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January 18, 2000

Attn: Mr. James Williams
U.S. Department of the Interior,
Bureau of Land Management
California Desert District
6221 Box Springs Boulevard
Riverside, CA 92507-0714

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CALIF. DESERT DISTRICT
RIVERSIDE, CA.

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Re: Comments by *DESERT WATCH* on the Metropolitan Water District of Southern California - Draft Environmental Impact Report/Environmental Impact Statement Cadiz Groundwater Storage and Dry-Year Supply Program San Bernardino, California.

Dear Mr. Williams;

Attached hereto are the comments submitted by *DESERT WATCH* on the Draft Environmental Impact Report/Environmental Impact Statement of the Metropolitan Water District of Southern California Cadiz Groundwater Storage and Dry-Year Supply Program in San Bernardino County, California.

G15-1

The "Lead Agency", Metropolitan Water District of Southern California (MWD), is sharing its responsibility as a Project Proponent with a private partner, The Cadiz Land Company. As a Lead Agency, MWD is also responsible under the National Environmental Protection Act (NEPA) EIR/EIS process to provide full and accurate disclosures of all feasible project alternatives, and their potential adverse impacts as specified under 40 CFR §1502.14, subd. (e).

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However, after conducting a thorough review of the Cadiz Project EIR/EIS and it's supporting technical reports, *DESERT WATCH* is concerned that the document fails to meet requirements that it discloses and considers every alternative in detail, including the proposed action, so that reviewers may evaluate their comparative merits. *DESERT WATCH* has found that the draft EIS/EIR does not adequately integrate appropriate survey and study methodologies in the NEPA analysis as required under the Fish and Wildlife Coordination Act (16, USC § 661 *et seq.*). As required under 40 CFR § 1502.22, the document also fails to provide a summary of existing credible scientific evidence for it's evaluation of numerous impacts, particularly given the unknowns that were encountered in the survey results and findings, and for the unsubstantiated use of the terms "minor" or "not-significant" given as conclusions for the many impacts throughout the document. Additionally, the document fails to: 1) provide full and accurate disclosures of all feasible project alternatives and their potential adverse impacts as required under 40 CFR §1502.14, subd. (e); 2) provide adequate conclusions based on fully integrated survey and study methodologies that are accepted by the general scientific community in the NEPA analysis as required under the Fish and Wildlife Coordination Act (16, USC § 661 *et seq.*) and; 3) provide, as required under 40 CFR § 1502.22, a summary of existing credible scientific evidence for it's evaluations of numerous impacts that are either not substantiated or supported by the analysis or credible evidence.

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As a result of these omissions and inadequacies in the current EIS/EIR document, it should be revised and recirculated with the inclusion of the following additional information, analysis and mitigation measures as described hereto.

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DESERT WATCH appreciates the opportunity to comment on the EIR/EIS, and urges the Bureau of Land Management to consider carefully these comments prior to certifying the Final EIR/EIS or Finding of No Significant Impacts for the project.

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Sincerely,

Edward A. Hartung
Executive Director, *DESERT WATCH*

cc: U.S. Fish and Wildlife Service

Proposed Project Alternatives

The proposed alternatives do not adequately explore reasonable measures that would significantly reduce impacts caused by the project (40 CFR §1502.14, subd. (e)). A change in the California Desert Conservation Area Plan (CDCA) is also proposed, however *DESERT WATCH* contends that any amendments to the CDCA would be unnecessary with the following changes to the project alternatives;

1. Contrary to the EIR/EIS, the proposed alternatives do not take into account existing utility corridors that are within the project boundary areas. As shown on figures ES-1 and ES-4 in the EIR/EIS, an existing powerline utility and dirt road owned and maintained by MWD runs north of Iron Mountain Pumping Plant across Darby Lake and intersects the main dirt road (Cadiz Road) that the proposed alignments follow north of Chubbuck. If used, this alternative route would substantially decrease the extent of habitat, and other impacts that the project would create by well over 50%. G15-9
2. None of the alternatives utilize existing utility corridors, roadways or areas with disturbed habitat along the route. Substantial avoidance of habitat impacts, over 50% of the total proposed, would be possible if the alignments were built in the existing Cadiz Road, or immediately adjacent to it, between Chubbuck north to McCoy. The proposed alternatives are unnecessarily routed away from existing roadbeds and predisturbed areas adjacent to them and are placed unnecessarily in undisturbed habitat.
3. The document dismisses the possible routing of the pipeline through salt playas as a feasible alternative. Difficulties of routing the pipeline through the saline lakebed listed by the proponent (such as high maintenance due to corrosiveness, and brine groundwater disposal difficulties) can be easily remedied with appropriate engineering measures such as the use of non-corrosive pipeline materials or cathodic protection in sections that warrant their use. Disposal of brine groundwater pumped during construction can be easily remedied by transferring it in temporary above ground lines to the brine-water evaporation ponds at the nearby salt mining operations in the middle of the lakebeds. The salt operations utilize such water for their operations. This alternative would not significantly increase the total cost of the project for the proponent, however the total reduction of environmental impacts of this alternative would be significant. Routing the proposed pipeline on an existing utility corridor and road owned and operated by the proponent north of Iron Mountain through Danby Lake Bed, then routing the pipeline northwest immediately adjacent to Cadiz Road would decrease the total area of habitat impacted by the entire project by over 90%. G15-10

Biological Resources

Wildlife Communities

1. The document states in section 5-144 that "...only a relatively low diversity of native wildlife has adapted to these conditions..." and continues "most forms of wildlife occupying desert ecosystems are generally sparsely distributed...", and "wildlife species inhabiting desert regions are specifically adapted to conditions that would generally prohibit most wildlife use". The document then states that "man made habitats in the project area ... may also meet specialized habitat or resource requirements of certain special interest species". G15-11

The preceding statements have no biological credibility. While it is true that desert ecosystems are filled with populations of plants and animals with highly specialized adaptations, the document contends that artificial and disturbed habitat created by the project will not be detrimental to native special interest species. No other impact will cause a greater effect on the local desert ecosystem and the native species that occupy it than the introduction of artificial and disturbed habitat. Impacts from the importation of weed species, invasive exotic plants and animals, and imbalances caused by the population increase of native species such as ravens, rabbits, and coyotes because of agriculture and disturbed land will inversely impact other native species.

Plant Species

1. The document states in section 5-152 that "Although rainfall was low during the 1998 to 1999 season, the remainder of the special interest annual plant species... have a minimal to moderate likelihood to occur within project construction and operation areas. Special interest perennial plant species not observed in the field are unlikely to occur" and additionally, according to the document, plant surveys were conducted only during one growing season for the project between March and May of 1999 (page 12, Biological Technical Report).

The assumption is used throughout the document that sensitive species "not detected" during the single survey period are wrongfully assumed as "not present". Absence of Evidence has been used to infer Evidence of Absence, however surveys were anything but conclusive. The document fails to disclose that during the 1999 growing season, a dry year resulted in zero percent rainfall through most of the eastern Mojave Desert (National Weather Bureau Records for the eastern San Bernardino County in 1999/1998). This lack of rain resulted in a lack of annual plant growth, and forced many perennial plants to remain dormant all year. It was not possible to detect many plant species during the 1999 spring season in the eastern Mojave due to this condition, therefore "no finding", "no impact" and "not present" conclusions made as a result of negative-findings obtained during a single-season plant survey are not possible.

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It is therefore necessary to assume that any prior occurrences of sensitive species documented in literature and in the California Department of Fish and Game Natural Diversity Data Base that are within the same type of habitat and in the same regional area (i.e., basin or mountain range) should be considered as likely to occur and weighed accordingly in determining significance of impacts of the project.

Wildlife Species

The following inadequacies were evident in the biological surveys as noted in the Biological Technical Report;

1. Page 19. The area called the "Southern Transmission Line" appears to consist of rocky outcrops suitable for numerous species dependent on this habitat type. There is no mention of sensitive species such as desert bighorn sheep, desert rosy boa, chuckwalla, and desert mule deer in this area, even though they occur in the region according to the California Department of Fish and Game, Natural Diversity Database. Additionally, other sensitive species including raptors such as golden eagles, peregrine and prairie falcons, and mammals such as mountain lions and even bats utilize rocky areas as denning and hibernating areas, and are likely to be present. None of these species have been mentioned as potentially impacted in the "Southern Transmission Line" alignment, nor in any mitigation measures pertaining to it.
2. Page 20. The habitat maps used for assessing total project impacts of the project on plant communities appear to be incorrect, particularly for estimates of impacts on fringe-toed lizard populations and other specialized habitat dependent species. In the Biological Technical Report, a field survey report states that "...based on field observations, the map was inaccurate and could not be used to determine the relative impact of a given alignment on the species."

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DESERT WATCH is greatly concerned that the erroneous data portrayed in the above mentioned maps was used by the proponent to estimate total acreage of impacts and to calculate mitigation land purchases. There are no explanations in either the EIR/EIS or the Biological Technical Report that state how, or if, these inadequacies in the project maps were subsequently verified and corrected.

3. Page 21. According to the document, a biological survey was conducted on June 5th, 1999 along the "Southern Transmission Line". The survey reported the presence of "abundant tortoise sign", however it also reports that "no new plant or animal species were detected...". The timing of this survey was beyond the typical flowering period of most desert annuals, even in normal rainfall years, and could not possibly serve as a reliable botanical survey to determine absence/presence of sensitive plant species. Additionally, no other biological surveys are mentioned in the document or appear to

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have been conducted in this location for other sensitive species and at times specific for species such as migratory birds, or night surveys for nocturnal reptiles and mammals.

615-15

Desert Tortoise

Given the harsh environment of the eastern Mojave in the Cadiz Valley region, it is remarkable that so much desert tortoise evidence was detected as indicated on figure 5.8-2. Based on the locations indicated throughout the project area for burrows, scat, carcasses and tracks, it is evident that the project will indeed impact this species on all of the proposed alignments. Although tortoise densities are generally documented as low in the project region by U.S. Fish and Wildlife Service, the presence of a small number of tortoises in "low density areas" becomes even more significant to population survival, longevity, and recovery in the region. In areas with low-density populations, the importance of each individual contributing to the gene pool and ensuing longevity of the area's population is magnified. It is therefore extremely important that the lowest number of take be permitted, and that mitigation for loss of habitat of this species be maximized to ensure survival of the population.

615-16

The following mitigation measures proposed under the EIR/EIS to protect desert tortoises are insufficient, and they do not conform to current U.S. Fish and Wildlife Service and the Desert Tortoise Council 1999 standards.

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- 1. Measure B-18 This measure is inadequate because as mandated under the Tortoise Monitoring Guidelines, only authorized monitors should be used to inspect and clear all construction vehicles prior to them being authorized to move at the start of each day.

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Vehicles not checked should remain idle until cleared by a monitor. Tortoises have the habit of using parked vehicles as resting and shading/cooling off spots. It is extremely easy to overlook this and many tortoises have been accidentally killed when vehicles were moved. Even if they were not directly driven over, tortoises can quickly succumb to overheating when their shade is removed during the heat of day. Additional requirements regarding moving tortoises during acceptable temperatures apply, see "Temperature Range and Moving Tortoises" section below.

- 2. Measures B-10, B-13, and B-18 correctly stipulate that only certified personnel may handle desert tortoises. However, mitigation measure B-28 conflicts with standard guidelines in that it authorizes untrained, and uncertified project employees to handle and move desert tortoises, and authorizes them to make discretionary decisions regarding moving construction vehicles away from resting tortoises.

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The only time such an employee would ever be allowed to move a tortoise is if the animal is in immediate peril such as crossing a busy public roadway, or other hazardous situation where the tortoise is in danger because traffic cannot be stopped or routed around it. Never should an untrained person be authorized to handle or move a tortoise in order to clear a parked construction vehicle.

Under measure B-28, direct harm leading to death may occur if improper handling occurs. Tortoises sheltering during the heat of day under the shade of a parked vehicle will die if the vehicle providing shade is moved and they cannot find shelter in time. They will also expel water if frightened, which will lead to water stress and death during the dry season. This condition may occur if the tortoise is moved carelessly, or if a loud noise such as a starting engine occurs over them. Even a well intentioned, however untrained, person moving a tortoise can cause death by gently rotating the animal and causing the internal organs to twist, or to cause it to void water. In order to avoid any take, the movement and relocation of any tortoise should be conducted only by an authorized, permitted person. Additional requirements regarding moving tortoises during acceptable temperatures apply, see "Temperature Range and Moving Tortoises" section below.

3. B-21 Avoidance of other raven encouraging activities such as over-watering roads and construction areas for dust control to the degree that pools form for ravens to drink out of should also be stipulated as a mitigation measure, because water will be more significant as an attractant to ravens than food during the dry months.

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4. B-22 A chain link fence will not provide a suitable barrier to juvenile desert tortoises. The measure should specify that the minimal mesh size of the fence should be no more than 1.5 inches, including the width of corner to opposite corner of the mesh.

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5. B-24 All power lines as well as their supporting poles, fences, and buildings will provide perching and nesting habitat for ravens. In addition, trees and other landscaping at facilities idle equipment, and any other flat spot above the ground with some overhead shade will provide prime raven nesting locations.

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Additional measures to provide for predator nest checks and removal by authorized biologists should also be included to mitigate for the increase of raven populations created by the project. If bird nests are determined to belong to protected species nests such as raptors or other migratory species, they must be retained until the end of the breeding cycle under the Federal Migratory Bird Act.

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6. B-25 As specified under current 1999 Desert Tortoise Monitoring Protocols accepted by the U.S. Fish and Wildlife Service and the Desert Tortoise Council, guidelines for desert tortoise monitoring state that "tortoise clearance surveys must be made no more than three days prior to construction." Given the relatively large home range and sometimes cryptic behavior of desert tortoises, it would be likely that nearby tortoises (even as far as 1/2 mile away) may wander into the construction area given the 30 day window in this measure. Furthermore, in addition to tortoise burrow excavation accepted protocols also require that any tortoises or eggs found must be relocated to artificial burrows off-site.

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Temperature Range and Moving Tortoises

As specified under current 1999 Desert Tortoise Monitoring Protocols accepted by the U.S. Fish and Wildlife Service and the Desert Tortoise Council, guidelines for moving desert tortoises state that "ambient air and ground temperatures must be within acceptable ranges prior to moving a desert tortoise." If a tortoise is to be moved outside of the acceptable temperature range, provisions must be made to ensure that the tortoise will be placed in a protective area until it can be safely released under the correct temperature. Relocation from a burrow or shaded area into a artificial burrow, or in a temporary box shelter kept cool indoors are acceptable methods for moving tortoises if the air temperature exceeds maximum standards. All mitigation measures regarding movement and relocation of tortoises must take this requirement into account to protect the animal.

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Document Inconsistencies

DESERT WATCH finds that the EIR/EIS Executive Summary (ES) incorrectly surmises that the Cadiz Project "would not cause an irreversible or irretrievable commitment of resources". However, there are inconsistent findings and interpretations, coupled with inadequate analysis throughout the EIR/EIS document and its technical documents that contradict the ES and violate 40 CFR § 1502.22. Through these faults, the EIR/EIS concludes that numerous impacts are "minor" or "not significant" without supporting evidence in any portion of the document. The ES also presents the following contradictory statements and fails to provide a summary of existing credible scientific evidence for them in the EIS/EIR;

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1. "...construction would involve replacement of topsoils and cryptogamic crust may eventually be reestablished, exposed soils would suffer some long-term loss during and following construction..." and then states that "most losses would be relatively minor". The document offers no data or analysis to substantiate the conclusion of this level of impact.

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2. "The Cadiz Project would have some minor long-term effects on water resources, including surface and sub-surface flows". No effects analysis are presented on desert riparian systems in the region, and no data or analysis to substantiate the conclusion exist as a result of this.

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3. "The Cadiz Project would result in minor irreversible and irretrievable impacts to habitats and the species that depend on them over the life of the project". The document offers no further data or analysis to substantiate this level of impact.

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4. "there would be long-term loss of habitat..." and "...Mitigation for these losses would protect at least an equivalent area...resulting in no net long-term loss of habitat". However, total estimates of habitat loss are in question due to apparent mapping inconsistencies (See preceding section under Wildlife Species Section 2 above) and lack of analysis of "edge-effects".

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5. "The construction and operation of the Cadiz Project would result in minor permanent and irreversible changes in the visual nature of the area". The document offers no further data or analysis to substantiate the conclusions of this level of impact.

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6. Section 8.3 states that "the impacts of the build alternatives on sensitive plant communities are not significant", but then counters itself in Section 9.1.8. in that "The gradual revegetation of the areas within the Cadiz Project construction right of way would...be expected to be relatively slow, resulting in potential longer term adverse effects to these areas".

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Cumulative Impacts of the Hayfield and Cadiz Projects

The following statements are used to explain a finding of no significant cumulative impacts, yet do not provide reasonable, or adequate evidence or analysis to substantiate them.

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1. The Executive Summary states that "neither project would cause significant adverse aesthetic impacts during or following construction because both are in remote areas and both provide for visible facilities to be consistent with existing aesthetics".

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The document offers no further data or analysis to substantiate this level of impact. Wilderness Areas are by their very nature "remote areas", and given that they are also identified in the Wilderness Act of 1964 (16 USC 1131-1136) as "an area of undeveloped Federal land retaining it's primeval character" and "an area where the Earth and it's community of life are untrammelled by man", any ensuing aesthetic impacts - even if it is "consistent with existing aesthetics" - would be difficult to classify as "not significant", and are not substantiated in the document.

2. "Bio-resources mitigation plans for both projects would provide long-term protection of resources currently not protected, offsetting project related impacts". Many of the bio-resource mitigation measures within this document fail to provide sufficient, long-term protective measures and do not substantiate this statement.

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3. "Neither project would have short or long-term impacts to wilderness areas or other recreation resources". There is an abundance of impacts disclosed in this document, and not disclosed, that conflict with this statement (i.e., see following section on Wilderness Area Issues), therefor this statement is incorrect.

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Further Considerations

EIR/EIS

Wilderness Area Issues

The document presents the assumption that project impacts to Wilderness Areas will be minor, yet acknowledges that they will be permanently impacted visually by structures placed close to them. Furthermore, the document fails to disclose that cumulative impacts to Wilderness Areas will be significant due to the increase of impacts resulting from increased vehicle use, i.e. increased maintenance traffic, and unregulated off-highway vehicle access along their borders due to new maintenance roads.

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These impacts are substantiated in Section 3-40 in the EIR/EIS, stating that "all wilderness areas will be effected by visual impacts during and after construction". Section 7.5.17 further states that "... the project would not directly impact any wilderness, though parts of the Cadiz Project are adjacent to wilderness areas...", and "...visitors to the wilderness areas would have off-site views of the construction... and some construction activity may be audible in those areas...".

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Additional impacts to Wilderness Areas are to be anticipated by the placement of construction "staging areas" called out in the document that are to be placed adjacent to them, however these impacts are not disclosed in the document (See Measure B-5 below).

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Section 5.17.1 of the EIR/EIS also states that Public Law 103-433, 108 stat. 4471, which is now S21 HR(518) the California Desert Protection Act, states that the designation of wilderness areas were not intended to lead to the creation of protective buffer zones around them, and that nonwilderness uses near Wilderness Areas shall not be precluded. However, the EIR/EIS fails to document that Section 103 of S21 HR(518) pertains to EXISTING RIGHTS, under which wilderness areas designated under section 102 of the same act shall be administered in accordance to the wilderness act. Neither Public Law 103-433, 108 stat. 4471 or S21 HR(518) prevent the creation of protective buffer zones, or the continuation of current protective regulations on existing public lands that are managed by the Bureau of Land Management adjacent to Wilderness Areas.

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The EIR/EIS should also consider and discuss the implications of regulations in S21 HR (518), and the Boulder Canyon Project Act 43 USC 617-619b, sec. 604, which explicitly prohibits Metropolitan Water District of Southern California from impacting any Wilderness Areas defined in S21 HR (518), including the Old Woman Mountains Wilderness Area, and the Cadiz Dunes Wilderness Area.

Measure B-1. Section 8.3 states that "the impacts of the build alternatives on sensitive plant communities are not significant", but then counters itself in Section 9.1.8. in that "The gradual revegetation of the areas within the Cadiz Project construction right of way would...be expected to be relatively slow, resulting in potential longer term adverse effects to these areas".

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There is a assumption made in the document that impacts to desert soils and plants will be short-lived and will be restored in a insignificant period of time. It is generally accepted by the scientific community and very well documented by restoration experts that seemingly small amounts of soil compaction caused by vehicles, grazing animals, and other man-made means results in decades, if not centuries, of required time before recovery occurs.

The success rate of casting seeds as a revegetation measure in the desert may not provide satisfactory results upon completion of the project, even if given a five-year performance window. An generally accepted methodology for revegetation in arid-lands such as planting containerized stock with a two-year long supplementary watering schedule should be required in order to ensure plant development and long-term survivability, and suitable restoration of impacted areas.

Long-term monitoring should also be mandated to ensure that revegetation efforts meet set performance criteria, and if they do not do so, mitigation measure B-1 should be re-evaluated in order to obtain suitable results.

Measure B-4 and Measure B-23. This measure is inadequate in that it does not provide additional patrolling and maintenance measures to ensure that the roads, signs, fences, etc., remain intact and effective in perpetuity. This measure will place further costs and burden on the Bureau of Land Management, requiring additional resource protection duties, including patrolling on weekends and busy holidays, and increased maintenance costs of repairing signs and fences. *DESERT WATCH* recommends that the project proponent be required to provide financial assistance to the Bureau of Land Management in order to offset the increased operational costs that the agency will incur as a result of maintaining, patrolling and protecting the Wilderness Boundaries that will be placed at potential risk due to the project.

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Furthermore, the proposed maintenance roads will extend habitat loss with a pronounced "Edge Effect" along their entire lengths. They will encourage the development of illegal spur roads into canyons and washes that they intersect, threatening the Cadiz Dunes Wilderness Area, and to a lesser extent the Old Woman Mountains Wilderness Area, and other remote areas in the Kilbeck Hills and Iron Mountain. The total impact of these roads will significantly extend the cumulative impacts that the project causes, and do not appear in the analysis of impacts stated in the document.

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Measure B-5. The designated staging areas as shown in the document are near wildlife and wilderness sensitive areas. Page 4-53 of the EIR/EIS shows a construction staging area that appears to be less than 50' from the Cadiz Dunes Wilderness Boundary, and near the Kilbeck Hills. All construction staging areas should be placed not less than 1/2 mile from wilderness boundaries or other sensitive habitat areas.

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Additionally, the document does not discuss the potential impacts caused by the "Staging Areas" to the Wilderness Areas (i.e., potential for vehicular trespass, construction noise, lights, trash, etc.).

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Measure B-6. This measure appropriately accesses mitigation for potential impacts to burrowing owls, however the document does not provide mitigation monitoring for nesting raptors (i.e. golden eagles and peregrine falcons), or other sensitive wildlife in other suitable habitat such as rocky areas during blasting and other construction activities.

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Measure B-7. This measure adequately accesses mitigation for burrowing mammal monitoring, however it does not stipulate burrow clearance and burrow removal upon clearance to avoid reoccupation of burrows after clearance surveys are completed, and should do so.

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Measure B-8. Due to the economic nature of construction schedules, etc., and the nature of the relationship MWD has to the project, the appointment of a field contract representative should be made by the neutral Lead Agency (Bureau of Land Management), and not be a project proponent employee. It is unwise to permit employees of the project proponent to be in charge of their own compliance monitoring.

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Measure B-9. This measure is appropriate, except that there is no approved video that a project proponent can show to it's own employees in order to meet tortoise education requirements without a trained instructor. All employees should be required to attend pre-construction meetings with approved instructors prior to any work assignments. Untrained contractors, or temporary employees that enter the job site, i.e. delivery drivers, will create the largest potential worker-related impacts to desert tortoises. Appropriate job site entry signage, a staffed "check point", and the use of an appropriate number of monitors will lessen the potential for tortoise fatalities or tortoise theft by these personnel.

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Measure B-11. Again, construction scheduling should be implemented to avoid raptor nesting, sheep and deer lambing, and other sensitive species reproduction or hibernation schedules in order to prevent impacts during critical times in critical habitat areas. This inadequacy is also evident in Construction Measure N-2 (page 5-230), that does not provide for blasting scheduling to prevent impacts to sensitive species.

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Measure B-12. *DESERT WATCH* is concerned that as written, this measure allows the proponent to cause unmitigated impacts to the open desert by allowing construction personnel to drive off-road "when absolutely required by the Project".

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Even a single vehicle conducting a single one-way trip through open desert causes erosion and impacts that will persist for decades. Due to the sensitivity of desert soils to even seemingly small impacts, it is critical that open-desert habitat adjacent to the project areas be fully protected. Measure B-12 should state that "under no circumstances are construction personnel to drive off-road in any area beyond the permitted project boundary without the prior consultation and consent of the Bureau of Land Management".