



**United States Department of the Interior**  
**BUREAU OF LAND MANAGEMENT**

California State Office  
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Sacramento, CA 95825  
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OCT 02 2015

Jason Peery  
Genesee & Wyoming Inc.  
13901 Sutton Park Drive South, Suite 330  
Jacksonville, Florida 32224

Scott Slater  
Cadiz, Inc.  
550 South Hope Street, Suite 2850  
Los Angeles, California 90071

Dear Mr. Peery and Mr. Slater:

As you are aware, the Bureau of Land Management (BLM) issued Instruction Memorandum (IM) No. 2014-122, Evaluation and Approval of Uses within Railroad Rights-of-Way Granted under the *General Railroad Right-of-Way Act of March 3, 1875*, on August 20, 2014 in response to the Solicitor for the Department of the Interior's legal interpretation of rights-of-way (ROWs) granted to railroads under the 1875 Act.<sup>1</sup> BLM utilized the IM and the 2011 M-Opinion to evaluate activities presented in the Cadiz Valley Water Conservation, Recovery & Storage Project (Project) and make an administrative determination as to whether the Project is within the scope of Arizona and California Railroad's (AZRC) 1875 Act ROWs.<sup>2</sup> BLM evaluation of the Project also relied on information provided by ARZC, Cadiz, Inc., and others to assist in determining whether the proposed activities for the Project on public land are within the scope of ARZC's 1875 Act ROWs. BLM also included publically available information, meetings with the parties involved, and details on the proposed activities provided by ARZC, Cadiz, Inc., and others.

Based on all this information, BLM has reached an administrative determination that the Project as described cannot be authorized by ARZC because it is outside the scope of ARZC's

<sup>1</sup> Solicitor for the Department of the Interior, Opinion M-37025 "Partial Withdrawal of M036964-Proposed Installation of MCI Fiber Optic Communication Line Within Southern Pacific Transportation Co.'s Railroad Right-of-Way" (Nov. 4, 2011) ("2011 M-Opinion").

<sup>2</sup> The four railroad rights-of-way granted to the ARZC that are part of this proposal are serialized as follows:

- CALA 0 010895 (granted 4/3/1911)
- CALA 0 011098 (granted 11/8/1905)
- CALA 0 011099 (granted 4/3/1911)
- CALA 0 011100 (granted 4/3/1911)

ROW grants held under the 1875 Act. As shown in the enclosed summary, BLM has determined that the Project does not derive from or further a railroad purpose. By determining the primary objective of the Project and how the railroad purpose interrelates, BLM examined “the nature and extent of the non-railroad benefits of an activity relative to the railroad purpose of the same activity” to provide for an overall evaluation of the Project.<sup>3</sup>

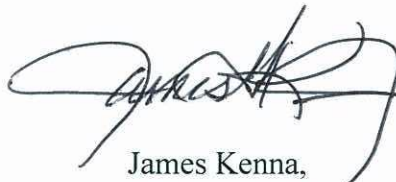
In order to proceed with the proposed Project, Cadiz, Inc., ARZC, or other parties involved will require BLM authorization for a right-of-way for the Project under the regulations set forth in 43 C.F.R. Part 2800. An SF-299 application is enclosed for your convenience. However, if additional information becomes available regarding the Project or if the information relating to the Project changes, an evaluation based on new information could result in a different determination by the BLM. Where the BLM has already completed the evaluation process, additional evaluations may be undertaken where appropriate and in the public interest given available BLM resources.

ARZC has a continuing obligation to notify the BLM of existing and new activities undertaken within their ROWs held under the Act. Any determination made with respect to any particular activity is limited to the facts before the BLM at the time of such determination.

This administrative determination is not a final agency decision and therefore not subject to appeal under 43 C.F.R. Part 4 (BLM Manual Sections 1841.1.D. and 1841.15) because it does not determine any final rights or obligations, does not constitute authorization or disapproval of any particular activity, nor do legal consequences for the activity in question flow from this administrative determination. Note that proceeding with new activities or continued activities found not to be within the scope of the ROWs without authorization from the BLM could result in the BLM instituting trespass proceedings.

If you have any questions regarding this request, please contact Erik Pignata, Realty Specialist, at (916) 978-4655 or epignata@blm.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Kenna', written over a horizontal line.

James Kenna,  
State Director

Enclosures (2)

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<sup>3</sup> IM 2014-122 at Section E.