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Congress of the United States  
House of Representatives  
Washington, DC 20515-0504

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NATURAL RESOURCES  
SUBCOMMITTEE ON FEDERAL LANDS  
CHAIRMAN  
SUBCOMMITTEE ON  
WATER, POWER, AND OCEANS  
COMMITTEE ON THE BUDGET

March 1, 2017

Hon. Ryan Zinke  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C. St.  
Washington, D.C. 20240

Dear Secretary Zinke:

We write to urge you to take immediate action concerning the Cadiz Water Conservation Recovery and Storage Project in Southern California. This water infrastructure project is unique in that it can conserve enough water for 400,000 people per year without any negative environmental impacts. The project also relies on zero public funding, but will create nearly \$1 billion in economic stimulus through investments in local businesses and create 5,900 new jobs, ten percent of which are reserved for veterans.

Unfortunately, these jobs and this desperately-needed water have been slowed by actions taken by the Bureau of Land Management (BLM) concerning the project's use of a right-of-way granted pursuant to the General Railroad Right-of-Way Act of 1875. Despite decades of precedent to the contrary, BLM argues that the project's use of an 1875 Act right-of-way is outside the scope of the law and therefore unauthorized without BLM approval.

We believe that a fair evaluation of the project would have led to a very different conclusion: that the project is indeed within the scope of the right-of-way authority and requires no further approval from BLM. Consequently, we respectfully request that you immediately withdraw BLM's October 2, 2015, evaluation and BLM's Instruction Memorandum relating to the "Evaluation of Activities within Railroad Rights-of-Way Granted under the General Railroad Right-of-Way Act of March 3, 1875." These actions will directly create thousands of much-needed jobs and a desperately-needed new water supply in California.

### **The Project**

The project proposes to capture groundwater in the Fenner Valley located in California that would otherwise migrate to the surface and evaporate. The captured water would then be transported through a buried pipeline in an 1875 Act right-of-way held by the Arizona and California Railroad (ARZC) that crosses BLM land to the Colorado River Aqueduct, where it would be distributed for use by Southern California communities that need reliable water

supplies. According to the project's Environmental Impact Report, "in the absence of the Project, approximately 3 million acre-feet of groundwater presently held in storage between the proposed well field and the Dry Lakes would become saline and evaporate over the next 100 years." Importantly, the project will augment supplies in the Colorado River Aqueduct, potentially easing tensions among Colorado River contractors.

The project has undergone a rigorous environmental review under the California Environmental Quality Act, which found no significant environmental impacts. In addition, in May 2016, the California Court of Appeals issued a ruling affirming six California State Court judgments, validating the approvals and environmental review for the project in every regard.

### **BLM's Arbitrary Actions and Overreach**

Under existing law and a 2011 M-Opinion by the Solicitor of the Department of the Interior, a holder of a right-of-way granted pursuant to the 1875 Act may authorize third-party activities within its right-of-way over public lands, **without** the approval of the BLM, if the activity in question furthers, **at least in part**, a railroad purpose.<sup>1</sup> For more than 140 years, this application of the law has ensured that co-locating utilities within previously granted and already disturbed railroad rights-of-way has helped to minimize additional environmental impacts and disturbances.

Contrary to existing law and the controlling M-Opinion, in October, 2015, BLM provided a summary evaluation to Cadiz, indicating that any use of an 1875 Act right-of-way will now require federal permitting and environmental review, **even if it furthers a railroad purpose**, if the activity in question does not *originate* from a railroad purpose. This new and arbitrary standard means that the Cadiz project could not use the ARZC right-of-way despite furthering several railroad purposes, including providing water for an automated fire suppression to protect critical railroad infrastructure, but instead must go through lengthy and costly BLM permitting.

Aside from the unfairness of moving the goalposts on Cadiz, BLM's arbitrary new standard has major ramifications for every existing activity within an 1875 Act right-of-way. For example, railroads may no longer be legally able to authorize the use of their respective rights-of-way to third parties for critical infrastructure, such as water pipelines, power lines, telecommunication lines, and fiber-optic cables, even when those activities further a railroad purpose and were co-located in compliance with the long-standing prior standard. We understand that there are currently over 3,500 individual existing instances of third-party uses of 1875 Act rights-of-way over federal lands and each is threatened by this new BLM standard.

In addition, BLM also now insists it be notified of all existing **and** proposed new activities co-located within 1875 Act rights-of-way across BLM land so that BLM may determine, de novo, whether such activities meet its arbitrary new standard. Any of the 3,500 existing co-location

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<sup>1</sup> (M-37025) dated November 4, 2011 (2011 M-Opinion)



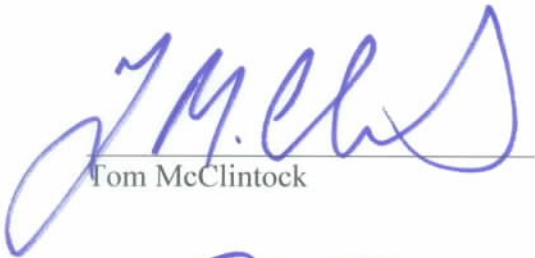
permitting process, where none has been required before. In some cases, projects would be required to remove their existing infrastructure or face trespassing proceedings.

On its face, the new standard is arbitrary and represents a gross expansion of BLM's authority at a time when BLM struggles to meet its primary mission objectives. Further underscoring the case for the immediate withdrawal of the 2015 Evaluation and Instruction Memorandum are the highly inappropriate communications between a BLM employee and an investment firm regarding the agency's analysis of the Cadiz project. Those communications are now the subject of investigations by the Department of the Interior's Office of the Inspector General and the House Oversight and Government Reform Committee. BLM's conduct has not gone unnoticed, resulting in negative national media coverage.

Based on the above, we respectfully request that BLM's 2015 Evaluation and Instruction Memorandum be immediately withdrawn. In addition, since the project will further a number of railroad purposes, we also request that BLM immediately recognize that the project is within the scope of the ARZC right-of-way. By promptly taking these actions, the Cadiz project will create nearly 6,000 jobs and a reliable new water supply in California, while the interpretation of the 1875 Act that railroads and others have relied on for close to 150 years will be restored.

Thank you for your consideration.

Sincerely,



Tom McClintock



Tony Cárdenas



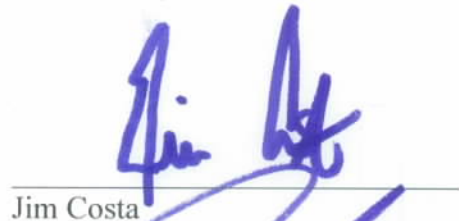
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