

GREGORY C. LOARIE (CA Bar No. 215859)  
EARTHJUSTICE  
50 California Street, Suite 500  
San Francisco, CA 94111  
T: (415) 217-2000 • F: (415) 217-2040  
E: gloarie@earthjustice.org

ELIZABETH B. FORSYTH (CA Bar No. 288311)  
EARTHJUSTICE  
810 3rd Avenue #610  
Seattle, WA 98104  
T: (206) 531-0841 • F: (206) 343-1526  
E: eforsyth@earthjustice.org

*Counsel for Plaintiffs*

*(Additional Counsel of Record  
Listed in Signature Block)*

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

CENTER FOR BIOLOGICAL DIVERSITY,  
DEFENDERS OF WILDLIFE, and SIERRA  
CLUB,

Plaintiffs,

vs.

U.S. BUREAU OF LAND MGMT.; DEBRA  
HAALAND, Secretary of Interior; NADA  
CULVER, Senior Advisor to the Secretary of  
the Department of the Interior; KAREN  
MOURITSEN, California Director, Bureau of  
Land Mgmt.; ANDREW ARCHULETA,  
California Desert District Manager, Bureau of  
Land Mgmt.; MICHAEL AHRENS, Needles  
Field Office Manager, Bureau of Land Mgmt.,

Defendants.

No.:

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

## INTRODUCTION

1. This case challenges a December 21, 2020 decision by defendants (collectively, BLM) to issue a private company, Cadiz, rights-of-way to convey water through a mothballed oil and gas pipeline that crosses Mojave Trails National Monument and other protected public land in southeastern California. BLM's decision allows Cadiz to implement the so-called "Cadiz Valley Water Conservation, Recovery and Storage Project" (or "Cadiz Water Project"), a longstanding scheme to sell groundwater extracted from ancient aquifers underlying the Mojave Desert.

2. BLM's decision will have a devastating impact on the fragile desert environment. Use of the oil and gas pipeline for water will make it possible for Cadiz to extract far more groundwater from the desert aquifers in and around Mojave Trails National Monument than is replenished naturally, causing overdraft in the affected groundwater basins. The resulting draw-down of the water table will cause many freshwater springs of critical importance to desert plants and animals to go dry. The retreating aquifer will also desiccate desert "playa" lakebeds, resulting in toxic air pollution from windswept sediments akin to what has plagued the Owens Valley to the north ever since large-scale water diversions to Los Angeles dried Owens Lake a century ago.

3. On December 21, 2020, in the eleventh hour of the departing administration, BLM issued the challenged rights-of-way with no environmental review, in violation of the National Environmental Policy Act (NEPA). BLM moreover failed to comply the Mojave Trails National Monument Proclamation's requirements that rights-of-way across the Monument be consistent with the care and management of monument objects and ensure availability of water resources. Finally, BLM violated the Federal Land Policy and Management Act's (FLPMA's) requirements to review whether the rights-of-way would create or exacerbate groundwater overdraft and to specify terms and conditions in the rights-of-way that would protect the environment.

1           4.     Plaintiffs Center for Biological Diversity, Defenders of Wildlife, and  
2 Sierra Club ask this Court to set aside BLM’s illegal issuance of the rights-of-way and  
3 enjoin BLM from authorizing or otherwise allowing Cadiz to undertake any activities  
4 within the rights-of-way until BLM complies with federal law.

#### 5                                   **JURISDICTION AND VENUE**

6           5.     This action arises under NEPA, 42 U.S.C. §§ 4321–4347, FLPMA, 43  
7 U.S.C. §§ 1701–1787, the Proclamation Establishing the Mojave Trails National  
8 Monument, Pres. Proc. No. 9395, 81 FR 8371 (Feb. 12, 2016), and the Administrative  
9 Procedure Act (APA), 5 U.S.C. §§ 701–706. The Court may issue a declaratory  
10 judgment and further relief pursuant to 28 U.S.C. §§ 2201–2202 and 5 U.S.C. §§ 705–  
11 706.

12          6.     Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal  
13 question) and 28 U.S.C. § 1346 (United States as defendant). An actual justiciable  
14 controversy exists between the parties within the meaning of 28 U.S.C. § 2201.

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

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

#### 19                                   **PARTIES**

20          9.     Plaintiff Center for Biological Diversity (“the Center”) is a national non-  
21 profit conservation organization with over 84,000 members dedicated to the protection  
22 of biodiversity and ecosystems throughout the world. The Center works through  
23 science, law, and creative media to secure a future for all species, great and small,  
24 hovering on the brink of extinction, with a focus on protecting the lands, waters and  
25 climate that species need to survive. The Center has offices in California and over  
26 17,500 members across the state, and it is actively involved in species and habitat  
27 protection in the California desert, including on the federal land at issue in this case.  
28

1           10. Plaintiff Defenders of Wildlife (“Defenders”) is a nonprofit corporation  
2 with members and supporters across the nation, including many in California.  
3 Defenders is dedicated to the protection of all native wild animals and plants in their  
4 natural communities. The organization focuses its programs on what scientists  
5 consider two of the most serious environmental threats to the planet: the accelerating  
6 rate of extinction of species and the associated loss of biological diversity, and habitat  
7 alteration and destruction. These programs encourage protection of entire ecosystems  
8 and interconnected habitats, including the Mojave Desert, while protecting wildlife  
9 that serve as indicator species for ecosystem health.

10           11. Plaintiff Sierra Club is a national nonprofit organization with sixty-three  
11 chapters and more than 830,000 members dedicated to exploring, enjoying, and  
12 protecting the wild places of the earth; to practicing and promoting the responsible use  
13 of the earth’s ecosystems and resources; to educating and enlisting humanity to protect  
14 and restore the quality of the natural and human environment; and to using all lawful  
15 means to carry out these objectives. Led by the Sierra Club’s San Geronio Chapter,  
16 the Sierra Club has worked to conserve and restore the Mojave Desert for decades.

17           12. Plaintiffs have members who live, work, and recreate in the Mojave  
18 Desert region in the vicinity of the Cadiz Water Project. Plaintiffs’ members and  
19 supporters enjoy, on a continuing basis, public lands within Mojave Trails National  
20 Monument and other public lands that will be affected by the Cadiz Water Project. In  
21 a land where water is scarce and precious, Plaintiffs’ members have visited freshwater  
22 springs that will be impacted by the Cadiz Water Project, including Bonanza Springs,  
23 to observe rare plants and animals and find solace and renewal, and they intend to  
24 continue to do so in the future. Plaintiffs’ members derive professional, scientific,  
25 aesthetic, recreational, and educational enjoyment from the natural ecosystems that  
26 these desert springs and other riparian areas support.

27           13. Plaintiffs have been, are being, and will continue to be adversely affected  
28 and irreparably injured by BLM’s decision to issue Cadiz rights-of-way to convey

1 water through the oil and gas pipeline at issue. BLM's decision allows Cadiz to carry  
2 out the Cadiz Water Project. The interests of Plaintiffs' members described above  
3 will be injured not only by the noise, pollution, and adverse impacts to plants and  
4 wildlife associated with construction, operation, and maintenance of the Cadiz Water  
5 Project, including the Project's pipelines and other infrastructure, but also by the  
6 draw-down of the aquifers that will result from operation of the Project. The drying of  
7 desert springs and riparian areas, as well as the air pollution caused by excessive  
8 drying of desert lakebeds, will cause Plaintiffs' and their members to suffer actual  
9 injury-in-fact that is both concrete and particularized.

10 14. Plaintiffs also have members who live in urban areas that could receive  
11 water from the Cadiz Water Project and are justifiably concerned about the health  
12 risks associated with using and consuming water from the Cadiz Water Project, which  
13 will contain hexavalent chromium and other heavy metals. The BLM decisions at  
14 issue harm Plaintiffs and their members, because they allow Cadiz to profit by  
15 privatizing and selling public water resources that are unsafe for urban uses.

16 15. Plaintiffs are non-profit advocacy organizations whose organizational  
17 missions have been, are being, and will continue to be frustrated by BLM's illegal  
18 decision to issue Cadiz rights-of-way across Mojave Trails National Monument and  
19 other protected public land for the Cadiz Water Project. BLM's illegal decision has  
20 caused Plaintiffs to divert their organizational resources to ensure that the Cadiz Water  
21 Project does not proceed. Plaintiffs' injuries described above are caused by the BLM  
22 decision challenged herein, because BLM's decision allows Cadiz to undertake  
23 harmful activities that would otherwise be illegal or impracticable. Plaintiffs' injuries  
24 would be redressed by the relief sought herein. Plaintiffs have no adequate remedy at  
25 law.

26 16. Defendant Bureau of Land Management is the administrative agency  
27 within the Department of Interior responsible for managing the public land  
28

1 surrounding much of the Cadiz Water Project and underlying much of the rights-of-  
2 way at issue.

3 17. Defendant Debra Haaland is Secretary of the U.S. Department of Interior  
4 and sued in her official capacity as such.

5 18. Defendant Nada Culver is Senior Advisor to the Secretary of the  
6 Department of the Interior, exercising the delegated authority of the BLM Director,  
7 and sued in her official capacity as such.

8 19. Defendant Karen Mouritsen BLM's California State Director and sued in  
9 her official capacity as such.

10 20. Defendant Andrew Archuleta is the District Manager for BLM's  
11 California Desert District and sued in his official capacity as such.

12 21. Defendant Michael Ahrens is the Field Manager for BLM's Needles  
13 Field Office and sued in his official capacity as such.

## 14 **LEGAL BACKGROUND**

### 15 **The Federal Land Policy and Management Act**

16 22. Congress enacted the Federal Land Policy and Management Act in 1973  
17 to ensure that federal public land administered by BLM is "managed in a manner that  
18 will protect the quality of scientific, scenic, historic, ecological, environmental, air and  
19 atmospheric, water resource, and archeological values." 43 U.S.C. § 1701(a)(8).  
20 FLPMA requires BLM to "take any action necessary to prevent unnecessary or undue  
21 degradation of the lands." *Id.* § 1732(b).

22 23. FLPMA finds the deserts of southern California are an especially rich  
23 and unique environment containing "historical, scenic, archeological, environmental,  
24 biological, cultural, scientific, educational, recreational, and economic resources." 43  
25 U.S.C. § 1781(a)(1). Though vast, the statute recognizes California's deserts are  
26 "extremely fragile, easily scarred, and slowly healed." *Id.* § 1781(a)(2). FLPMA  
27 finds, "the California desert environment and its resources, including certain rare and  
28 endangered species of wildlife, plants, and fishes, and numerous archeological and

1 historic sites, are seriously threatened by air pollution . . . and pressures of increased  
2 use.” *Id.* § 1781(a)(3).

3 24. To protect southern California’s deserts for future generations, FLPMA  
4 designated 25 million acres of federal public land as the California Desert  
5 Conservation Area (CDCA). 43 U.S.C. § 1781(c). The CDCA was designated “to  
6 provide for the immediate and future protection and administration of the public lands  
7 in the California desert within the framework of a program of multiple use and  
8 sustained yield, and the maintenance of environmental quality.” *Id.* § 1781(b).  
9 FLPMA directs the Secretary of the Interior to develop a “comprehensive, long-range  
10 plan for the management, use, development, and protection of the public lands within  
11 the [CDCA].” *Id.* § 1781(d). Exercising this authority, BLM has adopted the  
12 California Desert Conservation Area Management Plan of 1980 (CDCA Plan), as  
13 amended by both the Northern and Eastern Colorado Desert Coordinated Management  
14 Plan, and the Desert Renewable Energy Conservation Plan (DRECP). BLM  
15 regulations require “[a]ll future resource management authorizations and actions” to  
16 “conform” with these plans. 43 C.F.R. § 1610.5-3(a) (2017).

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

21 26. Prior to issuing a right-of-way for a water pipeline under FLPMA, the  
22 applicant must submit substantial analysis, and the Secretary of Interior, acting  
23 through BLM, must make a number of findings. For example, “prior to granting or  
24 issuing a right-of-way . . . for a new project which may have a significant impact on  
25 the environment,” BLM “shall require the applicant to submit a plan for construction,  
26 operation, and rehabilitation for such right-of-way” that complies with BLM’s terms  
27 and conditions. 43 U.S.C. § 1764(d). BLM’s terms and conditions must, among other  
28 things, “minimize damage to scenic and esthetic values and fish and wildlife habitat



1 and otherwise protect the environment”; and “protect Federal property and economic  
2 interests.” 43 U.S.C. § 1765.

### 3 **The National Environmental Policy Act**

4 27. NEPA declares “it is the continuing policy of the Federal Government  
5 . . . to use all practicable means and measures . . . to create and maintain conditions  
6 under which man and nature can exist in productive harmony, and fulfill the social,  
7 economic, and other requirements of present and future generations of Americans.”  
8 42 U.S.C. § 4331(a).

9 28. To effectuate this policy, NEPA requires federal agencies to prepare an  
10 “environmental impact statement” (EIS) for all “major Federal actions significantly  
11 affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). An EIS  
12 must set forth:

- 13 (i) the environmental impact of the proposed action,
- 14 (ii) any adverse environmental effects which cannot be avoided should
- 15 the proposal be implemented,
- 16 (iii) alternatives to the proposed action,
- 17 (iv) the relationship between local short-term uses of man’s environment
- 18 and the maintenance and enhancement of long-term productivity, and
- 19 (v) any irreversible and irretrievable commitments of resources which
- 20 would be involved in the proposed action should it be implemented.

21 *Id.*

22 29. NEPA created within the Executive Office of the President the Council  
23 on Environmental Quality (CEQ) “to formulate and recommend national policies to  
24 promote the improvement of the quality of the environment.” 42 U.S.C. § 4342.  
25 CEQ promulgated regulations to assist federal agencies in implementing NEPA in  
26 1978. *See* 40 C.F.R. §§ 1500–1508 (1978). Although CEQ updated these regulations  
27 in 2020, the 1978 CEQ regulations govern BLM’s issuance of the rights-of-way in  
28 this case, because the NEPA review process began prior to September 14, 2020. *See*  
Update to the Regulations Implementing the Procedural Provisions of the National



1 Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020); 40 CFR 1506.13  
2 (2020).

3 30. Under CEQ's regulations, if a proposed agency action is not likely to  
4 have significant effects or when the significance of the effects is unknown, the agency  
5 must prepare an "environmental assessment." 40 C.F.R. § 1508.9 (1978). The  
6 environmental assessment must "[b]riefly provide sufficient evidence and analysis for  
7 determining whether to prepare an environmental impact statement or a finding of no  
8 significant impact;" and "include brief discussions of the need for the proposal, of  
9 alternatives, [and] of the environmental impacts of the proposed action and  
10 alternatives[.]" *Id.*

11 31. As part of its environmental review under NEPA, an agency is required  
12 to evaluate the indirect effects of the proposed action. 40 C.F.R. §§ 1502.16(b)  
13 (1978), 1508.8(b), 1508.25(c). "Indirect effects" are "caused by the action and are  
14 later in time or farther removed in distance, but are still reasonably foreseeable." *Id.*  
15 § 1508.8(b). The agency's NEPA analysis also must assess the cumulative impacts of  
16 the action "result[ing] from the incremental impact of the action when added to other  
17 past, present, and reasonably foreseeable future actions." *Id.* §§ 1508.7,  
18 1508.27(b)(7).

19 32. Pursuant to the CEQ regulations, each federal agency is also required to  
20 identify categories of actions which do not individually or cumulatively have a  
21 significant effect on the human environment. 40 C.F.R. §§ 1507.3(b)(2)(ii) (1978),  
22 1508.4.

23 33. The Department of Interior (Department) has promulgated regulations  
24 establishing "procedures for the Department, and its constituent bureaus, to use for  
25 compliance" with NEPA and CEQ's implementing regulations. 43 C.F.R. § 46.10  
26 (2008). The Department's regulations identify actions that the Department concludes  
27 normally do not have a significant effect on the human environment and are  
28 "categorially excluded" from NEPA. *Id.* § 46.210.

1           34. The Department has established additional NEPA policy in part 516 of its  
2 “Departmental Manual” (DM). Chapter 11 of Departmental Manual part 516 specifies  
3 the additional NEPA procedures applicable to BLM. Chapter 11.9 lists additional  
4 BLM “Actions Eligible for Categorical Exclusion (CX)” from NEPA.

5           35. If an agency determines that a categorical exclusion identified in its  
6 agency NEPA procedures covers a proposed action, CEQ’s regulations require  
7 agencies identify any “extraordinary circumstances in which a normally excluded  
8 action may have a significant environmental effect,” 40 C.F.R. § 1508.4 (1978), in  
9 which case the agency must prepare an EIS or an EA with a “finding of no significant  
10 impact.”

11           36. The Department’s NEPA regulations provide that “extraordinary  
12 circumstances . . . exist for individual actions within categorical exclusions that may  
13 meet” the following criteria:

14           (a) Have significant impacts on public health or safety.

15           (b) Have significant impacts on such natural resources and unique  
16 geographic characteristics as historic or cultural resources; park,  
17 recreation or refuge lands; wilderness areas; wild or scenic rivers;  
18 national natural landmarks; sole or principal drinking water aquifers;  
19 prime farmlands; wetlands; floodplains; national monuments; migratory  
20 birds; and other ecologically significant or critical areas.

21           (c) Have highly controversial environmental effects or involve  
22 unresolved conflicts concerning alternative uses of available resources.

23           (d) Have highly uncertain and potentially significant environmental  
24 effects or involve unique or unknown environmental risks.

25           (e) Establish a precedent for future action or represent a decision in  
26 principle about future actions with potentially significant environmental  
27 effects.

28           (f) Have a direct relationship to other actions with individually  
insignificant but cumulatively significant environmental effects.

(g) Have significant impacts on properties listed, or eligible for listing, on  
the National Register of Historic Places as determined by the bureau.

(h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species.

(i) Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

(j) Have a disproportionately high and adverse effect on low income or minority populations.

(k) Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites.

(l) Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species.

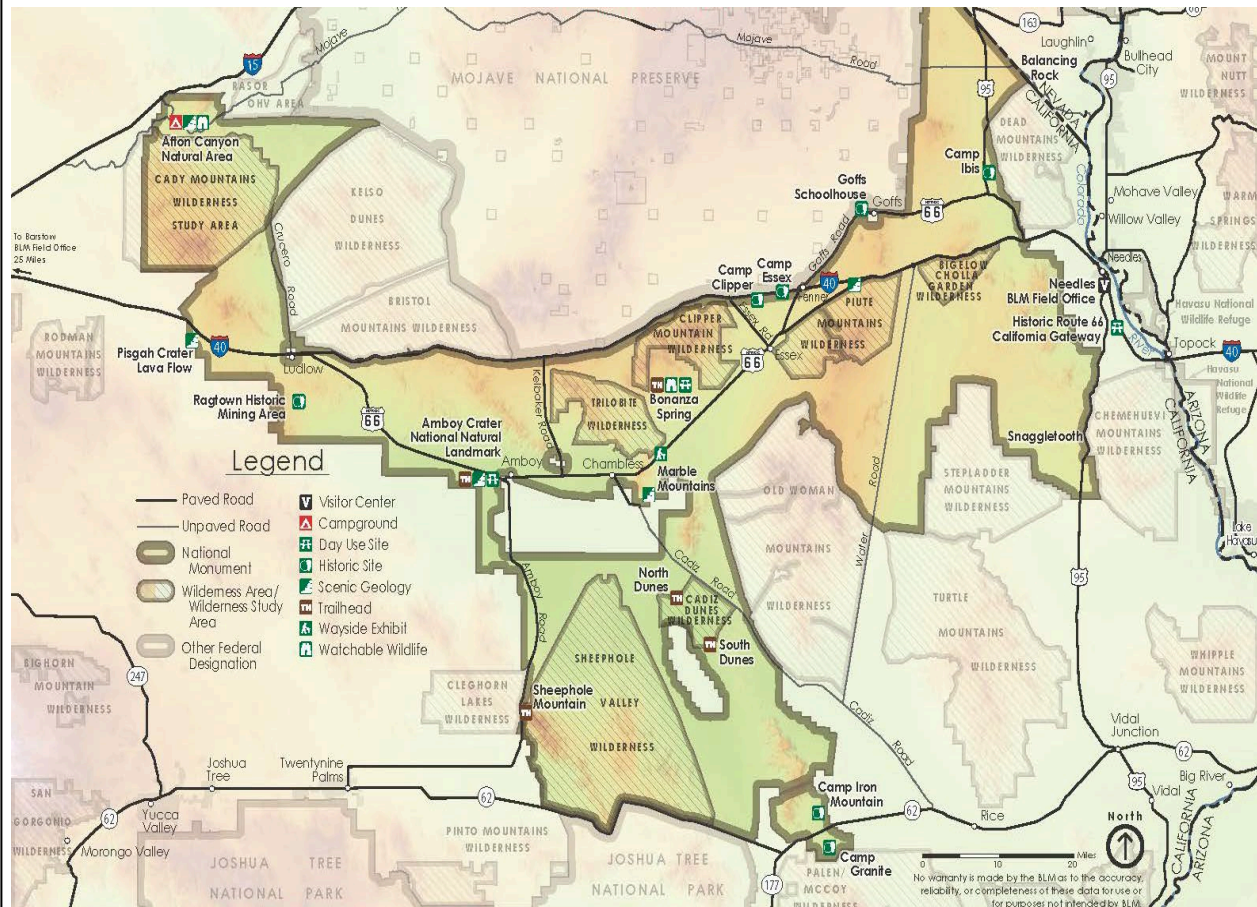
43 C.F.R. § 46.215 (2008) (citations omitted).

37. The Department's NEPA regulations confirm, "[a]ny action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in section 46.215; if it does, further analysis and environmental documents must be prepared for the action." *Id.* § 46.205(c)(1). BLM must "work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the section 46.215 extraordinary circumstances." *Id.* § 46.205(c)(2).

## FACTUAL BACKGROUND

### Mojave Trails National Monument

38. President Obama established Mojave Trails National Monument by presidential proclamation on February 12, 2016. *See* Pres. Proc. No. 9395, 81 Fed. Reg. 8,371 (Feb. 18, 2016). Stretching from Joshua Tree National Park north to Mojave National Preserve, the Monument encompasses 1.6 million acres of federal land administered by BLM within the CDCA. A BLM map of the Monument is reproduced below.



39. The presidential proclamation describes the Mojave Trails area as “a stunning mosaic of rugged mountain ranges, ancient lava flows, and spectacular sand dunes.” 81 Fed. Reg. at 8,371. The proclamation finds the monument is “an invaluable treasure and will continue to serve as an irreplaceable national resource for geologists, ecologists, archaeologists, and historians for generations to come.” *Id.* It concludes “protection of the Mojave Trails area will preserve its cultural, prehistoric, and historic legacy and maintain its diverse array of natural and scientific resources, ensuring that the prehistoric, historic, and scientific values of this area remain for the benefit of all Americans.” *Id.* at 8,374.

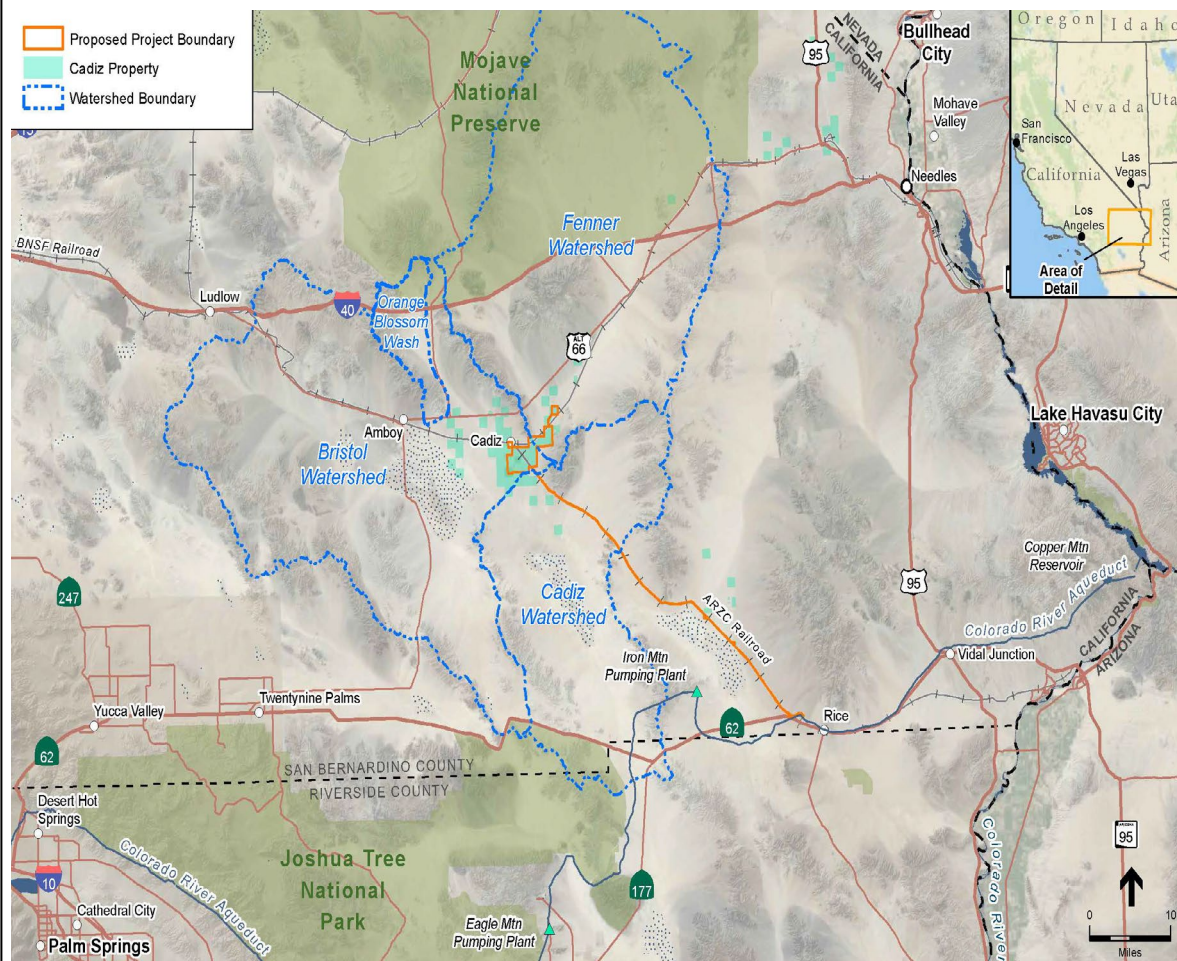
40. A complex network of ancient underground aquifers supports a number of ecologically significant springs, seeps and other riparian areas in and near Mojave Trails National Monument. The proclamation establishing Mojave Trails National Monument specifically identifies “the area’s scarce springs and riparian areas such as



Afton Canyon, Chuckwalla Spring, Hummingbird Spring, Barrel Spring, and Fenner Spring” as ecological objects warranting protection. 81 Fed. Reg. at 8,372.

### The Cadiz Water Project

41. Cadiz, Inc. and its subsidiary Cadiz Real Estate, LLC (collectively, Cadiz) are a for-profit corporations that have acquired over 34,000 acres of private land in the Mojave Desert, most of which is located within the large rectangular “donut hole” at the center of Mojave Trails National Monument. Cadiz’s property spans portions of the Fenner, Cadiz, and Bristol Valley watersheds, and it sits above the same underground aquifers that feed springs, seeps and riparian areas within the Monument, Mojave National Preserve, Joshua Tree National Park, and other public lands. A map depicting the Cadiz’s property (outlined in orange) in relation to the three watersheds is reproduced below.



1           42. Cadiz seeks to construct and operate the “Cadiz Valley Water  
2 Conservation, Recovery and Storage Project” or “Cadiz Water Project.” The Cadiz  
3 Water Project proposes to extract an average of 50,000 acre feet (an amount  
4 equivalent to 16.3 billion gallons) of groundwater every year for 50 years from the  
5 aquifers underlying Cadiz’ property. Cadiz seeks to profit by selling the extracted  
6 groundwater to municipal water districts and other users.

7           43. The Cadiz Water Project will extract far more groundwater from the  
8 underlying aquifers than is replenished naturally each year, causing overdraft.  
9 Overall, the Cadiz Water Project would lower groundwater levels by 80 feet in the  
10 aquifer system through unsustainable pumping, and it could take 390 years after the  
11 cessation of pumping for the aquifers to return to their current equilibrium.

12           44. The Cadiz Water Project will draw down the underlying aquifers and  
13 dewater springs, seeps, and other riparian areas in Mojave Trails National Monument  
14 and other public lands. The retreating aquifer will also desiccate desert “playa”  
15 lakebeds like Bristol and Cadiz Dry Lakes, resulting in toxic air pollution from  
16 windswept sediments akin to what has plagued the Owens Valley to the north ever  
17 since large-scale water diversions to Los Angeles dried Owens Lake a century ago.

18           45. The desert aquifers that the Cadiz Water Project intends to draw down  
19 contain hexavalent chromium and other naturally occurring heavy metals. Experts  
20 have warned that that water produced from the Cadiz Water Project will contain  
21 hexavalent chromium at levels that far exceed state and federal safety guidelines.

22           46. For the Cadiz Water Project to proceed, Cadiz must secure a right-of-way  
23 across Mojave Trails National Monument and other BLM-managed public lands that  
24 surround its property for a water pipeline capable of conveying water from the  
25 wellfield to an existing aqueduct and or other water conveyance offsite. A water  
26 pipeline across BLM-managed public lands with sufficient capacity is a critical  
27 component of the Cadiz Water Project, without which the Project is not economically  
28 viable and cannot proceed.

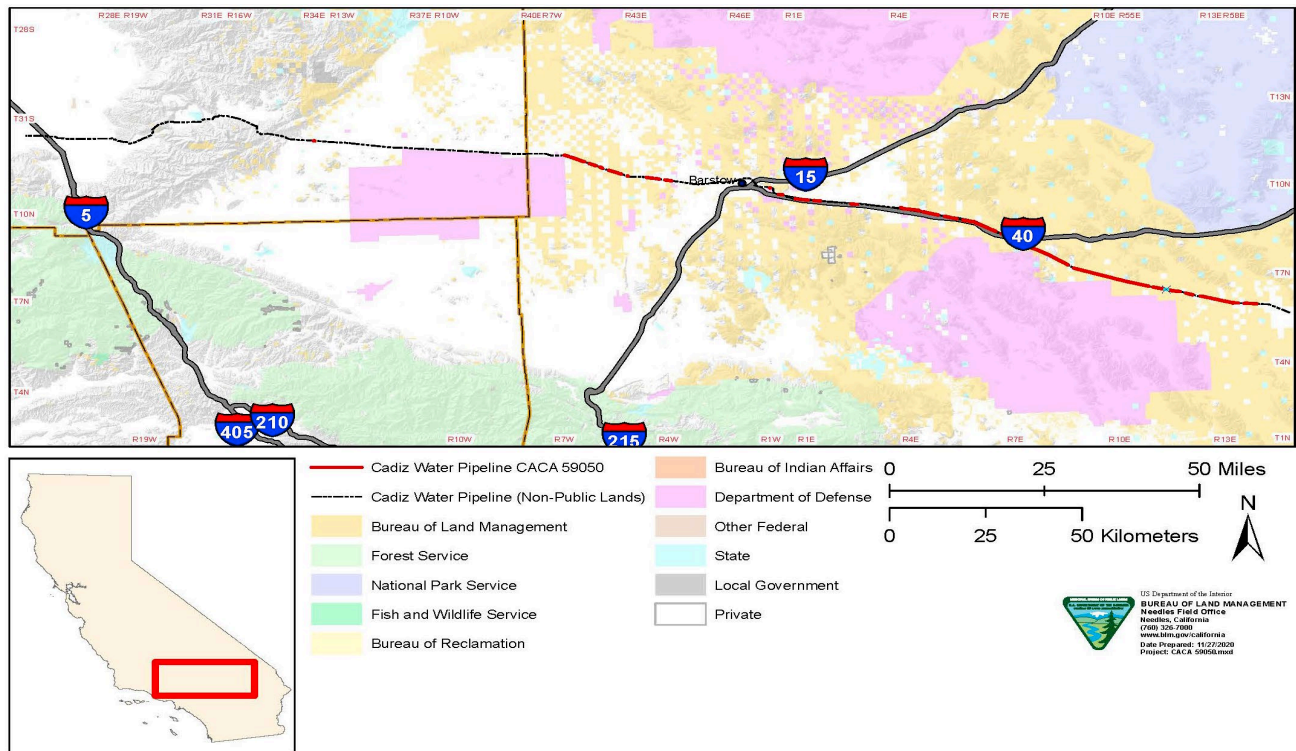
1           47. In September 2008, Cadiz leased a portion of a railroad right-of-way held  
2 by the Arizona & California Railroad (ARZC) that extends from Cadiz's property  
3 southeast through Mojave Trails National Monument to the town of Rice. In 2012,  
4 Cadiz proposed to construct a seven-foot-wide, 43-mile-long water pipeline within the  
5 ARZC right-of-way linking the Cadiz Water Project's wellfield to the Colorado River  
6 Aqueduct. In June 2019, Cadiz re-aligned a portion of its proposed southern pipeline  
7 route to deviate from the ARZC right-of-way and thereby avoid a 200-foot-wide strip  
8 of land in Section 36, Township 5 North, Range 14 East that is owned by the State of  
9 California and administered by the California State Lands Commission. In 2020,  
10 Cadiz applied to BLM for a new, 41-foot right-of-way under FLPMA to accommodate  
11 the proposed realignment. Cadiz's application to BLM for this 41-foot right-of-way is  
12 pending. Cadiz does not currently hold the necessary rights-of-way to construct a  
13 southern pipeline linking its property to the Colorado River Aqueduct.

14           48. In 2011, Cadiz negotiated the purchase of an oil and gas pipeline owned  
15 by the El Paso Natural Gas Company that stretches from Cadiz's property northwest  
16 to Barstow and all the way to Interstate 5 near the Los Angeles Grapevine, crossing  
17 the California Aqueduct, the Los Angeles Aqueduct, and the Mojave River Pipeline.  
18 Cadiz proposes to convert this oil and gas pipeline, which has been unused since  
19 2004, into a water pipeline capable of conveying up to 30,000 acre-feet from the  
20 Cadiz Water Project per year. Cadiz estimates it will cost approximately \$100 million  
21 to convert the pipeline to make it operational for delivery of groundwater.

22           49. The oil and gas pipeline crosses approximately 53.5 miles of BLM lands  
23 located in San Bernardino and Kern Counties, California. The portion of the pipeline  
24 that crosses BLM lands is located within a right-of-way granted to El Paso Natural  
25 Gas Company under the Mineral Leasing Act of 1920, 30 U.S.C. § 185. A map  
26 depicting in red the portion of the pipeline that crosses BLM land is reproduced  
27  
28



below.



50. On July 30, 2020, Cadiz applied to BLM (1) to reassign El Paso Natural Gas's Mineral Leasing Act right-of-way to Cadiz, and (2) to convert the Mineral Leasing Act right-of-way to a FLPMA right-of-way. Cadiz's application confirmed the requested rights-of-way would allow the Cadiz Water Project to proceed. The application described the need for the proposed "project" broadly as to "increase flexibility and resiliency of the water supply" through "enhanced conveyance capacity[.]" The application explained that the "probable effects" of the "project" would include "open[ing] up additional, diversified, [water] supply options" for water users.

51. On December 11, 2020, BLM concluded the conversion of the Mineral Leasing Act right-of-way to a FLPMA right-of-way was categorically excluded from NEPA review under exclusion 11.9(E)(12) of the Department of the Interior's Departmental Manual Part 516.

1           52. Exclusion 11.9(E)(12) provides for a categorical exclusion from NEPA,  
2 unless one or more extraordinary circumstances apply, for “[g]rants of right-of-way  
3 wholly within the boundaries of other compatibly developed rights-of-way.” 516 DM  
4 11.9(E)(12). BLM reasoned that the categorical exclusion applied because “[t]he  
5 water pipeline that would be authorized under FLPMA is the same existing facilities  
6 as the existing El Paso Natural Gas Pipeline. No new construction or modification is  
7 proposed.” BLM did not explain how a pipeline that could not, under the Mineral  
8 Leasing Act, be used to transport water, was compatible with grant of a right-of-way  
9 allowing the use of the pipeline to carry water. Nor did it explain its reasoning for its  
10 assumption that no construction or modification of the pipeline was required to  
11 convert it from gas to water.

12           53. BLM determined that no extraordinary circumstances applied which  
13 would make the project ineligible for a categorical exclusion. BLM reasoned that  
14 there would be no significant environmental impacts because “[t]he FLPMA [right-of-  
15 way] would utilize existing infrastructure and right-of-way footprint and would not  
16 include any new construction or ground disturbing activities.” BLM similarly  
17 determined that the right-of-way would have no impact on the Mojave Trails National  
18 Monument because “[w]hile portions of the project area are within the Mojave Trails  
19 National Monument, the FLPMA [right-of-way] would not include any new  
20 construction or ground disturbing activities on public lands.” In its findings, BLM did  
21 not mention that the purpose of the pipeline was to transport water pumped from the  
22 Cadiz Water Project, and it did not consider the effect that pumping would have on the  
23 desert environment.

24           54. BLM did not address whether the reassignment of El Paso Natural Gas’s  
25 Mineral Leasing Act right-of-way to Cadiz is subject to NEPA review.

26           55. By letter dated December 16, 2020, Plaintiffs Defenders and the Center  
27 objected. They explained that conversion and use of the oil and gas pipeline for water  
28 would have significant effects on the environment. They also highlighted that the new

1 right-of-way “would allow extraction of vast amounts of water from the desert  
 2 ecosystem impacting many resources.” They explained that several extraordinary  
 3 circumstances apply that trigger the need for BLM to analyze the project under NEPA,  
 4 including that the Cadiz Water Project would be a direct effect of issuing the right-of-  
 5 way, and that pumping from the Cadiz Water Project would impact “a cultural  
 6 landscape with sacred sites, wetland habitat and the numerous species that rely on it.”  
 7 They also pointed out that the impacts of the Cadiz Water Project would be highly  
 8 controversial; have highly uncertain and potentially significant environmental effects  
 9 or involve unique or unknown environmental risks; have significant impacts on  
 10 species listed, or proposed to be listed, on the List of Endangered or Threatened  
 11 Species due to impacts to the threatened desert tortoise; and could violate S.B. 307,  
 12 the State Water Resources Control Board’s dredge and fill procedures, the California  
 13 Endangered Species Act, and California Fish and Game Code Section 1600.

14 56. BLM did not respond to the Plaintiffs’ letter or conduct further analysis  
 15 under NEPA. On December 21, 2020, BLM provided Cadiz “fully executed Mineral  
 16 Leasing Act (MLA) right-of-way (ROW) grant CACA-059168,” assigning El Paso  
 17 Natural Gas’s Mineral Leasing Act right-of-way to Cadiz, along with “Federal Land  
 18 Policy and Management Act (FLPMA) ROW grant CACA-059050,” converting the  
 19 Mineral Leasing Act right-of-way to a FLPMA right-of-way.

## 20 **FIRST CLAIM FOR RELIEF**

### 21 **(Violations of NEPA)**

22 57. Plaintiffs re-allege, as if fully set forth herein, the allegations contained in  
 23 the preceding paragraphs.

24 58. BLM’s compliance with NEPA is subject to judicial review under the  
 25 APA. The APA provides that courts must “hold unlawful and set aside agency action,  
 26 findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion,  
 27 or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).  
 28

1           59. BLM's December 21, 2020 issuance of Mineral Leasing Act right-of-way  
2 CACA-059168 and Federal Land Policy and Management Act right-of-way CACA-  
3 059050 are "final agency actions" subject to judicial review under the Administrative  
4 Procedure Act (APA). 5 U.S.C. § 704.

5           60. BLM's issuance of Mineral Leasing Act right-of-way CACA-059168 and  
6 Federal Land Policy and Management Act right-of-way CACA-059050 is a major  
7 Federal action significantly affecting the quality of the human environment, within the  
8 meaning of NEPA. BLM violated NEPA by failing to prepare an EIS in connection  
9 with its decision to issue these rights-of-way.

10           61. BLM's determination that right-of-way CACA-059050 is categorically  
11 excluded from NEPA review is arbitrary, capricious, an abuse of discretion, and not in  
12 accordance with law. BLM may only convert existing rights-of-way without NEPA  
13 review "where no new facilities or other changes are needed," 516 DM 11.9(E)(11),  
14 and BLM may only exclude grants of right-of-way from NEPA review when they are  
15 within the boundaries of other "compatibly developed" rights-of-way, 516 DM  
16 11.9(E)(12). Right-of-way CACA-059050 is a conversion of a Mineral Leasing Act  
17 right-of-way to a FLPMA right-of-way which allows Cadiz to convert a pipeline  
18 transporting natural gas to transporting water. New facilities or other changes are  
19 needed to make this change, and the Mineral Leasing Act natural gas pipeline right-of-  
20 way is not "compatibly developed" with a FLPMA pipeline right-of-way allowing  
21 transport of water. BLM had no rational basis to rely on a categorical exclusion from  
22 NEPA to avoid environmental review of the right-of-way conversion.

23           62. BLM's determination that no extraordinary circumstances apply  
24 precluding the use of a categorical exclusion from NEPA for right-of-way CACA-  
25 059050 is arbitrary, capricious, an abuse of discretion, and not in accordance with law.  
26 There will be significant construction impacts associated with converting the oil and  
27 gas pipeline to make it operational for delivery of water. In addition, the right-of-way  
28 is a part of the Cadiz Water Project, and the Cadiz Water Project's effects are effects

1 of the right-of-way. The impacts of the Cadiz Water Project will be significant, highly  
 2 controversial, have highly uncertain and potentially significant environmental effects  
 3 or involve unique or unknown environmental risks; have a direct relationship to other  
 4 actions with individually insignificant but cumulatively significant environmental  
 5 effects; have significant impacts on species listed, or proposed to be listed, on the List  
 6 of Endangered or Threatened Species list; and would violate State laws imposed for  
 7 the protection of the environment. Extraordinary circumstances therefore apply,  
 8 precluding BLM's use of a categorical exclusion to avoid NEPA review. 43 C.F.R.  
 9 § 46.215(b), (c), (d), (f), (h), (i).

10 63. BLM's failure to conduct any NEPA analysis on its assignment of  
 11 Mineral Leasing Act right-of-way CACA-059168 to Cadiz is arbitrary, capricious, an  
 12 abuse of discretion, or otherwise not in accordance with law. When the Bureau re-  
 13 assigns an existing right-of-way, it must conduct NEPA review unless "no additional  
 14 rights are conveyed beyond those granted by the original authorizations." 516 DM  
 15 11.9(E)(9). Because BLM conveyed additional rights through its issuance of Federal  
 16 Land Policy and Management Act right-of-way CACA-059050 to allow Cadiz to  
 17 transport water through the pipeline, it was required to conduct NEPA review on its  
 18 assignment of Mineral Leasing Act right-of-way CACA-05916.

## 19 **SECOND CLAIM FOR RELIEF**

### 20 **(Violations of FLPMA)**

21 64. Plaintiffs re-allege, as if fully set forth herein, the allegations contained in  
 22 the preceding paragraphs.

23 65. BLM's compliance with FLPMA is subject to judicial review under the  
 24 APA.

25 66. BLM's issuance of Mineral Leasing Act right-of-way CACA-059168 and  
 26 Federal Land Policy and Management Act right-of-way CACA-059050 is arbitrary,  
 27 capricious, an abuse of discretion, and otherwise not in accordance with FLPMA.  
 28



1           67. First, FLPMA requires BLM to “take any action necessary to prevent  
2 unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b). For areas  
3 within the CDCA, FLPMA also requires BLM to ensure “immediate and future  
4 protection and administration of the public lands in the California desert” and “the  
5 maintenance of environmental quality.” 43 U.S.C. § 1781(b). BLM’s issuance of  
6 Mineral Leasing Act right-of-way CACA-059168 and Federal Land Policy and  
7 Management Act right-of-way CACA-059050 will cause unnecessary and undue  
8 degradation of Mojave Trails National Monument and other public land administered  
9 by BLM. BLM’s failure to prevent this unnecessary and undue degradation or to  
10 ensure protection of these public lands and the maintenance of environmental quality  
11 violates FLPMA.

12           68. Second, FLPMA provides “prior to granting or issuing a right-of-way  
13 . . . for a new project which may have a significant impact on the environment,” BLM  
14 “shall require the applicant to submit a plan for construction, operation, and  
15 rehabilitation for such right-of-way” that complies with BLM’s terms and conditions.  
16 43 U.S.C. § 1764(d). The Cadiz Water Project will have a significant impact on the  
17 environment. BLM violated FLPMA by failing to specify terms and conditions that  
18 “minimize damage to scenic and esthetic values and fish and wildlife habitat and  
19 otherwise protect the environment” and “protect Federal property and economic  
20 interests.” 43 U.S.C. § 1765.

21           69. Third, BLM’s decisions must conform to the California Desert  
22 Conservation Area Plan, as amended by the Desert Renewable Energy Conservation  
23 Plan (DRECP). The DRECP requires that “for any activity that proposes to utilize  
24 groundwater resources,” “[a] Water (Groundwater) Supply Assessment shall be  
25 prepared in conjunction with the activity’s NEPA analysis and prior to an approval or  
26 authorization.” The DRECP explains that “[t]he purpose of the Water Supply  
27 Assessment is to determine whether over-use or over-draft conditions exist within the  
28 project basin(s), and whether the project creates or exacerbates these conditions.”

1 BLM's issuance of Mineral Leasing Act right-of-way CACA-059168 and Federal  
2 Land Policy and Management Act right-of-way CACA-059050, without conducting a  
3 Groundwater Supply Assessment, violated the DRECP and FLPMA.

### 4 **THIRD CLAIM FOR RELIEF**

#### 5 **(Violation of the Proclamation Establishing** 6 **Mojave Trails National Monument)**

7 70. Plaintiffs re-allege, as if fully set forth herein, the allegations contained in  
8 the preceding paragraphs.

9 71. BLM's compliance with the proclamation establishing the Mojave Trails  
10 National Monument is subject to judicial review under the APA.

11 72. The Mojave Trails National Monument Proclamation requires that BLM  
12 may only allow assignments of and modifications to pipelines located within the  
13 Mojave Trails National Monument if they are "consistent with the care and  
14 management" of the Monument objects. 81 Fed. Reg. at 8,375. The Proclamation  
15 similarly provides that existing pipelines within the Monument "may be expanded . . .  
16 only to the extent consistent with the care and management" of Monument objects.  
17 *Id.*

18 73. The Mojave Trails National Monument Proclamation also directs the  
19 Secretary of Interior to "work with appropriate State officials to ensure the availability  
20 of water resources, including groundwater resources, needed for monument purposes."  
21 81 Fed. Reg. at 8,375.

22 74. BLM's issuance of Mineral Leasing Act right-of-way CACA-059168 and  
23 Federal Land Policy and Management Act right-of-way CACA-059050 is inconsistent  
24 with the care and management of monument objects and violates the Proclamation's  
25 requirement to ensure availability of water resources, because the rights-of-way will  
26 allow Cadiz to pump unsustainable amounts of groundwater that otherwise support  
27 monument objects including springs, seeps, and riparian areas, and the plants and  
28 wildlife that depend on them, in the Mojave Trails National Monument. BLM's



issuance of these rights-of-way therefore violated the proclamation establishing the Mojave Trails National Monument and was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Issue a declaratory judgment that BLM violated the law as described in this complaint;

B. Vacate and set aside Mineral Leasing Act right-of-way CACA-059168 and Federal Land Policy and Management Act right-of-way CACA-059050;

C. Enjoin BLM from authorizing or otherwise allowing Cadiz to undertake any activities within the rights-of-way at issue;

D. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees and costs;

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

F. Retain continuing jurisdiction of this matter until BLM fully remedies the violations of law complained of herein.

Respectfully submitted,

Dated: March 23, 2021

/s/ Gregory C. Loarie  
GREGORY C. LOARIE (CA Bar No. 215859)  
EARTHJUSTICE  
50 California Street, Suite 500  
San Francisco, CA 94111  
T: (415) 217-2000 • F: (415) 217-2040  
E: gloarie@earthjustice.org

ELIZABETH B. FORSYTH (CA Bar No. 288311)\*  
EARTHJUSTICE  
810 3rd Ave #610  
Seattle, WA 98104  
T: (206) 531-0841 • F: (206) 343-1526  
E: eforsyth@earthjustice.org  
\*admitted in California; not admitted in Washington

*Counsel for All Plaintiffs*

1 LISA T. BELENKY (CA Bar No. 203225)  
2 ARUNA M. PRABHALA (CA Bar No. 278865)  
3 CENTER FOR BIOLOGICAL DIVERSITY  
4 1212 Broadway Street, Suite 800  
5 Oakland, CA 94612  
6 T: (510) 844-7100 • F: (510) 844-7150  
7 E: lbelenky@biologicaldiversity.org  
8 aprabhala@biologicaldiversity.org

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*Counsel for Plaintiff Center for Biological Diversity*