exemption from local regulation for water projects. Accordingly, [Santa Margarita] is not required to

comply with the County's local zoning and building regulations. Thus, the County does not have permitting authority over [Santa Margarita]'s water projects."

[5] Respondents' unopposed request for judicial notice is granted in part and denied in part. We will take judicial notice of exhibit Nos. 1, 4, 5, and 7, which are copies of the California Regulatory Notice Registers. These are matters of which judicial notice may be taken. (Evid. Code, § 452, subd. (b).) Exhibit Nos. 2, 3, and 6 constitute correspondence regarding certain California regulations from various state agencies. Those matters are neither relevant to this appeal nor is it clear they constitute official acts of the executive departments. We deny the request for judicial notice as to exhibit Nos. 2, 3, and 6.

[6] Exhibit A to the water purchase and sale agreement, the schedule of project allotments, provides as follows:

"Project Participant	"Project Allotment (acre-feet per year)
"Santa Margarita Water District	15,000
"Three Valleys Municipal Water District	5,000
"Golden State Water Company	5,000
"Suburban Water Systems	5,000
"Jurupa Community Services District	5,000
"Arizona California Railroad	100
"California Water Service Company	5,000
"Total Project Allotment Subscribed	40,100
"Project Allotment Available	9,900
"Total Annual Project Allotment	50,000"

Save trees - read court opinions online on Google Scholar.

October 19, 2021

Central Valley Business Federation  
4974 North Fresno Street  
Suite 423  
Fresno, California 93726

Tracy Stone-Manning  
Director  
United States Bureau of Land Management  
760 Horizon Drive  
Grand Junction, Colorado 81506

Director Stone-Manning,

The Central Valley Business Federation is a diverse grassroots alliance representing nearly 70 businesses and associations across the San Joaquin Valley. We represent a broad cross-section of the local economy with members in manufacturing, energy, agriculture, transportation, real estate, and many more. Our membership has a reach of nearly 30,000 employers and 400,000 employees across the valley.

We understand that the United States Bureau of Land Management (BLM) granted a right-of-way permit to California company Cadiz Inc. authorizing the conversion of an existing oil and gas pipeline for water conveyance and that this permit is now being challenged in federal court. We also believe that the Biden Administration is under pressure to seek legal outcomes that would reconsider or revoke this permit, risking months or years of delayed access to this pipeline infrastructure for California communities while the legal process continues.

Consistent with the Central Valley Business Federation's water policy platform; we call your attention to the fact that water supply reliability in the region is in jeopardy. The uncertainty of this vital resource has significantly impacted the residents of California's San Joaquin Valley. We respectfully request that the BLM consider all viable projects that could help direct additional water resources to the region. A reliable water source is essential and imperative for our many industries who seek to feed and fuel the nation. We urge the federal government to not foreclose a new opportunity to improve water access for our diverse community and to support these permits in federal court.

Clint Olivier  
CEO  
Central Valley Business Federation

cc: Laura Daniel-Davis, Acting Assistant Secretary of Land and Minerals Management