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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN BERNARDINO**
14

15 CENTER FOR BIOLOGICAL DIVERSITY,
SAN BERNARDINO VALLEY AUDUBON
16 SOCIETY AND SIERRA CLUB, SAN
GORGONIO CHAPTER

17 Petitioners,

18 vs.

19 COUNTY OF SAN BERNARDINO, BOARD OF
20 SUPERVISORS OF COUNTY OF SAN
BERNARDINO,

21 Respondents;

22 CADIZ, INC., ARIZONA AND CALIFORNIA
RAILWAY COMPANY, CALIFORNIA
23 WATER SERVICES COMPANY, FENNER
VALLEY MUTUAL WATER COMPANY,
24 GOLDEN STATE WATER COMPANY,
JURUPA COMMUNITY SERVICES DISTRICT,
25 SANTA MARGARITA WATER DISTRICT,
SUBURBAN WATER SYSTEMS, THREE
26 VALLEYS MUNICIPAL WATER DISTRICT
AND DOES 1-40.

27 Real Parties in Interest.
28

) **Case No.**

) **VERIFIED PETITION FOR WRIT OF
MANDATE**

) (Cal. Code Civ. Proc. § 1094.5; Pub.
Resources Code § 21000 *et seq.* (CEQA))

1 **INTRODUCTION**

2 1. Over a decade ago, a water mining scheme led by Cadiz Inc. (“Cadiz”) and the
3 Metropolitan Water District of Southern California (“MWD”) threatened to export billions of
4 gallons of Mojave groundwater to the Los Angeles basin. To protect its Mojave aquifers, San
5 Bernardino County (“County”) passed a Desert Groundwater Management Ordinance (“Desert
6 Groundwater Ordinance” or “Ordinance”), San Bernardino County Code art. 5, § 33.06551 *et*
7 *seq.*, ensuring that these aquifers would not be subject to unsafe yield and harmful overdraft
8 conditions.

9 2. Although the original water mining project was rejected, Cadiz is now back
10 with a different partner, the Santa Margarita Water District (“SMWD”), again seeking to mine
11 billions of gallons of water, with a project misleadingly titled the “Cadiz Valley Water Storage
12 and Conservation Project” (“Cadiz Project” or “Project”). Yet instead of requiring Cadiz to
13 abide by its Desert Groundwater Ordinance, the County improperly granted Cadiz an
14 exemption, and resigned its role of lead agency for environmental review to a water district in
15 Orange County, hundreds of miles from the Project site. Petitioners bring this action because
16 the County has systematically failed to protect its desert groundwater and abide by County and
17 California state law.

18 3. This action challenges the County’s October 1, 2012 approval of the Cadiz
19 Project, the accompanying approval of the Project’s Groundwater Management, Monitoring,
20 and Mitigation Plan (“GMMMP”) and the Project’s exemption from the permitting
21 requirements of the County’s Desert Groundwater Ordinance. This action further challenges
22 the improper approval of the Cadiz Project, GMMMP and exemption from the Ordinance by
23 the County under the California Environmental Quality Act (“CEQA”), Public Resources Code
24 sections 21000 *et seq.*, and the CEQA Guidelines, title 14 California Code of Regulations,
25 section 15000 *et seq.* (“CEQA Guidelines”).

26 4. The Project would mine millions of gallons of water a year—for 50 years—
27 from a desert aquifer system in the Mojave Desert. As proposed and approved by the County,
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1 the Project would drain the Mojave aquifers at a rate far in excess of the rate of natural
2 recharge, resulting in significant and potentially irreparable environmental harm. Returning the
3 aquifers to their current levels following the end of the Project may take centuries.

4 5. Petitioners, joined by state and federal agencies, Native American Tribes, and
5 concerned members of the public, documented and presented to the County numerous
6 deficiencies in the Project’s environmental review, monitoring and mitigation plan, and
7 prospective ordinance exemption. Chief among the oft-repeated deficiencies: (1) the failure of
8 the County to act as lead agency under CEQA, and (2) the Project’s overwhelming failure to
9 adequately monitor, manage and mitigate Project impacts. Petitioners submitted timely oral
10 and written comments, both in writing and at the County’s October 1, 2012 special hearing to
11 approve the Project.

12 6. As described below, the County violated the procedural and substantive
13 requirements of the Desert Groundwater Ordinance in exempting the Cadiz Project by (1)
14 entering into a Memorandum of Understanding (“MOU”) prior to approving an appropriate
15 GMMMP; and (2) approving a GMMMP that impermissibly deviates from the Desert
16 Groundwater Ordinance’s requirements, allowing for extraction of groundwater far in excess of
17 the aquifer’s safe yield.

18 7. The County also violated CEQA, first by approving the Cadiz Project,
19 GMMMP and exemption from the Ordinance as a responsible agency when it was required to
20 act as lead agency, then “adopting” the Cadiz Project Environmental Impact Report (“EIR”) in
21 approving the GMMMP, when the EIR did not consider the County’s changes to the GMMMP.

22 8. Because the County failed to comply with its Desert Groundwater Ordinance
23 and CEQA, Petitioners petition this Court for a writ of mandate under Code of Civ. Proc.
24 sections 1085 and 1094.5, directing the County to vacate and set aside its approval of the
25 Project’s exemption from the Desert Groundwater Ordinance, approval of the GMMMP, and
26 approval of the Cadiz Project as a responsible agency under CEQA.

27 **JURISDICTION AND VENUE**

1 harmed by the Project and its components, as described herein, until and unless this Court
2 provides the relief prayed for in this Petition.

3 12. Petitioner SAN BERNADINO VALLEY AUDUBON SOCIETY (“SBVAS”)
4 is a non-profit 501(c)(3) organization of good standing. SBVAS is an independent organization
5 from the National Audubon Society, and maintains its own board, volunteer staff, membership,
6 policy and fundraising efforts. SBVAS is committed to protecting endangered species and wild
7 places, and in particular avian species, their habitats, and their sources of food. SBVAS has
8 worked to protect the natural resources of California; the organization’s mission is to educate
9 the public as to the importance of the natural environment and to preserve habitat for birds and
10 other wildlife. SBVAS is specifically focused on promoting and protecting these values in the
11 Inland Empire region, which includes the Project site, its surrounding habitat, and the Mojave
12 National Preserve. SBVAS was part of the coalition of public interest organizations that
13 provided timely written and oral comments to the County regarding its approval of the
14 GMMMP and exemption from the Ordinance. The interests of SBVAS and its members would
15 be directly, adversely, and irreparably harmed by the Project and its components, as described
16 herein, until and unless this Court provides the relief prayed for in this Petition.

17 13. Petitioner SIERRA CLUB, SAN GORGONIO CHAPTER (“the Club”) is a
18 chapter of the Sierra Club, a national non-profit membership organization committed to
19 protecting endangered species and wild places. The San Gorgonio Chapter of the Sierra Club is
20 based in San Bernardino, California. From its inception and for over a century, the Sierra Club
21 has worked to protect the natural resources of California, and has been a long-time advocate for
22 protection of the public wilderness lands surrounding the Project. The Club has led community
23 opposition to the Project since the project was originally proposed over a decade ago, and
24 continues to work with local communities to oppose the Project. The Club was part of the
25 coalition of public interest organizations that submitted timely written comments regarding the
26 challenged GMMMP and exemption from the Desert Groundwater Ordinance. The Club, its
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1 staff and its members would be directly, adversely and irreparably harmed by the Project, as
2 described herein, until and unless this Court provides the relief prayed for in this Petition.

3 14. Respondent COUNTY OF SAN BERNARDINO is a political and
4 geographical subdivision of the State of California with its principal offices located in the town
5 of San Bernardino, California. Respondent SAN BERNARDINO COUNTY BOARD OF
6 SUPERVISORS constitutes the elected decision-making body of the County empowered to
7 approve or disapprove GMMMPs under the Desert Groundwater Ordinance, and which entered
8 into agreements with SMWD and Cadiz regarding the County's role in the Project. The
9 Project's wells, pumps, pipelines, and the majority of the Project's anticipated environmental
10 impacts lie within the County's boundaries. The County maintains the authority to permit and
11 regulate the construction and development of the Project. The County has a duty to comply
12 with County ordinances when considering discretionary activities and land use regulatory
13 action such as the Cadiz Project. The County entered into a MOU with SMWD, Cadiz, and
14 FVMWC on May 11, 2012 regarding the Project, and approved the Project GMMMP, Project
15 approval and Ordinance exemption on October 1, 2012.

16 15. Real Party in Interest CADIZ, INC. is a company doing business under the
17 laws of the State of California with its principal place of business in Los Angeles, California.
18 Petitioners are informed and believe that (1) Cadiz is a Delaware corporation doing business in
19 California at all times relevant to this Petition, and (2) through its subsidiary Cadiz Real Estate
20 LLC, Cadiz Inc. owns approximately 34,000 contiguous acres of land in the Cadiz and Fenner
21 Valleys ("Cadiz Property"), upon which most or all of the Project's pumping and pumping-
22 related infrastructure will be constructed.

23 16. Real Party in Interest ARIZONA & CALIFORNIA RAILROAD COMPANY
24 ("ACRC") is a company existing as a limited liability partnership with its principle place of
25 business in Parker, Arizona. ACRC is a subsidiary of RailAmerica, a corporation listed on the
26 New York Stock Exchange with its corporate headquarters in Jacksonville, Florida. Petitioners
27 are informed and believe that ACRC is the owner and operator of the shortline railroad that
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1 runs from Cadiz, California to Parker, Arizona, and that Cadiz has entered into an agreement
2 with the ACRC to utilize a portion of its right-of-way (“ROW”) for placement of necessary
3 infrastructure for the proposed Project. ACRC was included as a participant in the EIR and is
4 listed as a recipient of Project water in Santa Margarita Water District’s Notice of
5 Determination of Cadiz Project approval in its claimed role as lead agency.

6 17. Real Party in Interest CALIFORNIA WATER SERVICES COMPANY
7 (“CWS”) is a subsidiary of the California Water Services Group, a publicly-traded Delaware
8 corporation. CWS’ principal place of business is San Jose, California. CWS was included as a
9 participant in the EIR and is listed as a recipient of Project water in SMWD’s Notice of
10 Determination.

11 18. Real Party in Interest FENNER VALLEY MUTUAL WATER COMPANY
12 (“FVMWC”) is a California mutual water company describing itself as a non-profit entity,
13 existing under the laws of the State of California with its principal place of business in Los
14 Angeles, California. Petitioners are informed and believe that FVMWC was created by Cadiz
15 to distribute Project water and will be solely comprised of public water systems that will own
16 shares commensurate with their rights to receive water from the Project.

17 19. Real Party in Interest GOLDEN STATE WATER COMPANY (“Golden State”)
18 is a water company with its principal place of business in San Dimas, California. Golden State
19 is a wholly-owned subsidiary of American States Water Company, a publicly-traded Delaware
20 corporation also based in San Dimas. Golden State is included as a Project participant in the
21 EIR, and is listed as a recipient of Project water in SMWD’s Notice of Determination.

22 20. Real Party in Interest JURUPA COMMUNITY SERVICES DISTRICT is a
23 public agency known as a Special District organized and existing under the California
24 Community Services District Law, Cal. Government Code sections 61000 *et seq.*, with its
25 principal place of business in Jurupa Valley, California. Jurupa Community Services District is
26 responsible for providing potable water, sewer and streetlights to over 101,000 people located
27 throughout 48 square miles in the Jurupa area of Riverside County. Jurupa Community
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1 Services District was included as a project participant in the EIR, is listed as a recipient of
2 Project water in SMWD’s Notice of Determination, and is acting as a responsible agency for
3 the proposed Project’s environmental review.

4 21. Real Party in Interest SANTA MARGARITA WATER DISTRICT (“SMWD”)
5 is a water district organized and existing under the California Water District Law, Cal. Water
6 Code sections 34000 *et seq.*, with its principle place of business in Rancho Santa Margarita,
7 California, providing retail water service to a mostly residential area of southern Orange
8 County, located over 200 miles away from the Cadiz project site. SMWD acted as the lead
9 agency for environmental review of the Cadiz Project and the SMWD Board of Directors
10 approved the EIR in that capacity, as indicated in the SMWD’s Notice of Determination.

11 22. Real Party in Interest SUBURBAN WATER SYSTEMS is an investor-owned
12 water utility doing business in the State of California with its principal place of business in
13 Covina, California, and is a wholly-owned subsidiary of SouthWest Water Company, a
14 privately-held corporation based Sugar Land, Texas. Suburban Water Systems was identified
15 as a project participant in the EIR and is listed as a recipient of Project water in SMWD’s
16 Notice of Determination.

17 23. Real Party in Interest THREE VALLEYS MUNICIPAL WATER DISTRICT is
18 a California Municipal Water District with its principle place of business in Claremont,
19 California. Petitioners are informed and believe that Three Valleys Municipal Water District is
20 a beneficiary of approval as listed on the SMWD Notice of Determination, was identified as a
21 project participant in EIR, and is acting as a responsible agency for the Project’s environmental
22 review.

23 24. Petitioners bring this writ action as beneficially interested parties who have
24 properly exhausted all administrative remedies. Petitioners have no plain, speedy, or adequate
25 remedy in the course of ordinary law unless this Court grants the requested writ of mandate.

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27 **GENERAL ALLEGATIONS**

1 25. The Cadiz Project plans to extract billions of gallons of groundwater from
2 alluvial aquifers underlying the Mojave Desert, near Cadiz, California, and transport Project
3 water to multiple public and private water districts and corporations in the greater Los Angeles
4 region.

5 26. The Project claims to extract an average of 50,000 acre-feet per year (“AFY”)
6 (approx. 16.2 billion gallons) over a 50 year period, although the Project is capable of
7 extracting far more in any given year. Physical infrastructure for the Project will include a well
8 field with up to 34 wells, and a 43-mile pipeline to the Colorado River Aqueduct.

9 27. The Project applicant is Cadiz who, through its subsidiary Cadiz Real Estate,
10 owns the Project site, and will be the primary financial beneficiary. Cadiz has entered into
11 agreements to sell the Project water to FVMWC, which will then re-sell the water to Project
12 participants.

13 **The Original Project**

14 28. A version of the Project was originally proposed as the “Cadiz Groundwater
15 Storage and Dry-Year Supply Program” in the late 1990s, with MWD acting as lead agency
16 under CEQA, and the federal Bureau of Land Management (“BLM”) acting as lead agency
17 under the National Environmental Policy Act.

18 29. The original Cadiz Groundwater Storage and Dry-Year Supply Program
19 emphasized storage of Colorado River water, and only intended to export water in “dry” years.
20 The executive summary to the earlier project’s draft environmental impact report stated that the
21 project could export up to 150,000 AFY.

22 30. MWD voted to cancel the previous Cadiz project in 2002. The MWD Staff
23 Recommendation was that “further board action on the project be deferred” due to, among
24 other reasons, the “growing realization that significant quantities of native groundwater may
25 not be available for export;” and “the money that is planned to be spent on the Cadiz project
26 may be needed elsewhere to acquire water supplies that are not dependent upon surplus
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1 Colorado River water and the availability of disputed local groundwater supplies;” and
2 “substantial financial risk.”

3 **San Bernardino County Desert Groundwater Ordinance**

4 31. The County enacted its Desert Groundwater Ordinance, San Bernardino
5 County Code Article 5, sections 33.06551 *et seq.*, on October 29, 2002, less than two weeks
6 after MWD cancelled the original project. The County adopted the Desert Groundwater
7 Ordinance specifically in response to the County’s inability to effectively regulate groundwater
8 exports and adequately monitor and protect against harm to the County’s aquifers.

9 32. The Desert Groundwater Ordinance states that “no person, district or other
10 entity . . . shall locate, construct, operate or maintain any new groundwater well within the
11 desert region of San Bernardino County . . . without first filing a written application to do so
12 with the enforcement agency and retaining a valid permit as provided herein,” San Bernardino
13 County Code art. 5, § 33.06554, unless the project is exempt by:

- 14
- 15 (1) Adopt[ing] a groundwater management plan pursuant to Water Code
16 sections 10750 *et seq.* (“AB 3030 Plan”) which adheres to “groundwater
17 safe yield” and “aquifer health” limitations, as those terms are defined in
18 section 33.06553 of this Code or has otherwise developed and instituted a
19 County-approved groundwater management, monitoring and mitigation plan
20 associated with its extraction of water that is consistent with guidelines
21 developed by the County; and
- 22 (2) Execut[ing] a Memorandum of Understanding (“MOU”) or other binding
23 agreement with the County which:
- 24 (A) requires parties to share groundwater monitoring information and data
25 to coordinate their efforts to monitor groundwater resources in the
26 County; and
- 27 (B) ensures that the measures identified in the AB 303 Plan or County-
28 approved groundwater management, monitoring and mitigation plan are
fully implemented and enforced.

(San Bernardino County Code art. 5, § 33.06552(b).)

1 33. The Desert Groundwater Ordinance prohibits issuing a permit unless the
2 reviewing County authority concludes that the project’s operation “would not result in
3 exceeding groundwater safe yield of the relevant aquifers.” (San Bernardino County Code art.
4 5, § 33.06554(d).)

5 34. The Desert Groundwater Ordinance makes it unlawful “for any person or entity
6 to violate any provision of this Article.” (San Bernardino County Code art. 5, § 33.06557.)
7 Thus, a project that qualifies for an exemption under the Desert Groundwater Ordinance may
8 not create a condition of overdraft in violation of the meaning and purpose of the Desert
9 Groundwater Ordinance.

10 35. The Desert Groundwater Ordinance seeks to ensure that extraction of
11 groundwater does not exceed groundwater safe yield, or “[t]he maximum quantity of water that
12 can be annually withdrawn from a groundwater aquifer [] without resulting in overdraft . . .”
13 (San Bernardino County Code art. 5, §§ 33.06551 and 33.06553.) Thus, the Desert
14 Groundwater Ordinance seeks to avoid overdraft, the condition of a groundwater supply in
15 which the average amount of water withdrawn annually by pumping exceeds the annual
16 amount of recharge replenishing the aquifer.

17 36. The Desert Groundwater Ordinance defines overdraft as “[t]he condition of a
18 groundwater supply in which the average annual amount of water withdrawn by pumping
19 exceeds the average annual amount of water replenishing the aquifer in any ten year period,
20 considering all sources of recharge and withdrawal.” (San Bernardino County Code art. 5, §
21 33.06553.) This definition is consistent with the California Water Code, which defines “annual
22 overdraft” as “the amount, determined by the board, by which the production of water from
23 ground water supplies within the district or any zone or zones thereof during the water year
24 exceeds the natural replenishment of such ground water supplies in such water year.”
25 (California Water Code § 75506.) Neither the Desert Groundwater Ordinance nor the
26 California Water Code mentions the concept of “Temporary Surplus.”
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1 37. The Desert Groundwater Ordinance emphasizes the “particular importance” of
2 protecting groundwater resources in the desert region of San Bernardino County due to the
3 “relative lack of significant natural recharge in those areas” and the “lack of regulatory or
4 judicial oversight of the groundwater aquifers.” (San Bernardino County Code art. 5, §§
5 33.06551 (b)(2) and (3).)

6 38. Pursuant to the Desert Groundwater Ordinance, Cadiz submitted a Desert
7 Groundwater Management Permit application in 2007 for a project similar to the original
8 project. The 2007 iteration of the project included San Bernardino County as the lead agency
9 under CEQA. Like the earlier, rejected project, the 2007 permit application included both
10 storage of Colorado River water and export of water from the aquifers only in dry or very dry
11 years. The permit application included a statement that any withdrawal of groundwater would
12 be temporary and had to be replenished by importation of Colorado River water. The County
13 never approved the 2007 permit application.

14 **The Current Cadiz Project**

15 39. The current Cadiz Project was re-born in 2010. While the earlier projects
16 emphasized importing and storing Colorado River water, and only exporting water in “dry”
17 years, the current Project focuses on groundwater export alone.

18 40. Under CEQA and the Desert Groundwater Ordinance, the County clearly
19 should have been the designated lead agency for the Project’s environmental review. Indeed,
20 when Santa Margarita Water District (“SMWD”) initially approached the County regarding the
21 Project and claimed to be the lead agency, the County replied with a detailed letter explaining
22 that the County, not SMWD, was lead agency, and that any dispute would be submitted to the
23 Office of Planning and Research (“OPR”) for an official lead agency determination pursuant to
24 Pub. Resources Code section 21165 and CEQA Guidelines section 15053.

25 41. However, the County never submitted the lead agency dispute to OPR and
26 ultimately agreed to be repaid by Cadiz for all Project-related staff time, studies, and legal
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1 expenses while accepting a more limited role as a responsible agency under CEQA. This
2 dubious bargain forms the essence of the May 11, 2012 Memorandum of Understanding. .

3 42. On May 11, 2012, the County entered into an MOU with Cadiz, SMWD, and
4 Fenner Valley Mutual Water Company (“FVMWC”) that purported to establish a process for
5 completing a GMMMP, which, together with the MOU, are required by the Desert
6 Groundwater Ordinance to qualify for an exemption. (San Bernardino County Code art. 5, §
7 33.06552(b).) The MOU also committed Cadiz to reimbursing the County for nearly every
8 conceivable expense related to Project approval, including legal defense in the event the
9 Project approval was challenged.

10 43. The MOU defined several terms for the Project whose definitions and use were
11 not fully disclosed or analyzed in the draft EIR and GMMMP, and which were defined
12 differently or not at all in the Desert Groundwater Ordinance, including “aquifer health,”
13 “overdraft,” “safe yield,” and “undesirable results.”

14 44. The MOU provided a definition of “overdraft” that differs from that in the
15 Desert Groundwater Ordinance. In contrast to the Ordinance, the May 11, 2012 Project MOU
16 defines “overdraft” to occur where the average annual amount of water withdrawn not only
17 exceeds the annual recharge of the aquifer, but also exceeds the amount of “groundwater that
18 may be available as Temporary Surplus.” (Memorandum of Understanding by and among the
19 Santa Margarita Water District, Cadiz, Inc., Fenner Valley Mutual Water Company, and the
20 County of San Bernardino, May 11, 2012, ¶ 2(g) [hereinafter MOU, May 11, 2012].)

21 45. The MOU also indicated that the County would provide several key variables
22 necessary to determine safe yield, aquifer health, and overdraft, such as a minimum
23 groundwater “floor” level and an acceptable “rate of decline.” (MOU, May 11, 2012, ¶ 3(b).)

24 46. Although the MOU purports to allocate complete enforcement authority to the
25 County, the MOU leaves the County in a secondary role and entrusts SMWD and FVMWC
26 with the responsibility to ensure the monitoring and mitigation measures are implemented in
27 accordance with the GMMMP.

1 47. The MOU required the County to make a decision on whether to approve the
2 Project within 90 days of SMWD’s certification of the Project EIR.

3 48. SMWD released the DEIR and an accompanying Groundwater Management,
4 Monitoring and Mitigation Plan (“GMMMP”) for public review in December 2011. The Draft
5 GMMMP purported to meet the Project’s mitigation and monitoring requirements, and claimed
6 to function to exempt the Project from the Desert Groundwater Ordinance in conjunction with
7 a MOU, even though the County had not yet approved the GMMMP. Although required by
8 the MOU, the Draft GMMMP did not include a “floor” level or “rate of decline,” nor were
9 these critical factors could not be considered in the DEIR.

10 49. SMWD did not circulate the FEIR and GMMMP for comment, releasing the
11 final versions of these critical documents for public review only twelve days before convening
12 its Project approval hearing. Among the multitude of last-minute changes SMWD made to the
13 GMMMP and FEIR were the additions of a minimum groundwater “floor” level and an
14 acceptable “rate of decline,” though the MOU had specified these crucial variables were to be
15 determined by the County. The revised GMMMP provided a maximum drawdown level (the
16 “floor”) of 80 feet below baseline levels as measured on a 10-year average for the Project, and
17 added monitoring wells to provide some degree of warning from aquifer harm. However, this
18 monitoring plan left out key elements of the sophisticated well monitoring and mitigation plan
19 created by MWD and BLM for the original project, including early-warning detection wells
20 and a requirement to halt project activities if water levels dropped below a foot—both
21 measures considered necessary by BLM and MWD to prevent overdraft and maintain aquifer
22 safe yield. Although the public had little time to assess the extensive new measures included in
23 the revised GMMMP, a staff scientist from the National Parks Service nonetheless pointed out
24 several flaws rendering the revised GMMMP inadequate to protect against overdraft and
25 ensure safe yield.

26 50. Neither the GMMMP nor the MOU contain all of the information required for
27 a permit under the Desert Groundwater Ordinance, including but not limited to an accurate and
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1 detailed plot plan and section map with required features; the proposed well diameter, depth
2 and completion interval; well design capacities; anticipated groundwater safe yield; anticipated
3 static and pumping levels; anticipated water quality; and proposed pumping cycles. (San
4 Bernardino County Code art. 5, § 33.06554.)

5 51. SMWD approved the Project GMMMP and certified the Project EIR as lead
6 agency on July 31, 2012.

7 52. Nearly two months later, the County significantly revised the GMMMP and
8 released its revisions for public review on September 26, 2012, two business days before the
9 County held a special public hearing to approve the GMMMP and the Cadiz project as a
10 responsible agency. These changes were not evaluated in the FEIR certified by SMWD as lead
11 agency. Among the County's most significant changes were the addition of an observation
12 well, creation of action criteria and potential corrective measures in the Project area vegetation,
13 changes to the action criteria and potential corrective measures in land subsidence, additional
14 information regarding the Agricultural Program's withdrawal, and additional data regarding the
15 rate of decline in groundwater elevation.

16 53. After the final revision of the GMMMP, but prior to the County's approval of
17 the GMMMP, Petitioners provided the County with detailed comments, identifying the
18 procedural and substantive deficiencies of the GMMMP and how the County's approval of the
19 GMMMP would violate the Desert Groundwater Ordinance and CEQA.

20 54. The County held a public hearing on October 1, 2012 to consider the proposed
21 GMMMP, Cadiz Project approval, and the Project's exemption from the Ordinance. At the
22 hearing, Petitioners provided oral testimony and submitted written comments in opposition.
23 Following the hearing, the County adopted Resolution No. 2012-176 "A Resolution of the
24 Board of Supervisors of the County of San Bernardino Considering an Environmental Impact
25 Report, Making Responsible Agency Findings, Adopting a Statement of Overriding
26 Considerations and Mitigation Monitoring and Reporting Plan, Approving a Groundwater
27 Management, Monitoring, and Mitigation Plan, and Authorizing an Exclusion for Phase I of
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1 the Cadiz Valley Groundwater Conservation, Recovery, and Storage Project.” Additionally,
2 the County directed the Clerk of the Board of Supervisors to file an NOD. The NOD, which
3 was filed on October 2, 2012, states that the County “adopted” the EIR for the Cadiz Project as
4 the EIR for the GMMMP.

5 55. On October 2, 2012, the County issued a Notice of Determination (“NOD”),
6 adopting the Cadiz Project’s EIR for the GMMMP under CEQA. The NOD describes the
7 Project as a GMMMP for “Phase I” of the Cadiz Project, proposed as an exclusion from the
8 Desert Groundwater Ordinance, and states that “the County considered the EIR for the Cadiz
9 Project as prepared and certified by the lead agency, Santa Margarita Water District, on July
10 31, 2012.”

11 56. To the best of Petitioners’ knowledge, no NOD was issued by the County for
12 its approval of the Cadiz Project EIR as a responsible agency, or for the County’s CEQA
13 approval of the Project’s exemption from the Desert Groundwater Ordinance.

14
15 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 57. Petitioners have exhausted all administrative remedies by submitting written
17 and oral comments and testimony on the GMMMP and the Project’s exemption from the
18 Ordinance to Respondent, requesting compliance with the Desert Groundwater Ordinance and
19 CEQA, including following the correct procedures and approving a GMMMP that adequately
20 protects the aquifers from overdraft. Petitioners, other members of the public, and public
21 agencies raised all issues in this Petition before the County prior to its approvals and
22 exemption.

23 58. Petitioners provided timely notice of this action to Respondent; a true and
24 accurate copy of this notice, along with a proof of service, is attached hereto as Exhibit A.

25 59. Petitioners have elected to prepare the record of proceedings in the above-
26 captioned proceeding pursuant to Pub. Resources Code § 21167.6(b)(2). Proof of Service of
27 this notification, along with the notification, is attached as Exhibit B.

1 (1) Adopted a groundwater management plan pursuant to Water Code sections
2 10750 *et seq.* (“AB 3030 Plan”) which adheres to “groundwater safe yield”
3 and “aquifer health” limitations, as those terms are defined in section
4 33.06553 of this Code or has otherwise developed and instituted a County-
5 approved groundwater management, monitoring and mitigation plan
6 associated with its extraction of water that is consistent with guidelines
7 developed by the County; and

8 (2) Executed a Memorandum of Understanding (“MOU”) or other binding
9 agreement with the County which:

10 (A) requires parties to share groundwater monitoring information and data
11 to coordinate their efforts to monitor groundwater resources in the
12 County; and

13 (B) ensures that the measures identified in the AB 303 Plan or County-
14 approved groundwater management, monitoring and mitigation plan
15 are fully implemented and enforced.

16 (San Bernardino County Code art. 5, § 33.06552(b).)

17 67. The County, through its Board of Supervisors, acted to approve the Cadiz
18 Project as exempt pursuant to San Bernardino County Code art. 5, section 33.06652(b) by
19 entering into an MOU with SMWD, Cadiz, and FVMWC, then approving the Project
20 GMMMP.

21 68. For the following reasons, the County’s approval of the Project GMMMP and
22 the Project’s exemption from the Desert Groundwater Ordinance failed to comply with the
23 Ordinance, and was arbitrary, capricious, and not in accordance with applicable law:

24 **Procedural Violations of the Desert Groundwater Ordinance**

25 69. The Desert Groundwater Ordinance requires that a GMMMP be adopted *before*
26 an MOU for a project is executed, in order to be lawfully exempted from the Desert
27 Groundwater Ordinance permitting requirement. (San Bernardino County Code art. 5, §
28 33.06552.)

69. The MOU must ensure that the measures identified in a “County-approved
groundwater management and mitigation plan are fully implemented and enforced.” (San
Bernardino County Code § 33.06552(b)(2)(B).)

1 71. Rather than ensuring that the measures in an already approved GMMMP are
2 fully implemented and enforced, the MOU for the Project purports to “establish a framework
3 for completing the GMMMP.” (MOU, May 11, 2012, ¶ 4(b).) Indeed, the MOU was executed
4 on May 11, 2012, over four months before the Board considered and adopted the GMMMP.

5 72. The MOU as executed could not “ensure” “that the measures identified in the
6 AB 303 Plan or County-approved groundwater management, monitoring and mitigation plan
7 are fully implemented and enforced” because no GMMMP had been approved by the County
8 when the MOU was signed. The County has improperly reversed the sequence of the
9 exemption procedures by entering into a MOU without first approving the GMMMP. As a
10 result, the MOU fails to ensure that the measures identified in a County-approved GMMMP
11 are fully implemented and enforced.

12 73. By entering into the MOU before approving the GMMMP, the County violated
13 the procedural requirements of the Desert Groundwater Ordinance.

14 74. The County’s approval of the GMMMP in violation of the procedural
15 requirements of the Desert Groundwater Ordinance was arbitrary, capricious, and not in
16 accordance with applicable law.

17 **Substantive Violations of the Desert Groundwater Ordinance**

18 75. The Cadiz Project claims to extract an average of 50,000 AFY, with a projected
19 recharge of 32,000 AFY according to Cadiz’s calculations.

20 76. The Project’s proposed extraction of 50,000 AFY greatly exceeds Cadiz’s own
21 overinflated recharge rate, and would result in an overdraft of over five billion gallons a year
22 under the Desert Groundwater Ordinance’s definition of overdraft.

23 77. In an attempt to circumvent the Desert Groundwater Ordinance’s safe yield
24 requirements, the MOU executed on May 11, 2012, purports to redefine “overdraft” for the
25 Project. Specifically, the MOU defines “overdraft” as occurring where the average annual
26 amount of water withdrawn not only exceeds the annual recharge of the aquifers, but also
27 exceeds the amount of “groundwater that may be available as Temporary Surplus.” (MOU,
28

1 May 11, 2012, ¶ 2(g).) The MOU defines “Temporary Surplus” as “the planned removal of
2 groundwater from storage pursuant to the GMMMP necessary to create underground storage
3 space for the capture and beneficial use of natural recharge without causing Undesirable
4 Results.” (MOU, May 11, 2012, ¶ 2(j).)

5 78. “Temporary Surplus” is not part of the definition of “overdraft” in the Desert
6 Groundwater Ordinance, and the term’s inclusion in the GMMMP is inconsistent with the
7 definition of overdraft as it is defined in the Ordinance.

8 79. Under its GMMMP and MOU, the Cadiz Project is permitted to create
9 overdraft and cause unsafe yield every year (both wet and dry) for the duration of the Project.

10 80. The 80-foot maximum drawdown level set by the GMMMP is inadequate to
11 ensure that the Project does not exceed the safe yield of the potentially irreparable permanent
12 damage to the aquifer.

13 81. The GMMMP fails to include sufficient monitoring and mitigation to comply
14 with the Ordinance, including its lack of sufficient “early warning” wells to adequately ensure
15 that the Project does not exceed the safe yield of affected aquifers and cause significant and
16 potentially irreparable permanent damage to the aquifer.

17 82. The GMMMP fails to adequately ensure that the Project will not cause
18 significant and potentially irreparable harm to the aquifers and the Mojave National Preserve.

19 83. The County’s approval of the GMMMP and exemption from the Ordinance,
20 when the Project’s extraction would result in unsafe yield and overdraft, as those terms are
21 defined in the Ordinance, is a violation of the Desert Groundwater Ordinance.

22 84. Because the MOU and GMMMP impermissibly deviate from the requirements
23 of the Desert Groundwater Ordinance to ensure safe yield and avoid overdraft, the County’s
24 approval of the GMMMP and the accompanying exemption were arbitrary, capricious and not
25 in accordance with law.

26 **SECOND CAUSE OF ACTION**
27 **(Violation of Cal. Government Code § 25120 et seq.)**

1 85. Petitioners hereby incorporate by reference each and every allegation set forth
2 above, inclusive.

3 86. The County must comply with the procedures set forth in California
4 Government Code sections 25120 *et seq.* to amend an ordinance. An ordinance may not be
5 revised or amended by reference. (Cal. Gov. Code § 25129.)

6 87. The Desert Groundwater Ordinance does not include the concept of
7 “Temporary Surplus” in its definition of “overdraft.”

8 88. The County redefined “overdraft” to include the concept of “Temporary
9 Surplus” in the MOU.

10 89. The County did not comply with the procedures required under Cal. Gov. Code
11 sections 25120 *et seq.* to redefine “overdraft.” Instead, the County simply executed an MOU
12 that purports to redefine the terms of the Desert Groundwater Ordinance by contract rather than
13 by formal amendment.

14 90. The MOU constituted an *ultra vires* act by the County to alter its Ordinance.
15 Therefore, the MOU is invalid.

16 91. The County’s approval of the GMMMP and the Project’s exemption based on
17 an invalid MOU was arbitrary, capricious, and not in accordance with law.

18
19 **THIRD CAUSE OF ACTION**
20 **Violation of California Environmental Quality Act**
21 **(Public Resources Code § 21000 *et seq.*)**

22 92. Petitioners hereby incorporate by reference each and every allegation set forth
23 above, inclusive.

24 93. The Desert Groundwater Ordinance states that the “permit is a discretionary
25 permit under the California Environmental Quality Act.” (San Bernardino County Code art. 5,
26 § 33.06554(a).) The County’s approval of an exemption to the Desert Groundwater
27 Ordinance’s permitting requirement requires the same discretionary approval under CEQA.
28

1 94. Despite the County’s statutory authority under CEQA to act as lead agency for
2 the Project (and its earlier expression of intent to do so), the County entered into an MOU on
3 June 28, 2011 with SMWD and Cadiz, delegating to SMWD the role of lead agency under
4 CEQA and designating the County to make a decision on the Project as a responsible agency.
5 On July 31, 2012, SMWD certified the EIR and approved the GMMMP.

6 95. For the following reasons, the County’s approval of the Cadiz Project, the
7 GMMMP, and the Project’s exemption from the Desert Groundwater Ordinance failed to
8 comply with CEQA, and was arbitrary and capricious, not supported by the evidence, and not
9 in accordance with law.

10 **Improper Role As Responsible Agency**

11 96. Under CEQA, the lead agency is required to prepare a complete and legally
12 adequate EIR prior to approving any discretionary project that may have a significant adverse
13 environmental effect. (Pub. Resources Code §§ 21100(a) and 21150.)

14 97. CEQA defines “lead agency” as “the public agency which has the principal
15 responsibility for carrying out or approving a project which may have a significant effect on
16 the environment.” (Pub. Resources Code § 21067.)

17 98. CEQA defines a responsible agency as “a public agency, other than the lead
18 agency which has responsibility for carrying out or approving a project.” (Pub. Resources Code
19 § 21069.)

20 99. If a project is to be carried out by a nongovernmental person or entity, the lead
21 agency shall be the public agency with the greatest responsibility for supervising or approving
22 the project as a whole. (CEQA Guidelines § 15051 (b).) The lead agency will normally be the
23 agency with general government powers, such as a city or county, rather than an agency with a
24 single or limited purpose. (CEQA Guidelines § 15051 (b)(1).)

25 100. A responsible agency’s authority to mitigate, approve, or disapprove a project
26 under CEQA is more limited than a lead agency’s authority. (CEQA Guidelines § 15041(a).)
27 Likewise, a lead agency has broader authority to approve or disapprove a project; the
28

1 responsible agency’s disapproval of a project must be based only on an environmental impact
2 of the part of the project that the responsible agency would be called on to carry out or
3 approve. (CEQA Guidelines § 15042.)

4 101. As the public agency with the greatest responsibility for supervising and
5 approving the Cadiz Project, a water extraction project proposed by a nongovernmental entity
6 with its physical location in San Bernardino County, and as the public agency tasked with
7 issuing a permit or exemption pursuant to its Desert Groundwater Ordinance, the County was
8 required to act as lead agency under CEQA for the Project’s approval and exemption from the
9 Ordinance.

10 102. The County improperly limited its role to that of a responsible agency,
11 impermissibly limiting its authority to control the EIR process, assess Project impacts, and
12 impose adequate mitigation and monitoring requirements.

13 103. The County’s approval of the Cadiz Project and its exemption of the Project
14 from the Desert Groundwater Ordinance under CEQA in the capacity of a responsible agency
15 was arbitrary, capricious, and not in accordance with law.

16 104. Faced with the prospect of the Project’s environmental review being conducted
17 by the wrong lead agency, the County should have petitioned the appropriate state agency for
18 an official determination of lead agency. Failing that, the County was required under CEQA to
19 file a lawsuit asserting its role as lead agency for the Project. Its failure to do either was
20 arbitrary, capricious and not in accordance with law.

21 105. The County’s “adoption” of the Project EIR for the GMMMP, which it had
22 illegally approved as a responsible agency, was arbitrary, capricious and not in accordance
23 with law.

24 106. The County’s “adoption” of the Project EIR for the GMMMP impermissibly
25 segmented the environmental review of the Project itself from that of the GMMMP, and was
26 arbitrary, capricious, and not in accordance with law.

1 107. The County was required to approve and submit a NOD for three Project-
2 related actions: (1) the County’s approval of the Cadiz Project EIR as a responsible agency; (2)
3 the County’s exemption of the Project from the Desert Groundwater Management Ordinance,
4 and (3) the County’s approval of the Project GMMMP. (CEQA Guidelines § 15096(i).) Yet the
5 County submitted an NOD only for the GMMMP approval, purportedly “adopting” the EIR
6 that it simultaneously approved for the Cadiz Project and for the Project’s exemption from the
7 Ordinance as a responsible agency. The County’s failure to approve or submit proper NOD’s
8 for the Project approval and its exemption from the Ordinance was arbitrary, capricious and not
9 in accordance with law.

10
11 **CEQA Findings Not Supported By Substantial Evidence**

12 108. CEQA requires that a responsible agency make findings for approval of a
13 project that are supported by substantial evidence in the administrative record and provide an
14 explanation of how the record supports the conclusions that it has reached. (CEQA Guidelines
15 §§ 15091, 15096.)

16 109. The County violated CEQA and failed to proceed in the manner required by
17 law by adopting findings that are inadequate and unsupported by evidence. These deficiencies
18 include, but are not limited to the determination that the EIR adequately disclosed and
19 evaluated the impacts of the GMMMP and imposes adequate mitigation measures to the extent
20 feasible; the determination that alternatives to the Project that would avoid or lessen the
21 significant impacts are infeasible or otherwise not reasonable; and the determination that
22 various mitigation measures that would avoid or lessen the significant impact of the Project are
23 infeasible.

24 110. As a result of the foregoing defects, the County prejudicially abused its
25 discretion by adopting findings as a responsible agency that do not comply with CEQA’s
26 requirements, and approving the GMMMP and the Project’s exemption from the Desert
27 Groundwater Ordinance in reliance thereon.

1
2 **The GMMMP Was Inadequately Analyzed Under CEQA**

3 111. An EIR must identify and describe in detail any feasible mitigation measures
4 that can be implemented to reduce or avoid each potentially significant environmental effect of
5 the project. (Pub. Resources Code § 21100(b)(3); CEQA Guidelines 15126.4(a).)

6 112. CEQA requires that an EIR be re-circulated for additional public and agency
7 comment when significant new information is added after the EIR’s initial circulation.

8 113. The revised version of the GMMMP, which established a floor and acceptable
9 rate of decline, was not released to the public until July 2012, after the circulation of the draft
10 EIR and the close of the comment period. This revised GMMMP was approved by SMWD in
11 July, 2012 along with the final EIR. The final EIR contained the major changes to the
12 GMMMP, but was not recirculated by SMWD.

13 114. Yet another version of the GMMMP—the version ultimately adopted by the
14 County—was not released to the public until September 26, 2012, nearly two months after
15 SMWD’s certification of the Project FEIR, and only two business days before the County
16 approved the Cadiz Project.

17 115. The EIR certified by SMWD did not contain the additions to the GMMMP
18 made by the County, and SMWD never recirculated the EIR with the inclusion of the County’s
19 last-minute changes.

20 116. The County then “adopted” the EIR for the Cadiz Project for its approval of the
21 GMMMP, even though the EIR did not contain key terms of the GMMMP added last-minute
22 by the County, rendering inadequate the EIR’s analysis of mitigation, monitoring, and project
23 impacts.

24 117. The County’s approval and the reliance on a CEQA document that lacked
25 analysis of critical components of the GMMMP, was arbitrary, capricious, and not in
26 accordance with law.

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VERIFICATION

I have read the foregoing Petition for Writ of Mandate and know its contents.

I am the Public Lands Desert Director for the Center for Biological Diversity, which is a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

Executed on November 1, 2012, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Ilene Anderson
Center for Biological Diversity

Exhibit A



via Overnight Mail and Electronic Mail

Laura H. Welch
Clerk of the Board of Supervisors
County of San Bernardino
385 North Arrowhead Avenue
San Bernardino, CA 92415

October 29, 2012

RE: Notice of Commencement of CEQA Action

Dear Ms. Welch,

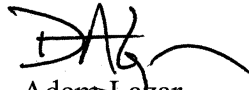
Pursuant to Cal. Public Resources Code § 21167.5, please take notice that the Center for Biological Diversity, National Parks Conservation Association, San Bernardino Valley Audubon Society and Sierra Club, San Gorgonio Chapter, intend to commence an action in San Bernardino Superior Court under the California Environmental Quality Act ("CEQA") against the County of San Bernardino, concerning the County's October 1, 2012 approval of the Cadiz Valley Water Conservation, Recovery and Storage Project ("Cadiz Project").

This action will allege that the County failed to properly follow the procedures and requirements of CEQA in ways including, but not limited to: failure to review and approve the project in the role of lead agency, failure to make proper findings, and failure to adequately analyze impacts described in the Cadiz Project's Groundwater Management, Monitoring and Mitigation Plan.

Among other things, the Petition will seek to set aside findings that the Cadiz Project satisfies the requirements of CEQA, require the County to prepare a new environmental impact report for the Cadiz Project in the role of lead agency, and to enjoin any further implementation of the Cadiz Project until adequate CEQA review is conducted and lawful approvals are obtained.

If you need more information or have any questions please do not hesitate to contact me.

Sincerely,



Adam Lazar

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, California as an active member of the Bar of that State. I am over the age of 18 and not a party to the foregoing action. My business address is 351 California St., Suite 600, San Francisco, CA. 94104.

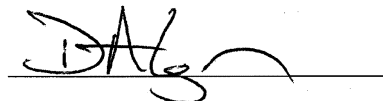
On October 29, 2012 I served a true and correct copy of NOTICE OF COMMENCEMENT OF CEQA ACTION on the Respondents to this action by placing a true and correct copy thereof in a sealed envelope, addressed as shown below:

Laura Welch, Clerk to the Board
San Bernardino County
385 North Arrowhead Avenue
San Bernardino, CA 92415

BY OVERNIGHT DELIVERY SERVICE via Federal Express to the offices of the addressee(s). In accordance with Code of Civil Procedure § 1013(c), I am readily familiar with my organization's practice of collection and processing correspondence for mailing with Express Mail. Under that practice the correspondence would be deposited at the Federal Express office on that same day in the ordinary course of business with postage thereon fully prepaid at San Francisco, California. Such envelope was sealed and delivered to the Federal Express office for collection and mailing following ordinary business practices addressed to the address above.

Executed on November 1, 2012 in San Francisco, California.

I declare under penalty of perjury under the law of California that the foregoing is true and correct.



D. Adam Lazar

Exhibit B

1 D. Adam Lazar (SBN 237485)
Adam Keats (SBN 191157)
2 CENTER FOR BIOLOGICAL DIVERSITY
3 351 California St., Suite 600
San Francisco, California 94104
4 Telephone: 415-436-9682
Facsimile: 415-436-9683
5 akeats@biologicaldiversity.org
6 alazar@biologicaldiversity.org

7 Michael Robinson-Dorn (SBN 159507)
U.C. IRVINE SCHOOL OF LAW
8 P.O. Box 5479
Irvine, California 92616
9 Telephone: 949-824-1043
10 mrobinson-dorn@law.uci.edu

11 Attorneys for Petitioners

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN BERNARDINO**

14 CENTER FOR BIOLOGICAL DIVERSITY, SAN) **Case No.**
15 BERNARDINO VALLEY AUDUBON SOCIETY))
16 AND SIERRA CLUB, SAN GORGONIO))
CHAPTER))
17 Petitioners / Plaintiffs,) **NOTICE OF ELECTION TO**
vs.) **PREPARE ADMINISTRATIVE**
18) **RECORD**
19 COUNTY OF SAN BERNARDINO, BOARD OF) (Cal. Pub. Res. Code § 21167.6)
SUPERVISORS OF COUNTY OF SAN))
BERNARDINO,))
20 Respondents;))
21 CADIZ, INC., ARIZONA AND CALIFORNIA))
22 RAILWAY CO., CALIFORNIA WATER))
SERVICES COMPANY, FENNER VALLEY))
23 MUTUAL WATER COMPANY, GOLDEN))
STATE WATER COMPANY, JURUPA))
24 COMMUNITY SERVICES DISTRICT, SANTA))
MARGARITA WATER DISTRICT,))
25 SUBURBAN WATER SYSTEMS, THREE))
VALLEYS MUNICIPAL WATER DISTRICT))
26 Real Parties in Interest.))
27))
28))

