

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)
UC IRVINE SCHOOL OF LAW
8 ENVIRONMENTAL LAW CLINIC
9 401 E. Peltason Dr., Suite 4500-B
Irvine, California 92697
10 Telephone: 949-824-1043
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,)
15 NATIONAL PARKS CONSERVATION)
ASSOCIATION, SAN BERNARDINO VALLEY)
16 AUDUBON 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, SANTA MARGARITA WATER)
21 DISTRICT, AND SANTA MARGARITA)
WATER DISTRICT BOARD OF DIRECTORS,)

22 Respondents;)

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

28 Real Parties in Interest.)

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE**

(Cal. Code Civ. Proc. § 1094.5; Cal. Pub.
Resources Code § 21000 *et seq.* (California
Environmental Quality Act))

1 **INTRODUCTION**

2 1. This action challenges the July 31, 2012 approval of the Cadiz Valley Water
3 Storage and Conservation Project (the “Project”) by the Santa Margarita Water District
4 (“SMWD”), through its Board of Directors, as recorded in a Notice of Determination and
5 SMWD’s certification of the Environmental Impact Report (“EIR”) for the Project.

6 2. Under the guise of a self-proclaimed "conservation" project, the Project would
7 mine millions of gallons of water a year—for 50 years—from a desert aquifer system in the
8 Mojave Desert. As proposed and approved, the Project would drain the aquifers at a rate far in
9 excess of the rate of natural recharge, with significant environmental harm. Returning the
10 aquifers to their current levels following the end of the Project may take centuries.

11 3. Petitioners, together with various governmental agencies at the state and federal
12 level, Native American Tribes, and concerned members of the public documented numerous
13 violations of CEQA during the administrative proceedings leading up to the certification of the
14 EIR and SMWD’s approval of the Project. Included among these violations is SWMD’s
15 usurpation of San Bernardino County’s (the “County”) proper role as lead agency for the
16 Project under the California Environmental Quality Act (“CEQA”), and SWMD’s failure to
17 properly prepare and certify a legally adequate EIR for the Project.

18 4. As described below, SMWD’s certification of the Project violated the California
19 Environmental Quality Act (“CEQA”), Cal. Public Resources Code § 21000 *et seq.*, and the
20 CEQA Guidelines, title 14 California Code of Regulations, § 15000 *et seq.* (“CEQA
21 Guidelines.”)

22 5. This action also challenges the County of San Bernardino and its Board of
23 Supervisors for failure to act as lead agency for the Cadiz project under CEQA.

24 6. Because SMWD and San Bernardino County failed to comply with CEQA,
25 Petitioners petition this Court for a writ of mandate under Code of Civ. Proc. §§ 1085 and
26 1094.5, directing SMWD to vacate and set aside its approval of the Project and EIR
27 certification. Petitioners also petition for declaratory relief in the form of a finding that the
28

1 County of San Bernardino is the proper lead agency for future environmental review of this
2 project under CEQA.

3 7. Petitioners' have no plain, speedy, or adequate remedy in the course of ordinary
4 law unless this Court grants the requested writ of mandate to require Respondent SWMD to set
5 aside its certification of the EIR and approval of the project, and declares that San Bernardino
6 County is the proper lead agency. In the absence of such remedies, Respondents' decisions
7 will remain in effect in violation of state law.

8
9 **JURISDICTION AND VENUE**

10 8. This Court has jurisdiction over this action pursuant to Cal. Code Civ. Proc. §§
11 1085 and 1094.5 and Pub. Resources Code §§ 21168 and 21168.5. This Court has the
12 authority to issue a writ of mandate directing SMWD to vacate and set aside its approval of the
13 Project and certification of the EIR for the Project under Code Civ. Proc. §§ 1085 and 1094.5.

14 9. Venue for the CEQA actions contained in this Petition properly lies in the San
15 Bernardino County Superior Court pursuant to Cal. Code Civ. Proc. § 395(a), because
16 Respondent County of San Bernardino and the Board of Supervisors of San Bernardino County
17 have their principal place of business in the City of San Bernardino, and additionally pursuant
18 to § 393(b), because the primary location of both the project and the majority of its associated
19 impacts is the County of San Bernardino. In addition, Respondents and Real Parties in Interest
20 reside throughout a four-county region, including San Bernardino County, making no other
21 location more appropriate or convenient.

22 **PARTIES**

23 10. Petitioner CENTER FOR BIOLOGICAL DIVERSITY ("The Center") is a non-
24 profit, public interest organization with over 41,000 members and 280,000 online activists.
25 The Center has offices in Joshua Tree, Los Angeles, and San Francisco, California, as well as
26 offices in Arizona, Florida, New Mexico, Oregon, Vermont, and Washington, D.C. The Center
27 and its members are dedicated to protecting diverse native species and habitats through science,
28 policy, education, and environmental law. The Center's members reside and own property

1 throughout California as well as those areas served by the State Water Project, and use the
2 waters and lands affected by the proposed Project, including the Mojave National Preserve, for
3 recreational, wildlife viewing, scientific, and educational purposes. The Center was one of the
4 coalition of organizations that submitted timely comments to SMWD in response to the
5 December 2011 Draft Environmental Impact Report (“DEIR”) for the Project, and has
6 submitted letters to both Respondents explaining the improper choice of lead agency and
7 warning of problems and inadequate review of a subsequent contractual agreement (MOU)
8 between Respondents and Cadiz, Inc. The Center and its members would be directly, adversely
9 and irreparably harmed by the Project and its components, as described herein, until and unless
10 this Court provides the relief prayed for in this petition.

11 11. Petitioner NATIONAL PARKS CONSERVATION ASSOCIATION (“NPCA”)
12 is a non-profit, membership based advocacy group whose mission is to protect and enhance our
13 national parks for present and future generations. NPCA has over 100,000 active supporters
14 and members in California and over 600,000 nationwide. NPCA maintains offices nationwide,
15 including Joshua Tree and Barstow, California. NPCA, in collaboration with other petitioners
16 to this action, has actively opposed and provided substantive and timely written and oral
17 comments on the challenged Project. Many NPCA members live, work and recreate in San
18 Bernardino County and throughout the areas to be impacted by the Project. NPCA members
19 use, recreate and enjoy the 1.6 million acre Mojave National Preserve, the third largest national
20 park unit in the lower forty eight states, including its diversity of wildlife and plants, desert
21 springs and desert habitat, and visual beauty. The interests of NPCA, its staff and its members
22 in preserving the Mojave National Preserve and surrounding lands will be harmed by the Cadiz
23 project unless court action is taken and Petitioners’ requested relief is granted. .

24 12. Petitioner SAN BERNADINO VALLEY AUDUBON SOCIETY (“SBVAS”) is
25 a non-profit 501(c)3 organization of good standing. SBVAS is an independent organization
26 from the National Audubon Society, and maintains its own board, volunteer staff, membership,
27 policy and fundraising efforts. SBVAS is committed to protecting endangered species and
28 wild places, and in particular avian species, their habitats, and their sources of food. SBVAS

1 has worked to protect the natural resources of California; the organization’s mission is to
2 educate the public as to the importance of the natural environment and to preserve habitat for
3 birds and other wildlife. SBVAS is specifically focused on promoting and protecting these
4 values in the Inland Empire region, which includes the Cadiz project site, its surrounding
5 habitat and the Mojave National Preserve. SBVAS was part of the coalition of public interest
6 organizations which provided timely comments in response to the December 2011 DEIR for
7 the proposed Project. The interests of SBVAS, its staff and its members in preserving the
8 desert habitat and wildlife will be harmed by the Cadiz project unless court action is taken and
9 Petitioners’ requested relief is granted.

10 13. Petitioner SIERRA CLUB, SAN GORGONIO CHAPTER (“the Club”) is a
11 chapter of The Sierra Club, a national non-profit membership organization committed to
12 protecting endangered species and wild places. The San Gorgonio Chapter of the Sierra Club
13 is based in San Bernardino, California. From its inception and for over a century, the Sierra
14 Club has worked to protect the natural resources of California, and has been a long-time
15 advocate for protection of the public wilderness lands surrounding the Cadiz project. The Club
16 has led community opposition to the Project since the project was originally proposed over a
17 decade ago, and continues to work with local communities in opposition. The Club was one of
18 the coalition of public interest organizations which submitted timely comments in response to
19 the current Project’s December 2011 DEIR, and members attended and spoke in opposition to
20 the project at SMWD’s July 2012 board meetings where the Cadiz FEIR was considered by the
21 SMWD’s board for approval. The Club, its staff and its members would be directly, adversely
22 and irreparably harmed by the Project, as described herein, until and unless this Court provides
23 the relief prayed for in this petition.

24 14. Respondent SANTA MARGARITA WATER DISTRICT (“SMWD”) is a water
25 district organized and existing under the California Water District Law, Cal. Water Code §§
26 34000 *et seq.*, with its principle place of business in Rancho Santa Margarita, California,
27 providing retail water service to a mostly residential area of southern Orange County, located
28 over two hundred miles away from the Cadiz project site. SMWD acted as the lead agency for

1 environmental review of the Cadiz project and Respondent SMWD BOARD OF DIRECTORS
2 approved the EIR in that capacity, as indicated in the Project’s July 31, 2012 Notice of
3 Determination.

4 15. Respondent COUNTY OF SAN BERNARDINO (the “County”) is a political
5 and geographical subdivision of the State of California with its principal offices located in the
6 town of San Bernardino, California. Respondent SAN BERNARDINO COUNTY BOARD
7 OF SUPERVISORS constitutes the elected decision-making body of the County empowered to
8 approve or disapprove projects under CEQA, and which entered into agreements with SMWD
9 and Cadiz regarding the County’s role in the Project. The Project’s pumps and the majority of
10 the Project’s anticipated environmental impacts lie within the County’s boundaries. The
11 County maintains the authority to permit and regulate the construction and development of the
12 Project. The EIR for the Cadiz project describes the County as a responsible agency under
13 CEQA.

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

21 17. Real Party in Interest ARIZONA & CALIFORNIA RAILROAD COMPANY
22 (“ACRC”) is a company existing as a limited liability partnership with its principle place of
23 business in Parker, Arizona. ACRC is a subsidiary of RailAmerica, a corporation listed on the
24 New York Stock Exchange with its corporate headquarters in Jacksonville, Florida.
25 Petitioners are informed and believe that ACRC is the owner and operator of the shortline
26 railroad that runs from Cadiz, California to Parker, Arizona, and that Cadiz has entered into an
27 agreement with the ACRC to utilize a portion of its right-of-way (“ROW”) for placement of
28 necessary infrastructure for the proposed Project.

1 18. Real Party in Interest CALIFORNIA WATER SERVICES COMPANY is a
2 subsidiary of the California Water Services Group, a publicly-traded Delaware corporation.
3 CWS’ principal place of business is San Jose, California. California Water Services Company
4 was included as a participant in the Project EIR and is listed as a recipient of Project water in
5 the July 31, 2012 Notice of Determination.

6 19. Real Party in Interest FENNER VALLEY MUTUAL WATER COMPANY is a
7 California mutual water company describing itself as a non-profit entity, existing under the
8 laws of the State of California with its principal place of business in Los Angeles, California.
9 Petitioners are informed and believe that Fenner Valley Mutual Water Company was created
10 by Cadiz to distribute Project water and will be solely comprised of public water systems that
11 will own shares commensurate with their rights to receive water from the Project.

12 20. Real Party in Interest GOLDEN STATE WATER COMPANY (“Golden State”)
13 is a water company with its principal place of business in San Dimas, California. Golden State
14 Water Company is a wholly-owned subsidiary of American States Water Company, a publicly-
15 traded Delaware corporation also based in San Dimas. Golden State Water Company is
16 included as a Project Participant in the EIR, and is listed as a recipient of Project water in the
17 July 31, 2012 Notice of Determination.

18 21. Real Party in Interest JURUPA COMMUNITY SERVICES DISTRICT is a
19 public agency known as a Special District organized and existing under the California
20 Community Services District Law, Cal. Government Code §§ 61000 *et seq.*, with its principal
21 place of business in Jurupa Valley, California. Jurupa Community Services District is
22 responsible for providing potable water, sewer and streetlights to over 101,000 people located
23 throughout 48 square miles in the Jurupa area of Riverside County. Jurupa Community
24 Services District was included as a project participant in the Project DEIR, is listed as a
25 recipient of Project water in the July 31, 2012 Notice of Determination, and is acting as a
26 responsible agency for the proposed Project’s environmental review.

27 22. Real Party in Interest SUBURBAN WATER SYSTEMS is an investor-owned
28 water utility doing business in the State of California with its principal place of business in

1 Covina, California, and is a wholly-owned subsidiary of SouthWest Water Company, a
2 privately-held corporation based Sugar Land, Texas. Suburban Water Systems was identified
3 as a project participant in the Environmental Impact Report and is listed as a recipient of
4 Project water in the July 31, 2012 Notice of Determination.

5 23. Real Party in Interest THREE VALLEYS MUNICIPAL WATER DISTRICT is
6 a California Municipal Water District with its principle place of business in Claremont,
7 California. Petitioners are informed and believe that Three Valleys Municipal Water District is
8 a beneficiary of approval as listed on the Notice of Determination, was identified as a project
9 participant in the Project EIR, and is acting as a Responsible Agency for the Project's
10 environmental review.

11 24. Petitioners are currently unaware of the true names and capacities of Does 1
12 through 20, inclusive, and therefore sue those parties by such fictitious names. Does 1 through
13 20, inclusive, are government or private entities presently unknown to Petitioners who will
14 receive Project water, or are otherwise beneficiaries of approval of the Cadiz Project, not listed
15 in the Project's July 31, 2012 Notice of Determination. Petitioners will amend this petition to
16 show the true names and capacities of Does 1 through 20 when such names and capacities
17 become known.

18 25. Petitioners are currently unaware of the true names and capacities of Real Parties
19 in Interest, Does 21 through 40, inclusive. Does 21 through 40, inclusive, are persons or
20 private entities presently unknown to Petitioners who claim some legal or equitable interest in
21 the Project that is the subject of this action. Petitioners will amend this petition to show the
22 true names and capacities of Does 1 through 20 when such names and capacities become
23 known.

24 26. Petitioners bring this action as private attorneys general pursuant to Cal. Code
25 of Civil Procedure § 1021.5, and any other applicable legal theory to enforce important public
26 rights affecting the public interest.

27
28 **GENERAL ALLEGATIONS**

1 27. The Cadiz Valley Water Conservation, Recovery and Storage Project (“Project”)
2 is a project to mine and export water from alluvial aquifers underlying the Mojave Desert, near
3 Cadiz, California, and transport Project water to multiple public and private water districts and
4 corporations in the greater Los Angeles region.

5 28. The Project was reviewed under CEQA with Santa Margarita Water District
6 (“SMWD”) acting in the role of lead agency. SMWD’s Notice of Determination was signed
7 July 31, 2012, and states that the Project will extract an average of 50,000 acre-feet (approx.
8 16.2 billion gallons) per year over a 50 year period. Physical infrastructure will include a well
9 field with up to 34 wells, and a 43-mile pipeline to the Colorado River Aqueduct.

10 29. The Project applicant is Cadiz, Inc. who, through its subsidiary Cadiz Real
11 Estate, owns the Project site, and will be the primary financial beneficiary. Cadiz has entered
12 into agreements to sell the Project water to Fenner Valley Mutual Water Company, who will
13 then re-sell the water to Project participants.

14 30. The Project also includes “Phase II,” which will consist of spreading basins to
15 recharge surface water into the groundwater basin and convey stored water back to
16 Participants.

17 **The Original Project**

18 31. A version of the Project was originally proposed as the “Cadiz Groundwater
19 Storage and Dry-Year Supply Program” in the late 1990’s, with the Metropolitan Water
20 District of Southern California (“MWDSC”) acting as lead agency under CEQA, and the
21 federal Bureau of Land Management acting as lead agency under the National Environmental
22 Policy Act.

23 32. The original project emphasized storage of Colorado River water, and only
24 intended to export water in “dry” years, but was nonetheless supported by applicant-funded
25 studies claiming the aquifers were naturally provided with 40,000 to 50,000 acre-feet per year
26 of water for recharge. The executive summary to the original DEIR further stated that the
27 project could export up to 150,000 acre-feet a year.

28 33. The original project’s studies of groundwater recharge were strongly disputed by

1 multiple expert reports, including two by the United States Geological Survey. Expert
2 hydrologist Dr. John Bredhoeft, a former 32-year career scientist at the United States
3 Geological Survey (“USGS”), reviewed the existing studies, and concluded that recharge was a
4 small fraction of the applicant’s estimates, finding that the most probable range of recharge is
5 5,000-6,000 acre-feet per year.

6 34. MWDSC voted to cancel the previous Cadiz project in 2002. The Staff
7 Recommendation was that “further board action on the project be deferred” due to “uncertainty
8 over the availability of surplus water;” the “growing realization that significant quantities of
9 native groundwater may not be available for export;” the “demand for Colorado River water
10 supply... may reduce our flexibility to store Colorado River water;” “increased capital costs
11 above the \$150 million estimate;” “the money that is planned to be spent on the Cadiz project
12 may be needed elsewhere to acquire water supplies that are not dependent upon surplus
13 Colorado River water and the availability of disputed local groundwater supplies;” and
14 “substantial financial risk.”

15 **San Bernardino County Desert Groundwater Management Ordinance**

16 35. The County of San Bernardino enacted its Desert Groundwater Management
17 Ordinance in October, 2002, less than two weeks after MWDSC cancelled the original project,
18 doing so specifically in response to the County’s inability to effectively regulate groundwater
19 exports, and to adequately monitor and protect against harm to the County’s aquifers.

20 36. The Desert Groundwater Management Ordinance, San Bernardino County Code
21 Article 5, § 33.06551 *et seq.*, states that no person or entity shall locate, construct, operate or
22 maintain a groundwater export and/or storage project in the Cadiz project area absent a permit
23 issued pursuant to the ordinance, unless the project is exempted by (1) a Groundwater
24 Management Monitoring and Mitigation Plan (GMMMP), and (2) the County entering into a
25 Memorandum of Understanding (MOU) with the Applicant. (San Bernardino County Code §
26 33.06554(a).)

27 37. The Ordinance emphasizes the “particular importance” of protecting
28 groundwater in the Project area due to “relative lack of significant natural recharge in those

1 areas” and the “lack of regulatory or judicial oversight of the groundwater aquifers.” (San
2 Bernardino County Code §§ 33.06551 (b)(2) and (3).)

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

6 39. In 2007, Cadiz submitted a Desert Groundwater Management Permit application
7 for a project similar to the original project, but without MWDSC as lead agency. The 2007
8 application also included both storage of Colorado River water and export of water from the
9 aquifer only in dry or very dry years. The permit application included a statement that any
10 withdrawal of groundwater would be temporary and had to be replenished by importation of
11 Colorado River water. The County did not approve the 2007 permit application.

12 **The Current Project**

13 40. The current Cadiz Project was re-born in 2011 with SMWD as the lead agency.
14 MWDSC, which must still facilitate the transport of water for the Project, was not consulted as
15 a lead or responsible agency for the new Project’s DEIR, and has not promised to treat or
16 transport Cadiz water, despite both being necessary for exporting the project’s water.

17 41. The Project has not undergone review under NEPA.

18 42. While the original emphasized importing and storing Colorado River water, and
19 only exporting water in “dry” years, the current Project focuses on groundwater export and
20 demotes the import and storage of water to a secondary “program” role of the Project, to be
21 implemented at an undetermined later time.

22 43. The original project claimed that MWDSC would employ conservation, or water
23 saving measures, across its system in relation to the Project. The current Project claims that it
24 “conserves” water by exporting water for consumptive use that would otherwise evaporate
25 from the dry lakebeds overlying the aquifer. The Project’s alleged “conservation” does not
26 include a detailed analysis of the end-uses of the water beyond a presumption that it will be
27 “beneficially used.”

28 44. The 2011 Project DEIR was accompanied by a Groundwater Management,

1 Monitoring and Mitigation Plan (“GMMMP”), which purports to meet the Project’s mitigation
2 and monitoring requirements, and claims to function to exempt the Project from the San
3 Bernardino County Desert Groundwater Management Ordinance in conjunction with a
4 Memorandum of Understanding entered into between Cadiz, SMWD and the County. The
5 GMMMP has not been approved by the County.

6 45. Petitioners provided detailed comments on the DEIR, identifying both legal
7 and scientific inadequacies with the Project, and included two reviews of the Project conducted
8 by expert hydrologists, detailing the shortcomings in their analysis of water supply. Other
9 commenters, including MWDSC and the National Parks Service, were also highly critical of
10 the project and its underlying studies. Petitioners’ comments included, but are not limited to
11 the following:

- 12 a. SMWD is the improper lead agency for the Project, and that the County is the
13 appropriate lead agency for the project;
- 14 b. SMWD failed to identify, include, and consult as required with required
15 responsible agencies;
- 16 c. The stated CEQA objectives for the Project are overly narrow;
- 17 d. The stated objectives and description of the Project are misleading;
- 18 e. The DEIR failed to adequately analyze the Project’s environmental impacts,
19 including but not limited to impacts related to biological resources,
20 threatened and endangered species, air quality and water quality.
- 21 f. The DEIR failed to provide substantial evidence in support of its conclusions
22 regarding the level of significance of the Project’s impacts and the efficacy of
23 proposed mitigation measures;
- 24 g. The DEIR improperly deferred impact analysis and development of
25 mitigation measures and appropriate thresholds;
- 26 h. The DEIR failed to consider a reasonable range of alternatives by, inter alia,
27 failing to give meaningful consideration to alternatives and rejecting without
28 adequate evidentiary basis reasonable alternatives that would meet most

1 project objectives;

2 i. The DEIR failed to adequately analyze growth-inducing and cumulative
3 impacts; and

4 j. The DEIR was so fundamentally flawed as to preclude meaningful public
5 review, and should have been revised and recirculated with additional
6 information.

7 46. The Memorandum of Understanding referred to in the GMMMP was not
8 included in the DEIR or approved by SMWD or the County prior to the DEIR's circulation.
9 However, in May, 2012, after circulation of the DEIR and the close of the comment period,
10 Cadiz, the County and SMWD entered into a Memorandum of Understanding (MOU) which,
11 in conjunction with the GMMMP, purports to exempt the Project from the County's Desert
12 Groundwater Management Ordinance.

13 47. The MOU provided several terms for the Project whose definitions and use were
14 not fully disclosed or analyzed in the EIR or GMMMP, including "aquifer health," "overdraft,"
15 "safe yield," and "undesirable results."

16 48. The MOU also indicated that the County would provide several key variables
17 necessary to determine safe yield, aquifer health and overdraft. Specifically, the MOU dictates
18 that the County must designate a minimum groundwater "floor" level and an acceptable "rate
19 of decline." However, the MOU, the DEIR and the GMMMP do not include the County's
20 findings regarding these variables.

21 49. The MOU identified San Bernardino County as a responsible agency for the
22 project and required the County to make a decision on whether to approve the Project within
23 90 days of SMWD's certification of the Project EIR.

24 50. On May 31, 2012, the Center submitted a letter to SMWD and the County
25 objecting to the approval of the MOU, and identified several elements presented therein which
26 were inadequately discussed or omitted entirely from the DEIR and GMMMP. The Center, a
27 Petitioner, requested that the DEIR analyze the additional information contained in the MOU,
28 and then that the DEIR be re-circulated for public review with the additional information and

1 analysis included. This request was repeated by Petitioners and other members of the public
2 during oral comments at the July 25, 2012 SMWD Board meeting.

3 51. SMWD did not recirculate the DEIR for review and comment. Instead, SMWD
4 released the Final Environmental Impact Report (“FEIR”) for public review on July 13, 2012
5 and scheduled a public hearing to consider approval of the EIR and project on July 25, 2012.

6 52. The National Park Service requested that SMWD delay approval of the FEIR
7 until it and other members of the public had sufficient time to review. The Park Service’s
8 request was not approved.

9 53. Hours of public comments, the vast majority of which indicated opposition to the
10 Project, caused the July 25 hearing to continue past midnight, resulting in the meeting being
11 continued to July 31, 2012. SMWD then approved the FEIR on July 31, 2012, and signed a
12 Notice of Determination (NOD) approving the Project on the same day. Petitioners are
13 informed and believe that the SMWD also approved the Project’s adopted findings and a
14 statement of overriding consideration at the July 31 meeting, as well as a revised GMMMP.
15

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 54. Petitioners have exhausted all administrative remedies by submitting written and
18 oral comments and testimony on the Project to Respondent requesting compliance with CEQA,
19 including the completion of full and adequate environmental review. All issues raised in this
20 Petition were raised before Respondent by Petitioners, other members of the public, or public
21 agencies prior to approval of the Project.

22 55. Petitioners have complied with Cal. Public Resources Code § 21167.5 by prior
23 service of a notice upon Respondents indicating their intent to file this Petition. Proof of
24 Service of this notification, with the notification, is attached as Exhibit A.

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

28 57. This Petition is timely filed in accordance with Cal. Public Resources Code §

1 21167 and CEQA Guidelines § 15112..

2
3 **FIRST CAUSE OF ACTION**

4 **Violation of California Environmental Quality Act**
5 **(Cal. Public Resources Code § 21000 *et seq.*)**

6 58. Petitioners hereby incorporate by reference each and every allegation set forth
7 above, inclusive.

8 59. The purpose of an EIR is to provide public agencies and the public in general
9 with detailed information about the effect which a proposed project is likely to have on the
10 environment. (Pub. Resources Code § 21061.)

11 60. An EIR must fully disclose and analyze all of the project's potentially significant
12 environmental effects. (Pub. Resources Code § 21100(b)(1).)

13 61. The EIR should be prepared with a sufficient degree of analysis to provide
14 decision-makers with information which enables them to make a decision which intelligently
15 takes account of environmental consequences. (CEQA Guidelines § 15151.)

16 62. CEQA further requires the lead agency to adequately consider mitigation
17 measures and alternatives to the Project, to adopt all feasible mitigation measures and/or
18 alternatives, to determine that proposed mitigation measures will or will not be effective in
19 avoiding or substantially lessening the Project's significant environmental impacts, and to
20 make an adequate statement of overriding considerations for those significant environmental
21 impacts deemed unavoidable. (Pub. Resources Code §§ 21002.1(b), 21100(b)(3); CEQA
22 Guidelines §§ 15092 and 15093).

23 63. CEQA contemplates an interactive process of assessment and responsive
24 modification that must be genuine. The lead agency must be able to substantially change or
25 disapprove the project through the CEQA review process; using CEQA as a *post hoc*
26 justification for a project is not permitted.

1 64. For the following reasons, SMWD’s approval of the Cadiz project failed to
2 comply with CEQA, and was arbitrary and capricious, not supported by the evidence, and not
3 in accordance with applicable law:

4
5 **Choice of SMWD as Improper Lead Agency**

6 **(Against SMWD and the County)**

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

10 66. CEQA defines “lead agency” as “the public agency which has the principal
11 responsibility for carrying out or approving a project which may have a significant effect on
12 the environment.” (Cal. Public Resources Code. § 21067.)

13 67. CEQA defines “local agency” as “any public agency other than a state agency,
14 board or commission.” (Cal. Public Resources Code § 21062.)

15 68. When two or more public agencies are involved with a project, “if the project is
16 to be carried out by a nongovernmental person or entity, the lead agency shall be the public
17 agency with the greatest responsibility for supervising or approving the project as a whole.”
18 (CEQA Guidelines § 15051(b).)

19 69. Cadiz., Inc., the Project applicant, is a publically-traded company. Cadiz has
20 been responsible for the Project’s financing and permitting, most of the Project pumping will
21 occur on or near Cadiz property, and Cadiz will be the primary financial beneficiary of the
22 Project. The Project requires at least one government approval, and qualifies as a Private
23 Project pursuant to CEQA Guidelines § 15377.

24 70. The lead agency “will normally be the agency with general governmental
25 powers, such as a city or county, rather than an agency with a single or limited purpose such as
26 an air pollution control district or a district which will provide a public service or public utility
27 to the project.” (CEQA Guidelines § 15051(b)(1).)

1 71. The majority of the Project’s impacts, including but not limited to impacts to
2 water supply, water quality, air quality, and biological resources, will occur at or in the vicinity
3 of the Cadiz Project site located in eastern San Bernardino County.

4 72. The Project falls under the jurisdiction of the San Bernardino County Desert
5 Groundwater Management Ordinance, which requires that the County either issue a permit
6 authorizing the Project, or issue an exemption. The County’s approval of either the permit or
7 the exemption to the permit constitutes a “project” which is likely to have a significant effect
8 on the environment, and is therefore subject to CEQA environmental review process.

9 73. The County, in addition to sanctioning the Project pursuant to the Desert
10 Groundwater Management Ordinance, must also issue building and construction permits and
11 other municipal approvals for the project.

12 74. Further, as the public agency tasked with issuing a permit or exemption pursuant
13 to the County Desert Groundwater Management Ordinance, the County was required to act as
14 lead agency under CEQA for the permit or exemption.

15 75. The County did not act as lead agency for the project, permitting instead SMWD
16 to act as lead agency.

17 76. The County had multiple opportunities to assert its role as lead agency for the
18 Project, including but not limited to the 2012 MOU it entered into with SMWD and Cadiz,
19 requiring the County to make a decision on the Project in the capacity of responsible agency.
20 The County could also have petitioned the Office of Planning and Research for a determination
21 that it was lead agency pursuant to CEQA Guidelines § 15053, but did not.

22 77. Failure to act as lead agency severely constrained the County’s ability to assert
23 control over the environmental review, mitigation, monitoring, and enforcement aspects of the
24 Project and its future oversight, and circumscribed the County’s discretion to change, approve
25 or disapprove the EIR and GMMMP.

26 78. The County’s failure to assert its role as lead agency for the Project is arbitrary,
27 capricious and not in accordance with CEQA statute and guidelines.

1 79. SMWD is a local agency in southern Orange County whose purpose is to supply
2 water to customers within its service area. SMWD has entered into a contractual agreement to
3 receive Project water, and will have its project-related costs reimbursed by Cadiz if it approves
4 the Project. Pursuant to California law, SMWD's board of directors is elected by residents of
5 service area.

6 80. As a water district with limited purpose, servicing an area hundreds of miles
7 from the Project site, with a board elected by residents its service area, SMWD does not
8 possess sufficient regional perspective, scope of expertise, or accountability to San Bernardino
9 County and its residents sufficient to fulfill its role as Lead Agency for the Project. Further,
10 the Project is proposed by a non-government entity, SMWD will neither construct nor operate
11 the Project, and SMWD is not responsible for additional approvals for the Project outside of
12 CEQA.

13 81. Approval of the Project with SMWD acting as lead agency for the Project was
14 arbitrary, capricious and not according to law.
15

16 **Failure to Properly Include Responsible Agencies**

17 **(Against SMWD)**

18 82. CEQA defines a responsible agency as "a public agency, other than the lead
19 agency which has responsibility for carrying out or approving a project." (Cal. Public
20 Resources Code § 21069.)

21 83. The term "responsible agency" includes all public agencies other than the lead
22 agency which have discretionary approval over the project. (CEQA Guidelines § 15381.)

23 84. MWDSC is a regional State agency providing wholesale water to districts
24 throughout Southern California, including Respondent SMWD.

25 85. The lead agency has a duty to consult with all responsible agencies prior to
26 deciding whether to prepare an EIR. (Cal. Public Resources Code § 21080.3), and is required
27 to notify all responsible agencies of its intent to prepare an EIR (Cal. Public Resources Code §
28 21080.4). The responsible agency then must respond with information about "the scope and

1 content of environmental information that is germane to" its responsibilities. The responsible
2 agency must provide comments on the DEIR, including detailed performance objectives for
3 mitigation measures, or refer the lead agency to appropriate, readily available guidelines or
4 reference documents. (Cal. Public Resources Code § 21081.6 (c).)

5 86. MWDSC owns and operates water pipeline infrastructure necessary to convey
6 Project water to its intended recipients, and to deliver water to and from the Colorado River
7 Aqueduct. MWDSC must approve the conveyance of Project water before its infrastructure
8 can be used to deliver water to the listed Project recipients and before the Colorado River
9 Aqueduct can be used. Therefore, MWDSC is properly a responsible agency for the Project.

10 87. MWDSC was not included as a responsible agency for the project when the
11 DEIR was circulated, so it could not provide the information required of it as a responsible
12 agency. The scrivener's change in the FEIR, including MWDSC as a responsible agency, did
13 not provide MWDSC with sufficient reviewing and critiquing authority befitting a responsible
14 agency tasked with approvals fundamental to the project's operation. Further, SMWD did not
15 provide a comment period for the FEIR and approved the Project shortly after the FEIR was
16 issued, so that MWDSC not assert a role as responsible agency at that late stage. The failure
17 to include MWDSC in an early stage of the Project's environmental review foreclosed
18 fulfillment of what would have been MWDSC's duties as a responsible agency in the review
19 process, which are greater than those of an interested member of the public.

20 88. The alteration to the surface of the dry lakebeds may require a streambed
21 alteration permit to be issued by the California Department of Fish and Game ("CDFG") (Cal.
22 Fish & Game Code § 1602). CDFG should also have been included as a responsible agency
23 for the project.

24 89. The addition of imported water to the aquifer during Phase II of the project and
25 the addition of Project water to State Water Project may require a permit for waste discharge
26 requirements and/or a water quality certification issued by the State Water Resources Control
27 Board or a regional Water Quality Control Board. (California Water Code §§ 13160 and
28

1 13260.) The Water Board or one of its regional agencies should have been included as a
2 responsible agency for the project.

3 90. The addition of Project water to State Water Project facilities requires
4 authorization from the California Department of Water Resources (“DWR”). DWR should
5 have been named as a responsible agency for the project.

6 91. SMWD’s failure to properly include MWDSC, CDFG, SWRCB (or regional
7 board) and DWR as responsible agencies in time to provide a meaningful critique and
8 recommendations for the EIR and GMMMP was arbitrary, capricious and not in accordance
9 with law.

10
11 **Failure to Provide an Adequate Description of the Project and the Affected Environment**

12 **(Against SMWD)**

13 92. CEQA requires an accurate, stable and finite project description of the proposed
14 project; the project description must “embrace the whole of the action” and include a
15 description of the entire scope of the project. (CEQA Guidelines § 15124.)

16 93. The EIR for the Cadiz project fails to provide an accurate, stable and finite
17 definition of the Project and the affected environment, and to describe the true scope of the
18 project, including but not limited to the following areas:

19 ***Project Title***

20 94. The Project has a misleading and deceptive title. The title of the Project includes
21 the terms “conservation” and “storage” but the project “conserves” water by exporting it for
22 consumptive use, and claims to “store” water on an undetermined future basis. The title of the
23 project is intentionally misleading and prejudicial to accurate public review.

24 ***Project Objectives***

25 95. CEQA requires a statement of objectives sought by the proposed project.
26 (CEQA Guidelines § 15124(b) and (d).) A clearly written statement of objectives in turn
27 assists the lead agency in creating a range of alternatives to evaluate in the EIR. (CEQA
28 Guidelines § 15124(b).) The statement of objectives should include the underlying purpose of

1 the project. (*Id.*)

2 96. The EIR fails to provide complete or accurate project objectives and does not
3 accurately describe the purpose of the Project. The EIR states that the purpose of the Project is
4 to “conserve” water, but “conserve” is commonly used to mean *save* water, not to export it for
5 consumptive use. The EIR’s use of “conservation” as a main project objective is misleading, is
6 unsupported by the evidence and is not in accordance with law.

7 97. The EIR fails to accurately describe the size of the Project’s export component.
8 The project EIR and NOD claim the project will extract an average of 50,000 acre-feet per
9 year. However, there is no contract or agreement that specifies the amount of extraction. The
10 contracts referred to in the MOU to deliver water demonstrate a minimum commitment to
11 deliver Project water, but do not describe a maximum threshold. Additional contracts for
12 export of water could cause the Project to export more water without any set limit. The EIR
13 also claims that the project could export at least 75,000 acre-feet per year, and previous
14 versions of the Project have estimated export potential at 150,000 acre-feet per year. Further, it
15 is likely that implementation of Phase II will provide additional exports of Project water and
16 result in an increase in export capacity beyond 50,000 acre-feet. The finding that the project
17 will export an average of 50,000 acre-feet per year is arbitrary, capricious not in accordance
18 with law and unsupported by the evidence.

19 98. The EIR fails to adequately assess the duration of the Project: there is no
20 guarantee or reason why the project will only last 50 years as the EIR claims. The project may
21 be extended, and the EIR states as much: that the duration of the project depends on fulfilling
22 the Project’s contractual commitments. Yet the EIR does not provide an analysis of impacts
23 for extending the project. Failure to do so renders the EIR’s analysis of long-term impacts
24 inadequate, and its conclusions regarding impacts unsupported by the evidence.

25 99. The MOU contains a provision to deliver 20% or 25,000 acre-feet water to San
26 Bernardino and 30,000 acre-feet to Inland Empire Utilities Agency. Yet Inland Empire
27 Utilities Agency is not listed as a project recipient of approval in the EIR or NOD. It is further
28 unclear from the EIR whether this water would be in addition to or part of the average 50,000

1 acre-feet already estimated by the project for yearly export. Failure to include or properly
2 analyze this term in the EIR, describing delivery of many thousand acre-feet of water to San
3 Bernardino and Inland Empire Utilities Agency, renders the EIR’s project description arbitrary
4 and unsupported by the evidence.

5 ***Legal and Regulatory Framework***

6 100. CEQA requires a statement of the current legal and regulatory framework in
7 which the proposed project will be developed.

8 101. The EIR inaccurately describes the current regulatory framework within which
9 the Cadiz project must be considered. The EIR does not adequately acknowledge the degree of
10 approval required by MWDSC for use of its pipe infrastructure to both deliver water to the
11 proposed recipients, and to import the water from the Colorado River or State Water Project.

12
13 **Illegal Segmentation of Project**

14 **(Against SMWD)**

15 102. Although both “recovery” and “storage” are included in the Project title, the EIR
16 segments the export and import components of the Project into two parts, or “phases,” with the
17 “recovery” component analyzed in detail in the EIR (“Phase I”) , and the “storage”
18 component’s review only occurring on a general “program” level (“Phase II”). The EIR and
19 GMMMP do not estimate the amount of water which would be imported, nor does it assess the
20 likely impacts to water supply and quality resulting from implementing this part of the project.

21 103. Even though the Project does not appear to have a firm commitment to store
22 water, it frequently uses the storage concept as justification for its actions in Phase I, such as
23 the lowering of the aquifer due to “temporary surplus,” which the MOU describes as the water
24 which may be exported despite overdraft in order to reverse the flow gradient and/or create
25 space to store imported water.

26 104. The Project EIR is not a programmatic EIR and does not contain sufficient
27 details regarding the storage component of the project. The segmentation of the project is not
28 in accordance with the law and violates CEQA.

1 appear to improperly use and rely upon computer models without adequate supporting field
2 data to support its conclusions, and improperly use groundwater flow models to estimate a
3 change in evaporation. The findings regarding recharge and evaporation are arbitrary,
4 capricious and unsupported by the evidence, and are directly contradicted by numerous studies
5 cited by multiple commenters.

6 109. The EIR fails to demonstrate that aquifer drawdown or overdraft (as defined by
7 common use, and not by the MOU) will not occur. The EIR fails to adequately substantiate its
8 claim that there would be no adverse impacts and no overdraft of the aquifer, and fail to refute
9 claims that the Project will cause a long-term depression in the aquifer, despite the fact that for
10 50 years or more the Project will deplete between 18,000 (according to SMWD’s own experts)
11 and 43,000 acre-feet per year of groundwater more than is recharged—and that assumes the
12 Project only pumps 50,000 acre-feet per year, when it is able to pump much more.

13 110. The EIR fails to adequately support its conclusion that export of the water will
14 eliminate or sharply curtail evaporation. The EIR proceeds from the assumption that extraction
15 of water below the dry lake beds will eliminate evaporation, but this conclusion is not
16 supported by the weight of the evidence. The EIR also does not adequately address whether
17 the evaporation rates will change if and when the aquifer is recharged with stored water. The
18 finding that exporting Project water will eliminate evaporation is arbitrary, capricious and
19 unsupported by the evidence.

20 111. The EIR assumes that evaporated water constitutes “waste” that is being
21 “conserved” by exporting Project water. However, water evaporating through the ground into
22 the natural environment is not wasted because it benefits soil structure, native plants, insects
23 and wildlife, and prevents soil erosion and negative air impacts. The presumption that
24 evaporated water in areas affected by the Project is “waste” is arbitrary and capricious and not
25 in accordance with law.

26 112. The EIR fails to adequately support its conclusion that the aquifer will be
27 sustainable or eventually recover from long-term Project water extraction operations. The
28 EIR’s analysis of depletion and recovery in the aquifer is arbitrary, capricious and not

1 supported by the weight of the evidence.

2 113. The EIR fails to adequately support its conclusion that the Project will not affect
3 area springs. The finding that springs will not be impacted is based on a conclusion that the
4 target aquifer is not hydrologically connected to the springs. However, at least some springs
5 within the Mojave National Preserve do appear to be hydrologically connected. Without
6 detailed studies of the springs' hydrologic connection, the EIR's assumption of no harm to
7 springs is arbitrary, capricious and unsupported by the evidence.

8 114. Despite public requests for the information, SWMD and the EIR failed to
9 provide to the public all data and necessary information to assess and verify the models that
10 Cadiz's experts used. As a result, members of the public and decision-makers were unable to
11 fully assess the validity of expert's conclusions and thus the EIR's conclusions, rendering
12 effective review of the EIR impossible. This failure to provide sufficient information to judge
13 the expert's conclusions is a violation of CEQA's public informational requirements.

14
15 ***Water Impacts: Mitigation and Monitoring***

16 115. CEQA requires SMWD to adopt feasible mitigation measures in order to
17 substantially lessen or avoid the otherwise significant adverse environmental impacts of
18 proposed projects. (Cal. Pub. Resources Code § 21002.) SMWD is required pursuant to
19 CEQA to consider mitigation measures and alternatives to the Project, to adopt all feasible
20 mitigation measures and/or alternatives, to determine that proposed mitigation measures will or
21 will not be effective in avoiding or substantially lessening the Project's significant
22 environmental impacts, and to make an adequate statement of overriding considerations for
23 those significant environmental impacts deemed unavoidable. (Cal. Pub. Resources Code §§
24 21002(b) and 21081.)

25 116. The EIR fails to properly consider reasonable mitigation measures for the
26 proposed project, including but not limited to: mitigation measures to prevent overdraft;
27 mitigation measures included for the prior Cadiz project(s), including a guarantee of replacing
28 all exported water; establishment and adequate monitoring of enough "early warning" wells

1 (particularly when a limited number of such wells, though without adequate monitoring, have
2 been added to the GMMMP); an adequate monitoring program; an adequate enforcement
3 process; and mitigation measures that would reduce growth-inducing impacts to the Project
4 recipients.

5 117. The proposed mitigation measures adopted for the Project are inadequate to
6 address the potential significant impacts of the Project on water resources, including but not
7 limited to long-term aquifer drawdown. There is no substantial evidence the proposed
8 mitigation measures are adequate to prevent long-term harm to the affected aquifers.

9 118. The EIR improperly deferred formulation of specific mitigation strategies and
10 thresholds for action until after Project approval.

11 119. The EIR improperly relies on an incomplete and inadequate Groundwater
12 Management, Monitoring and Mitigation Plan (GMMMP) for mitigation and monitoring of the
13 Project. The GMMMP is not approved by the County and does not contain many important
14 details contained in the MOU, and yet the EIR defers proper analysis of the mitigation and
15 monitoring to this inadequate GMMMP. The County must still supply key variables for the
16 Project that are missing from the GMMMP and EIR, including the identification of a “floor”
17 groundwater level. Without determining the “floor” there can be no finding regarding
18 overdraft or safe yield. The missing variables from the EIR and GMMMP render effective
19 monitoring of the project virtually impossible.

20 120. The GMMMP was updated between the DEIR and FEIR and received new and
21 revised measures, which SMWD claims improves upon those included in the DEIR and draft
22 GMMMP. Petitioners strongly dispute the efficacy of these additions towards effective
23 mitigation and monitoring of the Project. In addition, these revisions would not change the
24 terms of the May, 2012 MOU signed by SMWD, the County and Cadiz regarding project
25 approval, monitoring and oversight.

26 121. In the FEIR, SMWD claimed it made major changes to the GMMMP. If true,
27 these changes merited detailed review by responsible agencies and the public. However,
28 SMWD gave the public only a few weeks to review the changes before approving the Project,

1 not enough time for any concerned government agency or member of the public, including
2 Petitioners, to digest and suggest appropriate changes to the revised GMMMP. These agencies
3 include the County of San Bernardino, National Parks Service and MWDSC, whose interests
4 will be particularly impacted by the Project. The changes from the GMMMP in the DEIR to
5 the FEIR merited public re-circulation and the failure to do so violated CEQA's requirement to
6 re-notice and re-circulate and EIR with substantial new information, and violates CEQA's
7 public review provisions by attempting to pass substantial new measures without adequate
8 public review.

9 122. The EIR, GMMMP and MOU employ the concept of "temporary surplus" to
10 justify Project pumping beyond the amount where recharge is greater than extraction, which is
11 called "overdraft." However, the Project re-defines "overdraft" to exist only when there is no
12 "temporary surplus." "Temporary surplus" continues to shift meanings for the Project; before
13 it was justified to create space to import water from the Colorado River aqueduct or another
14 source, creating a "surplus" of water that must be exported in order to make way for the
15 imported water. In the current Project, the EIR claims that a "temporary surplus" is created by
16 the need to reverse the gradient or flow. However, the EIR and GMMMP state that the storage
17 portion of the project is now speculative, and the EIR and GMMMP does not adequately
18 estimate how much water would be required to be removed to reverse the gradient or flow.
19 Thus the determination of what constitutes "temporary surplus" seems to be at the whim of the
20 Project operator and a *carte blanche* to create harmful overdraft conditions. The EIR may not
21 justify a "temporary surplus" based on the expectation of water importation that is speculative
22 at best. The use of "temporary surplus" to drain the aquifer is arbitrary, capricious and
23 unsupported by the evidence.

24 123. The GMMMP and MOU re-define "overdraft" as a ten-year average of
25 extraction, so that one must wait an entire decade before determining Project impacts on water
26 level. The ten-year wait for monitoring renders this aspect of the project ineffective and
27 threatens the health of the aquifer, failing CEQA's mitigation requirement. The ten year delay
28 undermines the ability to monitor for "overdraft" conditions and is inadequately reviewed in

1 the EIR.

2 124. The GMMMP and MOU re-define “safe yield” to mean not causing “overdraft”
3 or endangering “aquifer health.” Because of the way these different terms are defined, a “safe
4 yield” would be found even with a precipitous drop in aquifer levels, as such a drop would not
5 be considered “overdraft” when there is a finding of “temporary surplus,” and “aquifer health”
6 is not defined to include drawdown of the aquifer. It is further impossible to find whether there
7 is a “safe yield” from the Project when the County has supplied neither the groundwater
8 “floor” level nor the acceptable “rate of decline.” The convoluted definitions of “safe yield”
9 and associated terms and lack of key variables renders a “safe yield” determination in the
10 GMMMP and thus in the EIR arbitrary, capricious and unsupported by the evidence.

11 125. The GMMMP and MOU define “aquifer health” but exclude the water level
12 from the definition. Aquifer health is necessarily based on water level, among other factors.
13 Failure to include the water level in the “aquifer health” means that monitoring for “aquifer
14 health” does not return a negative finding when aquifer drawdown occurs, making the
15 monitoring ineffective.

16 126. The MOU defines “undesirable results” to include decline below a “floor” and
17 “rate of decline” to be set by the County. However, the County has not set this floor or rate of
18 decline in the EIR or GMMMP. Without first establishing the “floor” or “rate of decline” the
19 finding of “undesirable results” cannot occur, making it impossible for the lowering of the
20 water level to trigger “undesirable results.”

21 127. The relationship between the MOU and GMMMP’s definitions of “aquifer
22 health,” “safe yield,” “overdraft” and “undesirable results” is poorly described in the EIR,
23 making the document prejudicially defective in describing and analyzing the Project’s
24 monitoring program.

25 128. The MOU requires monitoring and reporting to go through numerous stages of
26 intermediate interpretation and multiple decision levels, which delay reporting and make
27 monitoring ineffective. Through the process defined in the MOU, the monitoring review
28 process is excessively controlled by Project participants and Cadiz, depriving adequate

1 monitoring, review and enforcement opportunities to the County and concerned individuals.

2 129. The MOU requires disputes over aquifer health or other project aspects to be
3 subjected to binding arbitration. This provision deprives the County or other interested
4 member of the public an effective means of challenging aquifer drawdown or other impacts, as
5 a full review by an Article III court is precluded by the MOU. Arbitration is further limited by
6 first requiring findings of “overdraft” or “undesirable results,” which are either ambiguous or
7 re-defined by the MOU to inaccurately reflect the level of the aquifer. This makes it still more
8 difficult to seek a judicial remedy to aquifer drawdown, and also makes monitoring of the
9 project unenforceable. Requiring arbitration subject to the convoluted definitions of the MOU,
10 is both contrary to CEQA’s mitigation requirements and is inadequately described in the EIR.

11 130. The use of the above terms as defined in the MOU renders the monitoring and
12 mitigation of the Project ineffective and in violation of CEQA’s requirements to mitigate to a
13 less than significant extent and to effectively monitor for harm to the environment.

14 ***Water Impacts: Water Quality***

15 131. The EIR fails to adequately discuss, analyze and the impact related having to
16 treat Project water extracted from the aquifer to reduce the levels of hexavalent chromium 6.
17 Data supporting the EIR and comments from MWDSC indicate that the levels of hexavalent
18 chromium 6 in Project water are substantially higher than current standards, as signaled by the
19 adoption of Public Health Goal of 0.02 ppb—the level of the element that does not pose a
20 significant health risk in drinking water. It is reasonably foreseeable that SMWD will be
21 required to treat Project water to significantly reduce the levels of hexavalent chromium 6
22 before Project water can be introduced into the CRA and the MWDSC system. The EIR fails to
23 analyze the environmental impacts associated with the need to build treatment facilities and the
24 removal of hexavalent chromium 6, instead deferring such analyses until some later date.

25 132. The EIR fails to adequately assess the impacts to water quality from storing
26 imported water from the Colorado River or other source in the Project aquifers. As a result of
27 improper segmentation of the Project, the EIR fails to assess the environmental impacts to
28 water quality, even though the storage component is included in the Project’s title and

1 description. The EIR fails to adequately assess or attempt to mitigate the degradation of water
2 quality and potential violation of the state antidegradation policy. The failure to address water
3 quality impacts to the aquifer is arbitrary, capricious and not in accordance with law.

4 133. The EIR project fails to adequately assess impacts to water quality on the water
5 that would be transported through common infrastructure with Project water. Infrastructure
6 including the State Water Project and MWDSC pipelines will be required to deliver Project
7 water, but the EIR fails to adequately assess the addition of Project water to those supplies will
8 degrade the quality of the combined result. Failure to assess the impacts on water quality
9 through commingling sources during transport is arbitrary, capricious and not in accordance
10 with law.

11 ***Air Impacts***

12 134. The EIR improperly assumes that dust and airborne soil will not increase due to
13 loss of soil moisture. However, if the soil is dried out by the Project though eliminating
14 evaporation, this will cause air impacts from increases in dust and airborne soil.

15 135. The EIR failed to provide substantial evidence that the amount of extraction
16 beyond recharge rates will not result in the creation of significant dust and related air quality
17 issues.

18 136. The EIR and GMMMP likewise failed to establish appropriate mitigation
19 measures and thresholds for action for air impacts.

20 137. The failure to adequately address the impacts to air quality is arbitrary,
21 capricious and unsupported by the evidence.

22 ***Biological Impacts***

23 138. The EIR impermissibly underestimates the impacts of the Cadiz project on plants
24 and wildlife and their respective habitats, including but not limited to rare plants including
25 desert phreatophytes, the Desert Tortoise, the Mojave Fringe-Toed Lizard, the Desert Kit Fox ,
26 Badger, Burrowing Owl, Golden Eagle, Desert Bighorn Sheep, and cryptobiotic soils and
27 desert pavements. The EIR lacks adequate study of these populations and their dependence on
28 the current state of habitat surrounding the Project.

1 139. The EIR fails to adequately analyze the impacts to sensitive wildlife from
2 potential loss of springs and loss of soil moisture due to (purportedly) lower evaporation rates.

3 140. The EIR fails to adequately assess the Project’s impacts on wildlife connectivity,
4 wildlife corridors and linkages.

5 141. The EIR fails to adequately analyze impacts to water, scenic resources and
6 biological resources within the Mojave National Preserve.

7 142. The EIR fails to include appropriate mitigation and monitoring plans for affected
8 plants and wildlife, and impermissibly defers preparation and analysis of such plans until an
9 undetermined future date. The EIR also fails to include appropriate translocation plans for the
10 Mojave Fringe-Toed lizard, an avian and bat protection plan, desert kit fox and badger “passive
11 relocation” plans, burrowing owl relocation and monitoring plan, and raven reduction plan.

12 143. The EIR’s failure to adequately address and mitigate impacts to plants and
13 wildlife, and to include the appropriate mitigation, monitoring and translocation plans, renders
14 the Project EIR’s evaluation of wildlife and biological resources arbitrary, capricious and
15 unsupported by the evidence.

16 ***Climate Change***

17 144. CEQA requires consideration of increases or decreases of greenhouse gases and
18 inducement of man-made changes to the earth’s atmosphere (“climate change”) due to
19 implementation of a proposed project. (CEQA Guidelines § 15064.4).

20 145. The Project fails to adequately account for climate change impacts, including
21 climate change-induced changes to rates of evaporation and recharge to the aquifer, and
22 impacts to the desert environment from a combination of climate change and the impacts of the
23 proposed project.

24 ***Growth-Inducing Impacts***

25 146. CEQA requires that an EIR provide full analysis of ways in which a proposed
26 project could foster economic or population growth, or the construction of additional housing,
27 either directly or indirectly, in the surrounding environment. (Pub. Resources Code §
28 21100(b)(5) and CEQA Guidelines §§ 15126 and 15126.2.) Physical changes to the

1 environment caused by economic and social impacts should also be considered as a significant
2 effect on the environment. (CEQA Guidelines 15164(e).)

3 147. The EIR fails to adequately assess the growth-inducing impacts caused by
4 enactment of the Project. The EIR mischaracterizes and underestimates the Project's growth-
5 inducing impacts through providing a flawed analysis of the water use, assuming that because
6 the Project water may substitute for another supply that the water will not be growth-inducing,
7 even though the net amount of water available region-wide will increase by the amount of the
8 Project supply.

9 148. The EIR impermissibly defers full assessment of the Project's growth
10 consequences to future assessments of local decision-makers.

11 149. The EIR fails to fully assess the growth-related impacts of the Project as required
12 by CEQA.

13 *Cumulative and Indirect Impacts*

14 150. CEQA requires that an EIR for a proposed project consider reasonably
15 foreseeable cumulative impacts from a project. (Pub. Resources Code §§ 21100 and CEQA
16 Guidelines § 15130.) The EIR fails to provide an adequate cumulative impacts assessment for
17 the Cadiz project.

18 151. The EIR does not adequately assess the cumulative impacts on the local area of
19 the pumping from the project.

20 152. The EIR does not adequately assess the regional impacts of delivering Project
21 water to the respective recipients of the water,

22 153. The EIR does not assess the reasonably foreseeable cumulative impacts
23 associated with combining Phase I impacts with storage of imported water (Phase 2 of the
24 Project), deferring unlawfully analysis to the future.

25 Alternatives

26 (Against SMWD)

27 *Feasible Alternatives*

1 154. CEQA requires an EIR to examine a range of reasonable alternatives that would
2 feasibly obtain most of the project objectives, but avoid or substantially lessen any significant
3 adverse effects of the project. (CEQA Guidelines § 15126.6.)

4 155. SMWD erroneously rejects feasible alternatives as infeasible. To the extent that
5 a stated primary purpose of the project is to conserve water, alternatives to the proposed Project
6 would conserve water more efficiently, and with far fewer environmental impacts than the
7 approved alternative were rejected as infeasible. The EIR fails to adequately explain why the
8 chosen alternative is superior for meeting the conservation purpose of the Project. In addition,
9 the EIR provides no substantial evidence to support its exclusion of feasible alternatives.

10 156. The EIR failed to provide an alternative to the Project to provide users with a
11 reliable alternative source of water. There are many other alternatives to pumping at least
12 50,000 acre-feet per year from the aquifer for a purported “conservation” of wasted water.

13 157. Among several reasons that SMWD gave for rejecting reasonable alternatives as
14 infeasible was that the alternative would require an easement from the BLM. Contrary to
15 SMWD’s assertions, the chosen Project also requires approval from the BLM to utilize the
16 Railroad Right of Way. SMWD’s rationale for rejecting such alternatives requiring BLM
17 approval is arbitrary, and the inference that the approved project is not subject to BLM
18 approval is contrary to law.

19
20 ***Reasonable Range of Alternatives***

21 158. CEQA requires that an EIR include a reasonable range of alternatives for a
22 proposed project that will foster informed decision-making and public participation. (CEQA
23 Guidelines § 15126.6.)

24 159. The EIR does not adequately consider Project alternatives that would achieve
25 conservation of groundwater at the same or greater degree than the chosen alternative.

26 160. The EIR does not sufficiently justify choosing the Project alternative through its
27 statement of overriding considerations.

1 161. The EIR provides a limited and incomplete range of feasible alternatives to the
2 proposed project, including at least one alternative that inappropriately includes significant
3 portions of the proposed project.

4 162. The EIR improperly concludes that the alternatives described in the EIR have
5 similar impacts and outcomes as the proposed project, and does not provide alternatives that
6 are clearly distinguishable from the “no project” alternative and the proposed project.

7 163. The EIR’s project alternatives were impermissibly narrowed, so that only the
8 Project could qualify as a legitimate alternative. By making “saving” or “conserving” water
9 that the EIR incorrectly characterizes as being “wasted” a fundamental objective of the Project,
10 SMWD unlawfully limited the scope of the project and the reasonable alternatives that could
11 otherwise meet most of the Project’s key objectives. The failure of the EIR to analyze
12 reasonable alternatives is an error of law.

13 164. The EIR fails to analyze an alternative that avoids impacts to the region’s springs
14 and biological resources.

15
16 **Inadequate Response to Comments**

17 **(Against SMWD)**

18 165. SMWD failed to respond adequately to comments submitted by Petitioners, other
19 members of the public, and other agencies. Instead, the responses given to numerous
20 comments are conclusory, evasive, confusing, or otherwise non-responsive, contrary to the
21 requirements of CEQA. In particular, the EIR failed to adequately address comments that the
22 models used by Cadiz’ experts were likely to be overestimating recharge and evaporation rates
23 for the Project.

24 166. In addition, SMWD failed to provide an adequate rationale for rejecting
25 alternatives to the Project proposed by Petitioners and other commenting agencies and persons.
26 By failing to provide adequate responses to public comments and proposed alternatives,
27 Respondents failed to proceed in the manner required by law.

1 **Failure to Include Terms of MOU in EIR and to Recirculate EIR**

2 **(Against SMWD)**

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

5 168. SMWD failed to re-circulate the EIR despite the availability of significant new
6 information contained in the Memorandum of Understanding (MOU) entered into between
7 Cadiz, SMWD and the County after the DEIR was circulated and prior to certification
8 regarding the Project’s environmental consequences.

9 169. The failure to analyze the terms included in the MOU constitute a failure to
10 adequately review the Project, and to re-circulate a new EIR as required by CEQA.

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

13 **(Against SMWD)**

14 170. CEQA requires that an agency’s findings for approval of a project be supported
15 by substantial evidence in the administrative record and requires that an agency provide an
16 explanation of how the record evidence supports the conclusions that it has reached. (CEQA
17 Guidelines § 15091)

18 171. SWMD violated CEQA and failed to proceed in the manner required by law by
19 adopting findings that are inadequate as a matter of law in that they are not supported by
20 substantial evidence in the record, including, but not limited to:

21 172. The determination that alternatives to the Project that would avoid or lessen the
22 significant impacts are infeasible or otherwise not reasonable;

23 173. The determination that various mitigation measures that would avoid or lessen
24 the significant impacts of the Project are infeasible;

25 174. No substantial evidence supports SMWD’s findings adopted pursuant to CEQA,
26 including the findings that the project will produce less than significant environmental impacts,
27 even with the GMMMP implemented, and that water supply, water quality, climate change, air
28 quality, and biological resources have been mitigated to less than significant levels.

1
2 **Statement of Overriding Considerations Not Supported By Substantial Evidence**

3 **(Against SMWD)**

4 175. Where no feasible mitigation measures or alternatives are available to avoid or
5 reduce a project's significant environmental effects, CEQA allows an agency approving a
6 project to adopt a Statement of Overriding Considerations that describes how specific
7 overriding economic, legal, social, technological, or other benefits outweigh the significant
8 environmental effects.

9 176. In approving the Project and certifying the EIR, SMWD concluded that the
10 Project would result in significant unavoidable impacts. SMWD adopted a Statement of
11 Overriding Considerations, including findings that specific considerations make infeasible the
12 mitigation measures or alternatives identified in the EIR for the Project's unavoidable
13 significant impacts and that economic, social, and other factors justify approval of the Project
14 despite these unavoidable significant impacts.

15 177. The Statement of Overriding Considerations inaccurately estimates impacts to
16 water supply, water quality, air quality and biological impacts. SMWD's adoption of a
17 Statement of Overriding Considerations that purportedly justifies the Project's significant
18 adverse impacts on the environment is not supported by substantial evidence and represents a
19 failure to proceed in the manner required by law. Similarly, the finding that no feasible
20 alternatives or additional mitigation measures exist to eliminate or reduce the remaining
21 significant effects is not supported by substantial evidence.

22 178. As a result of the foregoing defects, SMWD prejudicially abused its discretion by
23 adopting findings that do not comply with CEQA's requirements and approving the Project in
24 reliance thereon. Accordingly, both SMWD's certification of the EIR and SMWD's approval
25 of the Project must be set aside.

26
27 **PRAYER FOR RELIEF**

28 WHEREFORE, the Petitioners pray for relief as follows:

1 1. For alternative and peremptory writs of mandate, commanding SMWD:
2 (A) to vacate and set aside approvals of the Project;
3 (B) to vacate and set aside certification of the Final EIR for the Project;
4 (C) to suspend any and all activity pursuant to Respondents' approvals of the Project
5 that could result in an adverse change or alteration to the physical environment until all
6 requirements of CEQA and all other applicable state and local laws, policies, ordinances, and
7 regulations are complied with, as directed by this Court pursuant to Cal. Public Resources
8 Code section 21168.9;

9 (D) For a stay, temporary restraining order, preliminary injunction, and permanent
10 injunction prohibiting any actions by Respondents and Real Parties in Interest pursuant to
11 SMWD' approval of the Project and certification of the EIR for the Project until full
12 compliance is attained with all requirements of CEQA and all other applicable state and local
13 laws, policies, ordinances, and regulations;

14 (E) For a declaration that SMWD's actions certifying the EIR and approving the
15 Project violated CEQA and the CEQA Guidelines, and that the certification and approvals are
16 invalid and of no force or effect;

17 (F) For a declaration that the County of San Bernardino is the proper lead agency for
18 the Project under CEQA;

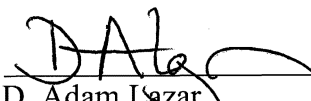
19 5. For costs of the suit;

20 6. For attorney's fees pursuant to the Cal. Code of Civil Procedure § 1021.5; and

21 7. For such other and further relief as the Court deems just and proper.

22
23 DATED: August 30, 2012

24 Adam Keats
25 D. Adam Lazar
26 CENTER FOR BIOLOGICAL DIVERSITY

27 By: 
28 D. Adam Lazar
Attorney for Petitioners

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

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

I am the California Desert Field Representative for the National Parks Conservation Association, 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 August 29, 2012, at Joshua Tree, California.

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



Seth Shteir
National Parks Conservation Association

Exhibit A



Via overnight mail

August 28, 2012

Dan Ferons
General Manager
Santa Margarita Water District
26111 Antonio Parkway
Rancho Santa Margarita, CA 92688

Re: Notice of Commencement of CEQA Action

Dear Mr. Ferons:

Please take notice pursuant to Pub. Res. Code § 21167.5, that on August 30, 2012, Petitioners Center for Biological Diversity, National Parks Conservation Association, San Bernardino Valley Audubon Society and Sierra Club, San Geronimo Chapter, intend to commence an action for writ of mandate to review, overturn, set aside, void, and annul the July 31, 2012 decision by Santa Margarita Water District approving the Cadiz Valley Water Conservation, Recovery and Storage Project (the "Project") and certifying an Environmental Impact Report for the Project (SCH #2011031002). This action is based on Respondents' failure to comply with the California Environmental Quality Act (Public Resources Code §21000 *et seq.*) and San Bernardino County Desert Groundwater Management Ordinance (San Bernardino County Code, Article 5, § 33.06551 *et seq.*) in adopting the Environmental Impact Report and approving the Project.


This action will allege that Santa Margarita Water District failed to properly follow the procedures and requirements of CEQA and San Bernardino County law in ways including, but not limited to: improper lead agency; failure to adequately describe the project objectives, size and duration; failure to adequately include responsible agencies; illegal segmentation of project components; failure to provide notice and re-circulate the EIR with additional information; failure to adequately identify and analyze impacts to water supply, water quality, biological resources, climate impacts, and growth; failure to adequately provide mitigation and monitoring of the project; failure to adequately discuss and analyze alternatives; and inadequate statement of overriding concerns and findings.

Among other things, the Petition will seek: a declaration that San Bernardino County is proper lead agency for the project; to de-certify the EIR; to set aside findings that the project satisfies the requirements of CEQA; and to enjoin any further

implementation of the 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,

A handwritten signature in black ink, appearing to read 'DAL' with a flourish extending to the right.

Adam Lazar
Attorney for Petitioners



Via overnight mail

August 28, 2012

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

Re: Notice of Commencement of CEQA Action

Dear Ms. Welch:

Please take notice pursuant to Pub. Res. Code § 21167.5, that on August 30, 2012, Petitioners Center for Biological Diversity, National Parks Conservation Association, San Bernardino Valley Audubon Society and Sierra Club, San Geronimo Chapter, intend to commence an action for writ of mandate to review, overturn, set aside, void, and annul the July 31, 2012 decision by Santa Margarita Water District approving the Cadiz Valley Water Conservation, Recovery and Storage Project (the "Project") and certifying an Environmental Impact Report for the Project (SCH #2011031002). This action is based on Respondents' failure to comply with the California Environmental Quality Act (Public Resources Code §21000 *et seq.*) and San Bernardino County Desert Groundwater Management Ordinance (San Bernardino County Code, Article 5, § 33.06551 *et seq.*) in adopting the Environmental Impact Report and approving the Project.

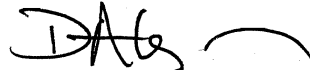
This action will allege that the County of San Bernardino failed to act as lead agency for environmental review of the project under CEQA. The action will also allege that Santa Margarita Water District failed to properly follow the procedures and requirements of CEQA and San Bernardino County law in ways including, but not limited to: improper lead agency; failure to adequately describe the project objectives, size and duration; failure to adequately include responsible agencies; illegal segmentation of project components; failure to provide notice and re-circulate the EIR with additional information; failure to adequately identify and analyze impacts to water supply, water quality, biological resources, climate impacts, and growth; failure to adequately provide mitigation and monitoring of the project; failure to adequately discuss and analyze alternatives; and inadequate statement of overriding concerns and findings.

Among other things, the Petition will seek: a declaration that San Bernardino County is proper lead agency for the project; to de-certify the EIR; to set aside findings

that the project satisfies the requirements of CEQA; and to enjoin any further implementation of the 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,

A handwritten signature in black ink, appearing to read 'DAL', with a large, sweeping flourish extending to the right.

Adam Lazar
Attorney for Petitioners

1
2 **PROOF OF SERVICE**

3 **STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

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

7 On August 28, 2012 I served a true and correct copy of NOTICE OF
8 COMMENCEMENT OF CEQA ACTION on the Respondents to this action by placing a true
9 and correct copy thereof in a sealed envelope, addressed as shown below:

10 Santa Margarita Water District
11 26111 Antonio Parkway
12 Rancho Santa Margarita, CA 92688
13 Attn: Dan Ferons, General Manager

14 San Bernardino County
15 385 North Arrowhead Avenue
16 San Bernardino, CA 92415
17 Attn: Laura H. Welch, Clerk of the Board

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

26 Executed on August 28, 2012 in San Francisco, California.

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

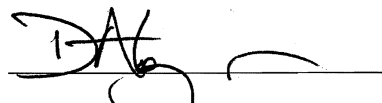

D. Adam Lazar

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
8 401 E. Peltason Dr., Suite 4500-B
Irvine, California 92697
9 Telephone: 949-824-1043
10 mrobinson-dorn@law.uci.edu
Attorneys for Petitioners

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

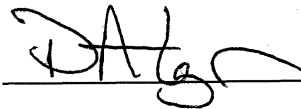
13
14 CENTER FOR BIOLOGICAL DIVERSITY,) **Case No.**
NATIONAL PARKS CONSERVATION)
15 ASSOCIATION, SAN BERNARDINO VALLEY)
AUDUBON SOCIETY AND SIERRA CLUB,)
16 SAN GORGONIO CHAPTER)
17) **NOTICE OF ELECTION TO**
Petitioners / Plaintiffs,) **PREPARE ADMINISTRATIVE**
18 vs.) **RECORD**
)
19 COUNTY OF SAN BERNARDINO, BOARD OF) (Cal. Pub. Res. Code § 21167.6)
SUPERVISORS OF COUNTY OF SAN)
20 BERNARDINO, SANTA MARGARITA WATER)
DISTRICT, AND SANTA MARGARITA)
WATER DISTRICT BOARD OF DIRECTORS,)
21 Respondents;)
)
22 CADIZ, INC., ARIZONA AND CALIFORNIA)
RAILWAY CO., CALIFORNIA WATER)
23 SERVICES COMPANY, FENNER VALLEY)
MUTUAL WATER COMPANY, GOLDEN)
24 STATE WATER COMPANY, JURUPA)
COMMUNITY SERVICES DISTRICT,)
25 SUBURBAN WATER SYSTEMS, THREE)
26 VALLEYS MUNICIPAL WATER DISTRICT)
AND DOES 1-40.)
27)
Real Parties in Interest.)
28)

1 **NOTICE OF ELECTION TO PREPARE RECORD**

2 Petitioners Center for Biological Diversity, National Parks Conservation Association,
3 San Bernardino Valley Audubon Society, and Sierra Club, San Gorgonio Chapter, elect to
4 prepare the record of proceedings in the above-captioned matter, or alternatively, to pursue an
5 alternative method of record preparation pursuant to Public Resources Code Section
6 21167.6(b)(2).
7

8 DATED: August 30, 2012

By:

9 
10 _____

11 D. Adam Lazar
12 Center for Biological Diversity

13 Attorney for Petitioners
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28