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P4

February 21, 2000

Metropolitan Water District  
Water Resource Management Group  
P.O. Box 54153  
Los Angeles, CA 90054-0153  
Attn.: Mr. Dirk Reed

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

Re: Draft EIR/EIS  
Cadiz Groundwater Storage and Dry-Year Supply Program, San  
Bernardino County, California

Dear Gentlemen:

**Please Incorporate Prior Comments/Questions Inadequately Stated or Addressed in this EIS/EIR:**

On March 21, 1999 and May 23, 1999, respectively, I sent you comments and questions during the scoping for the EIR/EIS concerning issues I hoped to see addressed in the report. My concerns were inadequately addressed in the report, my questions were unanswered and unfortunately you failed to include the comments and questions in this report. Your summary of my comments was so poor as to capture none of the issues I raised. I must assume you did an equally poor job of reflecting questions and concerns of others. So I hereby respectfully request that you mail to me a copy of the Public Participation Report # 1161. And I hereby incorporate by reference, and attach hereto both of my prior letters and the exhibits appended to the first letter, so that these will appear in the Final Environmental Impact Statement/Report in full.

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**Further Reports of Obscene Monetary Contributions and Conflicts of Interest:**

Next I incorporate by reference the attached print out of an article that appeared in the Sacramento Bee on Sunday, January 23, 2000, "Water: Davis Adviser taps a Capitol Aquifer", which reports on the estimated \$133,000 given to Governor Gray Davis' 1998 campaign, and then shows how the latest water bond voter proposition, (Prop. 13) on the March 7<sup>th</sup> ballot, was changed to allow Brackpool and the Cadiz boys to receive \$50 million of public bond moneys for the Cadiz project. (See page 109 of the voter information guide). Also attached hereto and incorporated herein by reference is an editorial that appeared in the same issue of the Bee, "Wielding Water Power: Should a Big Campaign Contributor be Inside Adviser?"

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The water has always been murky around this project, but the stench is growing really bad.

**DEMAND TO SEE THE CATERGORY II OR III PLAN AMENDMENT TO THE CALIFORNIA DESERT CONSERVATION AREA "DESERT PLAN" AND TO HAVE PUBLIC HEARINGS ON THOSE CHANGES BEFORE THIS SITE-SPECIFIC PLAN IS CONSIDERED.**

I am a person who has attended meetings held at Cadiz, and submitted comments at every prior opportunity concerning this project, objecting several times to the fact that the project violates the California Desert Conservation Area Plan. In addition, I have brought suit in the recent past on behalf of plaintiffs against the Bureau of Land Management for failure to Amend the Plan before consideration of a site specific proposal to dispose of nuclear waste at Ward Valley, which would violate the Desert Plan and require an amendment.

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Notwithstanding my demonstrated interest in these issues and this project, I have never received a copy of the Record of Decision for the Amendment of the CDCA. The EIR/EIS report recognizes throughout that the project is in violation of the Desert Plan, and that an amendment is needed. But the language of the amendments is not even included here. We are led to believe at ES 39 that the amendment will be prepared sometime in the future and that is why it is not in the EIR/EIS. (If that is the case, why is this project being considered before the plan amendment has been approved?).

But at Pages 5-18 and 5-19 there is great confusion on this issue. At P. 5-18 it says, "The BLM District Manager, Desert District *may initiate* an amendment to the CDCA Plan *at any time.*" But on P. 5-19 it says, "For the Cadiz Project, notice of the proposed CDCA Plan amendment and a request for comments *was published* in the Federal Register and a newspaper of general circulation in the affected area. Notices were also sent to those on the CDCA Plan mailing list. This was done in conjunction with noticing for the Cadiz Project EIS." **But I have never received a notice of the CDCA Plan amendment nor the opportunity to comment.** What is the status of the plan amendment? I hereby demand a copy of the notice and the proposed amendment and the right to give public comment on the amendment. I also hereby request the BLM to hold a public hearing on the plan amendment and to provide the people with thirty days prior written notice thereof.

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#### REQUESTS FOR DISCLOSURE:

Please disclose information to the public concerning the following:

1. The present status of the agreement which exists between Metropolitan Water District and Cadiz for compensation. I.e., if the Met gets \$50 million from the state bond issue, how much of that goes to the private company, Cadiz, for storing the water they take from "indigenous" sources? What other state funds may be allocated to the project? Will there be incremental payments received by Cadiz? How much money does Cadiz receive for each gallon or acre-foot of water they pump out of their basin, after taking Colorado River and "indigenous source" water and putting it into their own storage facilities? What is the total in gross receipts expected by Cadiz over the life of the project?
2. Who provided the information to First Union Securities (formerly Everen Securities) about Cadiz as a potential investment, as reflected in their December 1, 1998 report?
3. The draft EIR/EIS acknowledges that a massive amount of groundwater will be mined and the aquifer will be left with a basin deficit of over forty years worth of natural recharge. Why was this not more carefully analyzed in the draft document, and isn't this a CEQA defect?
4. When the salt water from Bristol and Cadiz Lakes flow to fill the cone of depression beneath the extraction wells, won't the pristine aquifer become

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P4-7

5. meaningfully degraded forever? Isn't this against the law? Is this sensible groundwater management? p4-7
6. How can BLM even consider allowing storage of all of this water in a place which is a seismically active region only 13 miles from the recent Hector Mine Earthquake registering 7.1 in magnitude? Especially in an area which used to be a mine, bomb, and live ordinance field for the military, where accidental explosions are still a possibility? How much did Brackpool and Dutton and The Cadiz Boys actually pay for this brackish explosive place where MWD wants to put the water they pull out of the WARD/FENNER Valleys where it is stored just fine right now? p4-8  
p4-9  
p4-10
7. Why does the draft report not present the Catellus map that demonstrates Piute, Ward, and Fenner Valleys are all one connected aquifer under ground? Why does the report use deceit and misrepresentation in saying Ward Valley is "geologically separate from Cadiz", but failing to say that Ward Valley is **not** geologically separate from Fenner Aquifer where Cadiz is sinking their wells to suck up all the water to transport it over to Cadiz's basin? (If I put a straw in my side of the glass and suck up the water in the glass, won't I also eventually suck up the water from your side of the glass?) p4-11
8. Why are the preparers of this report so blind as to be unable to see the Environmental Justice issues involved? Cadiz takes the water out of the interconnected Ward, Fenner, Piute Aquifers, which water feeds the Colorado River through five connecting underground pathways. The people of Needles (poor, Hispanic, Native American) and the people of Mexico, and the five River Tribes, all rely on the Colorado River for life, agriculture and economic viability. The Colorado River is drying up as its sources are extracted. There are therefore Environmental Justice issues involved in this project. The draft report says there are no environmental justice issues because the "water supply from both projects would be equitably distributed by Metropolitan consistent with Board policy." In other words, we are so equitable we'll sell it to anyone in our service area. But nothing is said about the fact that they are stealing water from one part of the state where Native Americans, minorities and poor reside, and where Metropolitan has no governing jurisdiction, in order to deliver it to somewhere far away for use by their own customers. And with the water, life's blood, is transported the economic prosperity which life-giving water brings. p4-12

9. What is the justification for Met/Cadiz' taking of "indigenous" water (translated, means water underlying public lands that belongs to the people)? The draft report goes into great lengths to demonstrate Metropolitan Water District *needs the water* to meet growth projections in the coastal regions, and this is the cheapest source they can find. The water is just sitting here. "We need it." We have explored lots of other alternatives and this is our best idea, so we want to take it. But no justification whatsoever is given for allowing Cadiz to pump water for selling it outside the region, with no beneficial use whatsoever to the residents, the natural habitat, of the overlying land from which they are extracting this resource. What is the justification? And is it not true that you intend to use this water to permit further development in areas like 29 Palms?

P4-13

10. Economic Benefits: The draft report, in recounting the economic benefits of this project, failed to state the most important benefit of all. If Cadiz gets to profit from every gallon of water they pump out of the Fenner/Ward/Piute aquifer and put into their own storage basin, they will make millions of dollars off the people's water. Then they will have millions of dollars with which to pay off politicians. It is sad that Metropolitan Water District is a quasi-governmental agency that cannot help government leaders in the form of campaign contributions. But as Ted Dutton has shown on the local level, and Keith Brackpool demonstrates at the state level, such constraints won't inhibit Cadiz Land Company, a private corporation. Need to influence the District Attorney to prosecute your enemies such as Rail Cycle? No problem! Even D.A.s have to run for office and Dennis Stout is very ambitious and has benefited greatly from Dutton's largess. Stout can launch a great prosecution and keep it going with allegations and innuendoes and tie them up in court for years. Then the friendly judge can dismiss a few counts here and there so the District Attorney never has to produce any credible evidence at trial. In the end, the D.A. just might settle with you, (pay me some bucks in civil settlement and I will not only dismiss the charges against you, but I will hide my entire file, and all the information obtained in our criminal investigation of you). Our district attorney has employed this tactic repeatedly, and indeed has assisted Cadiz in this manner by prosecuting Waste Management for its alleged dirty tricks used against Cadiz. Nothing has stuck yet, though, has it?

P4-14

Speaking of dirty tricks. I found the notes of the telephone call from an agent of Cadiz, made to me in my home, recorded without my knowledge or consent,

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and from which portions were extracted and used by Cadiz in several different advertisements aired on KFRG radio during the Cadiz campaign about Measures L and M. Let's see if District Attorney Dennis Stout will prosecute Cadiz on my behalf, shall we?

On 1/25/96, a man identifying himself as Ralph "Ralphie" Amonitagy, called me at home, asked for me by name. He said he was calling for Waste Management, and that he worked for a firm in Arizona called "Whittset". He was conducting a survey of people's opinions on Rail Cycle. He said he was a "waste specialist". He said Rail Cycle would produce jobs—they would hire young boys to sit out there and shoot rats with bb guns. He said the project would be very clean because they would drop disinfectant from helicopters. Don't worry about water pollution, Ralphie said. Just drink bottled water. As for irrigation of vegetables and fruit, Kids don't like vegetables anyway—just give them a vitamin supplement. He said if anyone dies from the pollution—no problem. Rail Cycle will give the families enough money to move to San Diego, get a nice condo, have a yacht, and soon the families will forget. As for closure of the dump, someday they'll just put a soccer field on top, and no one will remember that anyone ever thought dumps were bad.

p4-15

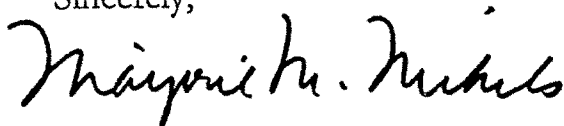
The next week Cadiz aired my conversation with this "Ralphie" on the air, without my consent. I was not identified, but people who knew my voice recognized me. That is the same Cadiz Land Company who now wants to take San Bernardino County's indigenous water.

Finally, Cadiz has persuaded government officials in San Bernardino County to approve Cadiz' extraction of water for agricultural purposes. They went to great extremes to try to act like they are farmers, and were intending to grow organic fruit in the desert. Now, as we see their present plans unfolding, it appears perhaps all they ever intended was to **mine the water and move on.**

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I recommend Cadiz be allowed to keep farming their 9,600 acres of land, as part of the no-project alternative.

Sincerely,



MARJORIE MUSSER MIKELS

Enclosures

**Marjorie Musser Mikels**

**Attorney at Law**  
201 N. First Avenue  
Upland, CA 91786-6061

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March 21, 1999

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
Box 54153  
Los Angeles, CA 90054-0153

Re: Joint EIR/EIS for the Cadiz Groundwater Storage  
And Dry-Year Supply Program ("Project")

Public Input as to Scope and Content of Information to Be Included  
In the Joint EIR/EIS

Attn.: Debra Man, Chief, Planning and Resources Division

Dear Ms. Man and MWD:

I hereby submit the following issues and questions to be addressed in the EIR/EIS your company is preparing. These questions are asked on behalf of myself and other taxpayers and citizens of San Bernardino County. My concerns fall under the following topics, elaborated upon below:

- 1. Under what jurisdiction and authority is Metropolitan Water District ("Met") acting as "lead agency" concerning this project located in San Bernardino County, involving federal land outside the Met's service area, entailing Met's taking water beyond the scope of the 1932 Congressional grant?
- 2. How does the Met justify the gross conflicts of interest of it and its attorneys, BEST, BEST & KRIEGER, in extracting indigenous ground water from an area outside their service area to transfer for use by and sale to their own

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customers, all without the consent of those entitled to beneficial use of the water?

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3. What is the connection between this proposed project and the recent land deal between the Wildlands Conservancy, Catellus Development Corp., and the U.S. Bureau of Land Management? Is any land in that exchange involved in this plan to take indigenous water from eastern San Bernardino County and bank it at Cadiz for later use in the Met's service area?

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4. What is Met's connection with the sleazy San Bernardino County/State politics surrounding this grab of "indigenous" ground water?

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5. Is the Met behind the "Quad State" Conspiracy to Kill the Desert Tortoise, which under the leadership of a renegade former BLM director of the desert district, is using taxpayer money to attack existing federal and state laws designed to protect endangered species and their habitats?

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6. Will those corporations who polluted the urban groundwater basins in the Inland Empire be the beneficiaries of Cadiz/Met's transfer of groundwater from the desert aquifer to the Cadiz Water Bank?

P4-23

7. Is the groundwater being extracted in contemplation of, and in preparation for thereafter allowing Edison to fill the Ward Valley basin with nuclear waste and chopped-up reactors? If not, why not "store" the water right where it is, instead of removing it to Cadiz's salty underground basin?

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## INTRODUCTION

Metropolitan Water District announced its intention to prepare the EIR/EIS on a project to transfer "Colorado River" water to Cadiz, for underground storage, allegedly to supply water in dry years. Only incidentally do they mention their intent to "transfer indigenous groundwater" using the same facilities. And no where in their scoping announcement does the Met ever mention the words: **WARD VALLEY**. Instead Met talks about Fenner and Cadiz, without acknowledging the water in the Fenner aquifer is connected underground to the Ward Valley aquifer located near the Met's

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Iron Mountain pumping station. (See maps attached hereto as Exhibits A). The scoping papers fraudulently fail to disclose Met and Cadiz's plan to **convert** water from underground storage basins near the Colorado River, and treat that water as if it were their own, merely by transferring the water to Cadiz's private land for "storage". By this little scheme, Cadiz can make money as the "water bank", and Met can steal the water to which it is not entitled, for sale to its own customers.

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There are tremendous environmental threats created by this scheme, some discussed below, and some of which the Met says it will address in the EIR/EIS. But there are other threats to the citizens of San Bernardino County created by the fraud, conflict of interest, political payola, and backroom sleazy politics surrounding this project. Before Met wastes ratepayer funds on environmental impact reports, I invite review of these other issues and urge the Met to decide on a "No Project" alternative, in advance.

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1. **Why is the Met the lead agency?** On June 18, 1932, the 72nd Congress granted MWD certain public and reserved lands of the United States in the counties of Los Angeles, Riverside, and San Bernardino to provide MWD access to lands to build their aqueduct, pumping plants, transmission lines, etc. The purpose of this grant was to **enable conveyance of water from the Colorado River** to Southern California. At no time did Congress say Met could drill wells and extract water at any location they chose along the aqueduct route, taking the water to their own or their friend's storage basins for their future use whenever they wished to supply it to their own customers.

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The Met is not a special district serving the desert area where they plan to extract this water. Why are they allowed to serve as lead agency for a project whereby they intend to take someone else's water for their own use? San Bernardino County has jurisdiction over this unincorporated area? Why is not the county the lead agency? The federal government owns land on which the pipelines and conveyance facilities are to be constructed. Why is not the Bureau of Land Management the lead agency? The city of Needles has rights to the groundwater, which will be impacted by the project, and as the nearest municipality has superior legal rights to water in the still unadjudicated basin. Why is not Needles the lead agency?

There has been a flourey of legislation recently introduced in the state senate, which appear to be attempts to give the Met legitimacy. Senator Johnson, for instance, wants to amend law to give Met "authority to exercise powers to carry out its objectives and purposes." And Sen. Hayden wants to make the Met a state agency by giving them requirements of "internal disclosure" of conflicts of interest and the like, so these requirements can be construed as "State Mandates". Then

the Met can be reimbursed for up to \$1million a shot, supposedly for "compliance with state mandates." Hayden also introduces fancy language about the Met using "water conservation, groundwater storage, and replenishment measures, watershed management", etc., for the "Los Angeles River, San Gabriel River, **and other Southern California rivers.**" Is that supposed to expand Met's jurisdiction to include groundwater aquifers near the ColoradoRiver?

Sen. Kelly wants to give the Met all authority "reasonably implied to exercise the power necessary to carry out their objects and purposes". (Please see Senate Bills 520, 521, 60, 552, 553, 554 et al.)

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If I want to steal from you, may I be appointed the agency to oversee the theft? Is that an exercise of authority necessary "to carry out my purposes?" That is what is transpiring here. The plan is clearly **OWENS VALLEY REVISITED!** Only this time, the water beneficiary gets the job of determining if there might be adverse environmental impacts resulting from its own theft of the water. Makes one wonder what the outcome will be, doesn't it?

## 2. Isn't there some conflict of interest here?

The inherent conflict of interest in the Met serving as lead agency is evident from the above discussion. But there are other gross conflicts of interest on the part of Met's agents which taint this project and create a foul stench. I refer, of course, to the Met's attorneys, **Best, Best & Krieger (BB&K)**. The law provides that a principal is charged with liability for the conduct of its agent acting on its behalf.

BB&K, since at least 1992, has represented the City of Needles as its city attorney. But BB&K also represents MWD, and in fact, is the firm which prosecuted the eminent domain proceedings to condemn the Domenigoni land for the new Eastside Reservoir in western Riverside County. (See Riverside Superior Court Case No. NC 010680). That is the place where Met will store water "transferred" from the Colorado River region for use by Met's San Diego customers. BB&K also represents Perris and Hemet, where the new Eastside Reservoir is touted as promising new economic benefits of casinos, golf courses and water sports. BB&K also represents San Bernardino County's Local Agency Formation Commission, which ruled adversely to Needles request to have Ward Valley placed in its sphere of influence. These representations of clients with adverse interests are significant.

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In 1992, before Needles Councilman Charles Butler's death, he was influential in the City of Needles' expenditure of almost a half million dollars to do the hydrology and other studies in conjunction and preparation for a plan to put

wells at Ward Valley to obtain water for municipal use. Needles already derives their drinking water from wells at Klinefelter, only a couple miles away, and these wells tap the water in the Ward Valley and surrounding aquifers as are involved in Met's plan. Exhibit B hereto is evidence that the City of Needles had plans to develop 15-120 wells and obtain water and power, and that Needles had a consultant. Questions were raised about the impact on the desert tortoise habitat. Best, Best & Krieger were Needles' attorneys at that time. Exhibit C hereto shows the underground pathways to the Colorado River from the connected aquifers of Fenner and Ward Valleys. One of those pathways goes right through Klinefelter and on down through the Sacramento Wash through Needles. Thus, Met's plan to transfer indigenous water from these groundwater basins is a direct theft from Needles and the other river communities, and their plan to drill wells there is the same plan already studied and prepared by Needles, with **Best, Best & Krieger representing both adverse parties.**

Did BB&K disclose in writing to both clients their conflict of interest and obtained the informed written consent of both parties to this adverse representation? I do not think so. In fact, Best, Best & Krieger used its position as attorneys for the City of Needles, (and the tax dollars of that poor, isolated, small community) to fight and try to destroy politically and economically both Councilman Charles Butler and Councilwoman Ruth Lopez who were concerned about the Ward Valley and related water issues.

This adverse representation makes this whole plan actionable and dispicable.

### 3. What's the connection with Catellus, Wildlands Conservancy and the BLM?

Shortly before Met announced it would be holding scoping meetings, news reports were released about a big land swap involving Catellus Development Corp., Wildlands Conservancy, (the principals of which were being kept secret from the public), and the Bureau of Land Management. The gist of the releases were that the tax payers (via Congressional action) were going to be footing the bill to the tune of \$36 million to allow Wildlands to buy 437,000 acres of the 782,000 acres of "hard-to-develop desert and agriculture land" Catellus owns. In a separate part of the deal, Catellus is to receive from the BLM federal land, "closer to civilization and easier to develop". The land this anonymous "conservancy" is getting, paid for by public dollars, "will eventually be placed under federal protection", whatever that means.

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This is all significant because of the close relationship between MWD and Catellus, (they are building their offices together in downtown L.A., next to Union Station). It is also important because it is well known that Catellus (spun off from the Rail Roads who acquired from the government millions of acres of land so they could develop cross-country rail systems) owns land in checkerboard formations throughout the Ward, Fenner, and Cadiz valleys, i.e., the land in question.

It was Catellus who first stated, in their letter dated June 27, 1996, to the BLM project Coordinator for the Ward Valley nuclear dump,

**“The Ward, Fenner and Piute valleys form the heart of the single richest freshwater storage region in the southern California desert. Publicly-available estimates of the existing water resources in the three basins alone indicate they contain a minimum of approximately 13,000,000 acre-feet (which, if all such storage were potable, is nearly twice California’s total annual metropolitan and industrial water consumption). Overall, these studies suggest that total current groundwater reserves in the greater Ward Valley area are approximately 30,000,000 acre feet.”**

Catellus attached a map showing all the land they own in the region, a copy of which is attached hereto as Exhibit D. Realizing that water is being sold in San Diego today for at least \$450 per acre-foot, and understanding that California law allows an owner of land over a basin to pump water for the reasonable and beneficial use on his property (but not to extract and give it to MWD to sell to San Diego), one can see the vast economic incentive to take this water. One can also hypothesize that Catellus is somehow involved.

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But the newspaper articles did not say who the Wildlands Conservancy is, did not say what land the BLM is giving to Catellus, did not say what land Wildlands is getting, did not say where further information could be obtained, did not say why Wildlands is getting federal money to help them buy land the government originally gave to the railroads. The news accounts appeared only two weeks before Metropolitan Water District announced this scoping. So it is easy to conjecture a connection between Catellus, who owns land in this project area, and is selling to Wildlands Conservancy, and this project. The public has a right to have these questions answered, which goes to the issue of public trust, and expenditure of public moneys.

In August, 1993, The Center for community Action and Environmental Justice published a white paper entitled, **The Give Away of Public Lands for Private profits/ The Scandal Within the Bureau of Land Management and the Nature Conservancy** wherein the authors laid out the schemes and specific examples of how Ed Hastey, (state director of the BLM, and also on the board of

directors of The Nature Conservancy), and using the exclusive services of Ralph Brown as a facilitator, transferred public land to private individuals through exchanges producing enormous profits for Brown, the Conservancy and Hastey's friends. One wonders if the heat generated by that report caused Hastey and the Nature Conservancy to change names, ergo, Wildlands. (The referenced report may be obtained for \$6.00 payable to the center by contacting the above).

In any event, I would like questions answered as to the connections between this project and the above-referenced land deal, and also ask that the owners of all parcels in the project area be identified.

The project description says MWD is going to construct and operate a well field for extraction of groundwater, withdraw up to 150,000 acre-feet per year, over a period of fifty years and transfer, in addition, indigenous groundwater to the Colorado River Aqueduct for fifty years using the same facilities. We are told MWD plans to install 40 wells and that the "entire groundwater extraction well field would be constructed on land owned by the project proponents." But we are not told who those proponents are, or precisely where their land is located, and what law gives them the right to extract all the water out of these aquifers to give to MWD to haul off and store in Cadiz' basin, or at Eastside Reservoir via the Colorado River Aqueduct. Please answer these questions.

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#### 4. What is Met's part in the sleazy politics surrounding this project?

I am a citizen and taxpayer of San Bernardino County where the project is located. I am also a life-long resident of said county and am married to, but separated from the person who is the current Chairman of the Board of Supervisors of said county. I have not conferred with Jon Mikels on the following.

I remember the first time that Ted Dutton gave us grapes from Cadiz, the agricultural project he was involved with. I said, "What is this, Jon? Dutton ain't no farmer." And indeed, I was correct. Dutton and the boys had done studies to find out where the water in the desert was located, then established a "farm" to give them, via the county's approval solicited with heavy campaign contributions, the right to pump the water "for agricultural use". They now plan to be the **water bank**.

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From the beginning there has been something very sleazy about events in the Cadiz area. The county approved the Rail Cycle project, subject to approval by the voters of the "business tax", (which approval was not forthcoming), only a short distance from Cadiz's farm. This gave Cadiz a cause of action on which to sue the county, which they did, thus allowing Cadiz and the County Board of

Supervisors to negotiate in closed session, outside of view of the public, and without public comment, on Cadiz's plan to become the water bank.

Meanwhile, members of the public who attempted to speak out on these issues, like myself, have been incarcerated, prosecuted, beaten, in some cases brutally, and have had their reputations smeared and their economic livelihoods threatened.

The District Attorney has used the taxpayers' money to prosecute people for alleged connections with Waste Management, alleging Waste Management did illegal things to poor Cadiz. (When did the D.A. help the ordinary people go after people who have committed civil wrongs against them?) But Cadiz played a few games of their own.

I remember sitting at my desk at my office at home one night when a person called me, claiming to be from Rail Cycle and asked what I thought of the solid waste dump planned at Amboy. During the next weeks, Cadiz played two separate radio advertisements containing my voice and words from that conversation, all without my consent, having recorded our telephone call and using that recording for their commercial purposes. Either they lied when they represented themselves to be from Rail Cycle, or they tapped and recorded my telephone conversations. During that same period, on several occasions, while litigating against Best, Best & Krieger, they repeated back to me verbatim, words I had used in private telephone conversations with my clients. From this, I did believe my phones were tapped. But the district attorney, on behalf of Cadiz, is prosecuting Waste Management for alleged wire taps of Cadiz' phones. It was Cadiz who illegally recorded and published my calls.

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During this period I was aware of the close political connections between Ted Dutton and the governor. I attended two dinners with Pete Wilson at Bob Dutton's (Ted's son) house, and all the other times I ever saw the governor personally, Ted was there and at the governor's arm or close by. Then Wilson appointed him to the School Allocation Board, handling billions of dollars of school funds, when all Dutton was, that I ever knew, was a developer, (or actually a wheeler-dealer, who somehow got his hands into all kinds of lucrative land schemes). Dutton is supposed to be out of the Cadiz project now, but I do not believe it. Dutton was very good at greasing the political wheels. Perhaps there is nothing illegal in that—so long as there is no tit for tat, but I believe the real scheme is only now starting to unfold.

I often wondered why Supervisor Jerry Eaves' campaign contribution reports showed him giving ten, twenty and twenty-five thousand dollar

contributions to Rusty Areias, from Los Banos. A recent San Francisco Chronicle article provided some of the answers; other prior publications filled in the pieces.

Rusty, (one of the "gang of five" along with county Supervisor Jerry Eaves, when Eaves was in the state Assembly), is a dairy farmer from San Joaquin Valley, who turned into a "water farmer". He was selling water from the groundwater basin he shared with other farmers, water that would go to the Met. Other farmers found out, sued him. He went bankrupt, and lost his election. But never mind. The Chronicle article reports he gets paid \$5000 a month by Cadiz and owns 20,000 shares of stock in Cadiz. The article said he is to receive 40,000 more shares if Cadiz wins approval from state regulators to take the water from "indigenous groundwater basins" and store it in Cadiz' water bank. Now the new governor has appointed him to head the state's Department of Parks and Recreation. So I guess he is still in great political standing.

Another member of the "gang of five" was Steve Peace from El Cajon. The last day of the 1998 legislative session, Senator Peace and Gov. Pete Wilson pushed through a bill charging the tax payers \$235 million to pay for water storage along the water route from the Colorado River to San Diego. So I guess Cadiz' tremendous campaign contributions to governors, legislators, supervisors, and district attorneys is bearing fruit. Who cares about the old water law, which allows owners of land to use the water only for the reasonable and beneficial use of their property? Jim Costa and other legislator will get the law changed. But it might not even be necessary in order to effectuate this theft by Cadiz and the Met of the water in the desert's largest groundwater aquifer.

That is where the private negotiations in the back room with the county come in. That is also where Best, Best & Krieger's involvement becomes so crucial. What if the little town of Needles should just happen to go belly up? For instance, what if Needles can't pay off all those bonds that BB&K, their attorneys, (even acting as bond counsel) persuaded the city to issue (some in direct violation of the city charter requiring a vote of the people that never took place)? Or what if the City of Needles can't pay the county the "booking fees" which the County says Needles owes, but BB&K advised not to pay? Or what about the hundreds of thousands of dollars BB&K had the little town of 5000 people pay them to sue their own council person. Or what about all the money-making assets of the tiny town, like the hospital, the golf course, marina, the utilities that are being lost, while BB&K serves as the city's attorneys? If Needles goes bankrupt, it becomes **County Unincorporated Territory! Then, San Bernardino County can join Cadiz in becoming the WATER BANK.** The benefits of any water rights the city of Needles might have, as a consequence of using the basin for municipal water supply, would inure to the County. And who would be left to contest or

p4-30

litigate the water grab, Owens Valley revisited? No one. Catellus would be on board. Hastey is always ready for a deal. Wildlands is probably ready to convey their right to the water under their newly acquired property to the Met. Win-win! Whoopee! As discussed below, even Edison, who is dying to dump their cut-up San Onofre, "Song One" reactor in the sand at Ward Valley, on their "utility corridor" wins, because all those environmentalists can no longer say migrating radionuclides will get into the aquifer and contaminate the water. **The water will be gone.** There is only one problem—what about the "desert tortoise"?

P4-30

##### 5. Is the Met behind the QUAD STATE conspiracy to kill the desert tortoise?

San Bernardino County has formed a coalition with several other California counties (e.g., Kern, Riverside), as well as counties from the states of Arizona, Utah, and Nevada, to form a joint powers authority. The authority will issue bonds to generate income, to pay for lobbying to attack the laws which protect the desert tortoise and its habitat.

The coalition has hired Gerald Hillier, former Bureau of Land Management Desert District Director, under Ed Hastey, who is being paid \$110 per hour, plus all of his expenses to go to Washington, Sacramento and any other place necessary to gut the endangered species act and laws protecting the tortoise.

P4-31

Why would San Bernardino County (which is paying 70% of the coalition's costs, based on the percent of desert tortoise habitat located in its jurisdiction) want to destroy protection of the desert tortoise? Exhibit B shows that even in 1992 it was recognized that "the area considered for drilling is in **prime desert tortoise habitat in a Wilderness Study Area.**" Thus, if the Met wants to sink forty wells and rip off the water in Fenner and Ward Valleys they will have to get rid of the desert tortoise protections. Unlike Cadiz's valley, close to salt mines and brine, with a low water table, which residents in the area say is dropping significantly since Cadiz started farming, Ward Valley has springs and artesian wells. The water under Ward Valley gurgles out and rushes down in water falls and pools on its way to the Colorado River, 1000 feet in elevation below. When Met completes extraction of that precious life-giving substance in those aquifers, (and in the name of "storage for dry years", pumps the water over miles and miles of hot desert terrain, exposed to evaporation, and degradation in Cadiz' spreading basins and inferior storage aquifers,) then Ward and Fenner Valleys will no longer support life. Nor will those valleys support agriculture, economic production or beneficial use of any kind. And yes, the desert tortoise—and all other living creatures dependent on the springs--will die.



No wonder the County of San Bernardino has declared war on the desert tortoise. Big campaign contributions, and perhaps the rewards of becoming the "water bank" depend on getting rid of that despicable creature. Is the Met behind this? One might guess the tortoise has been discussed. Please address these issues in the EIR/EIS.

P4-31

#### 6. Do the urban polluters get to benefit from the water grab?

I respectfully ask the Met to address the following questions. How much of the water it plans to "store" from the Ward and Fenner Valleys, depriving the desert communities of future agricultural and economic development, will go to clean up the messes created by Lockheed Martin, Aerojet, Kaiser, and the United States military bases in the Inland Empire?

We know that Lockheed dumped perchlorate and trichloroethylene, that Aerojet did the same, as well as poisoning Chino Hills wells with arsenic, that Kaiser was dumping chromium, nickel, vanadium and barium, and the Air Force was putting plutonium in the sewer lines. All these poisons are pluming into the groundwater basins along the Santa Ana watersheds, ending up in places such as the Chino basin. How much of the water being taken from the desert communities is to be used to dilute the polluted urban groundwater to acceptable levels? And how much money are these polluting corporations being required to pay to clean up the messes they made while generating profits for years (many from weapons manufacturing)? And how much of that money will be paid to the communities who are losing their water (and future benefits to be derived therefrom), so that the Met can wheel it to the urban centers closer to the coast?

P4-32

Are the big polluters going to be let off, free to cover over their toxic nightmares with new economic uses, such as Kaiser's transportation hub for trucks and trains carrying nuclear waste to the desert? These are policy questions that need to be addressed by our political leaders who are pushing legislation to enable and legitimize this water grab. There is a lot of rhetoric these days about water transfers, and conjunctive use, and water "development" being the answer to the shortages foreseen because of the burgeoning population. But the millions of acre-feet of water consumed by the polluters such as those few mentioned above, is rarely addressed. I would like to know precisely where the indigenous groundwater Met plans to put in the "CRA" will go, and who will benefit? If it is necessary to take it to polluted urban groundwater basins, to inject for the purpose

of diluting poisons deposited there by industry, please indicate that. Such truths will further policy discussions which may help support future life on earth.

And if the additional water is needed to supply new development, then please address whether it is anticipated that the groundwater in the aquifers beneath Met's well fields will replenish itself. If not, how many years will it take for the coastal cities to use all the water being taken from these indigenous groundwater basins? If new development has sprung up in reliance on this water, how long will it be 'til the well runs dry? What happens then?

Finally, beyond this issue of identification of the beneficiaries of this project, please identify all those groups who are expected to lose, because of the proposed action by Cadiz and the Met. The maps attached hereto show clearly that the groundwater basins in question feed the Colorado River. Yet, for purposes of the Bureau of Reclamation's rulemaking on off-stream storage, they indicated to me that water in aquifers, even if connected to the river by underground pathways, is not considered water from the Colorado River for purposes of the allocations between the compact states. While that is all well and fine, if one extracts water from aquifers connected to and flowing into the river, one would reasonably expect there to be less water in the river. Specifically, one would anticipate less water in the lower Colorado River, which is already drying up, and less water for Mexico, which also has entitlements to Colorado River water. What steps are being taken to provide due process and rights of protest to the losers in this proposed action?

P4-32

**7. After Met extracts the water, then is Edison going to fill up the basin with nuclear waste?**

In January, 1999, the U.S. Dept. of Energy came to Needles and the Board of Supervisors and announced their "suggestion" to transporters of nuclear waste from the east coast to go across the Colorado River at the Topac Bridge and over Highway 40, right through Needles and Ward and Fenner Valleys, en route to the Nevada Test Site for storage. Las Vegas doesn't like the odds of thousands of shipments coming near their town.

In February, 1999, the U.S. Nuclear Regulatory Commission and Edison held a hearing regarding their plan to start chopping up San Onofre's reactor number one ("Song One", they call it). It will be cut up in pieces and put on trucks and trains, shipped across the San Bernardino County en route to the Nevada Test Site and Barnwell, South Carolina, presumably over the same routes.

P4-33

U.S. Ecology, licensed by the state's Dept. of "Health" Services to operate a nuclear dump at Ward Valley, has paid the \$250,000 annual fees to renew their license for another year. That license allows them, as soon as the land at Ward Valley has been deeded by the federal government to the state, to begin burying millions of drums of radioactive waste right over the groundwater MWD tells us it is preparing to extract.

Please address in the EIR/EIS whether Met's plan means they have some kind of inside information indicating there will be no nuclear dump over the Mojave Desert's largest groundwater aquifer; or whether the plan is just to get the water out first? Is Met's project designed to eliminate cogent objections to the absurdity of dumping that waste at Ward Valley? Or is Ward Valley to be the excuse for Owens Valley revisited? Or is it both? Certainly there is a close alliance between the Metropolitan Water District and Edison—Water and Power seem to be close cousins. Please address these reasonable concerns for the citizens of San Bernardino County who have had to live with this nightmare for so many years now.

P4-33

### ENVIRONMENTAL JUSTICE

Finally, with the above issues in mind, I hope the Met will not discard the issues of Environmental Justice with such a curt dismissal as, "These policies do not create adverse effects on disadvantaged populations", as indicated in the last sentence of your Notice of Preparation.

I hereby specifically demand a thorough demographic analysis of the population of Needles. I believe you will find in this "remote desert community" large percentages of persons of ethnic minorities, including Native Americans, impoverished individuals, Catholics, lower educational achievers, low income workers, and approximately 33% children, as well as a high proportion of senior citizens on fixed incomes. These people cannot afford large campaign contributions to governors, legislators, or supervisors, like Keith Brackpool can. But they are Americans who deserve water as much as the rich coastal communities do. Met cannot arbitrarily declare their area's water to be "surplus", as justification for Met's removing it and taking it elsewhere to store, in order to claim ownership and sell it to Met's customers. That is "conversion".

P4-34

### Conclusion

Please provide answers to all the questions raised herein, if and when Met prepares a draft EIR/EIS, and allow me the opportunity to further comment at that time. It is my hope that Met will reconsider the project in light of the above and save the

P4-35

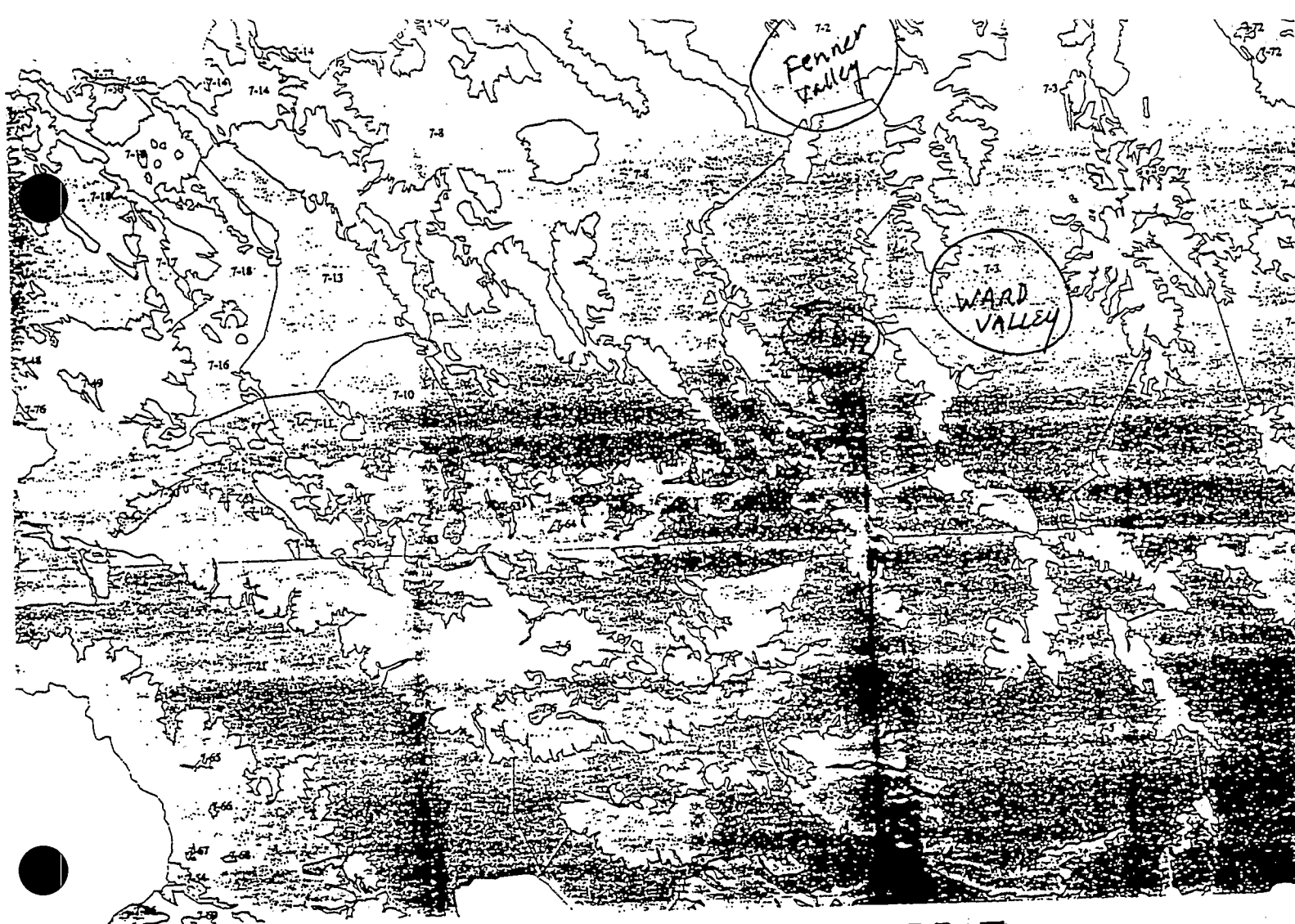
ratepayers money, by not proceeding with a project so fraught with legal and political pitfalls as is this one. Concentrate on your Imperial Irrigation District deal with people who seem to want to sell "conserved" water.

P4-35

Thank you for allowing me to comment.

Very truly,

MARJORIE MUSSER MIKELS



# REGION 7

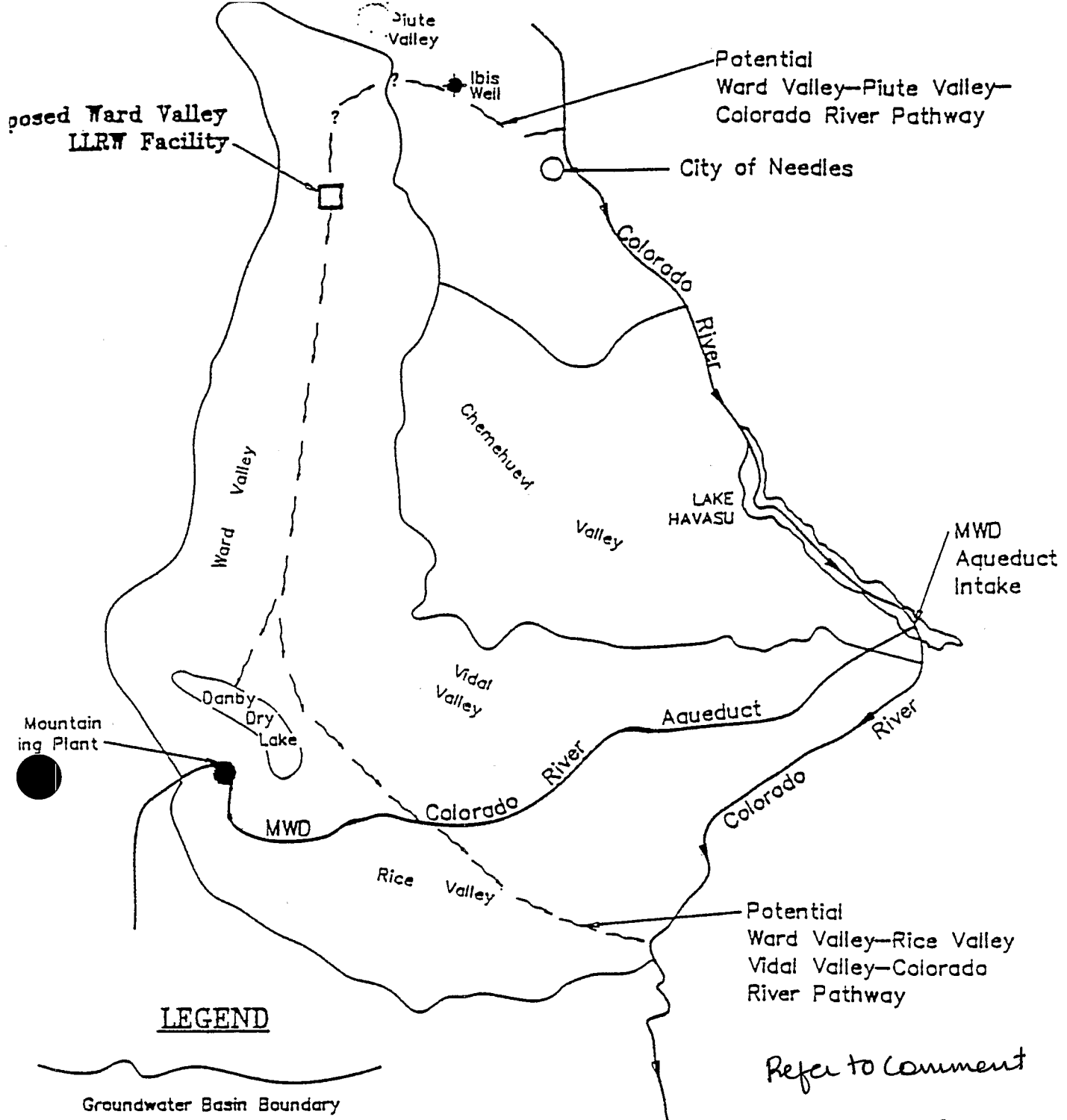
## WATER BASINS

- |                              |                               |                                 |
|------------------------------|-------------------------------|---------------------------------|
| 7-1 LANFAIR VALLEY           | 7-28 VALLECITO-CARRIZO VALLEY | 7-55 COLLINS VALLEY             |
| 7-2 FENNER VALLEY ✓          | 7-29 COYOTE WELLS VALLEY      | 7-56 YAQUI WELL AREA            |
| 7-3 WARD VALLEY ✓            | 7-30 IMPERIAL VALLEY          | 7-57 PINYON WASH AREA           |
| 7-4 RICE VALLEY              | 7-31 OROCOPIA VALLEY          | 7-58 WHALE PEAK AREA            |
| 7-5 CHUCKWALLA VALLEY        | 7-32 CHOCOLATE VALLEY         | 7-59 MASON VALLEY               |
| 7-6 PINTO VALLEY             | 7-33 EAST SALTON SEA BASIN    | 7-60 JACUMBA VALLEY - EAST      |
| 7-7 CADIZ VALLEY ✓           | 7-34 AMOS VALLEY              | 7-61 DAVIES VALLEY              |
| 7-8 BRISTOL VALLEY           | 7-35 OGILBY VALLEY            | 7-62 SAN GORGONIO MOUNTAIN AREA |
| 7-9 DALE VALLEY              | 7-36 YUMA VALLEY              | 7-63 MUSIC VALLEY               |
| 7-10 TWENTYNINE PALMS VALLEY | 7-37 ARROYO SECO VALLEY       | 7-64 PINTO MOUNTAIN AREA        |
| 7-11 COPPER MOUNTAIN VALLEY  | 7-38 PALO VERDE VALLEY        | 7-65 PALM CANYON                |
| 7-12 WARREN VALLEY           | 7-39 PALO VERDE MESA          | 7-66 ASBESTOS MOUNTAIN AREA     |
| 7-13 DEADMAN VALLEY          | 7-40 QUIEN SABE POINT VALLEY  | 7-67 NIGHTINGALE AREA           |
| 7-14 LAVIC VALLEY            | 7-41 CALZONA VALLEY           | 7-68 DEEP CANYON                |
| 7-15 BESSEMER VALLEY         | 7-42 VIDAL VALLEY             | 7-69 HORSE CANYON               |
| 7-16 AMES VALLEY             | 7-43 CHEMHUEVI VALLEY         | 7-70 RATTLESNAKE MOUNTAIN AREA  |
| 7-17 MEANS VALLEY            | 7-44 NEEDLES VALLEY           | 7-71 MCCLAIN VALLEY             |
|                              |                               | 7-72 CHEMHUEVI MOUNTAINS AREA   |


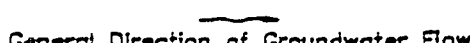
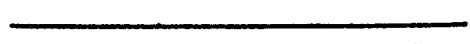
*From Water  
Quality  
Control Boards  
Colorado River  
Region*

*Refer to  
Comment  
P4-25*

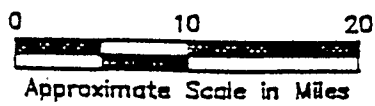
*Exhibit  
"A" (3)*



**LEGEND**


-  Groundwater Basin Boundary
-  General Direction of Groundwater Flow Showing Potential Pathways
-  MWD Colorado River Aqueduct

*Refer to Comment  
P4-28*




O.T.E.: Scale Applies only to Geohydrologic Features;  
Sources: Bedinger, et al., 1989  
and The Mark Group, 1990

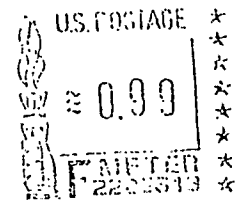
**OSCIENCE**  
Services Incorporated

Drawn: PLP
Checked: 
Approved:
Date: 5-AUG-94

**POTENTIAL  
GROUNDWATER PATHWAYS**

Exh. 

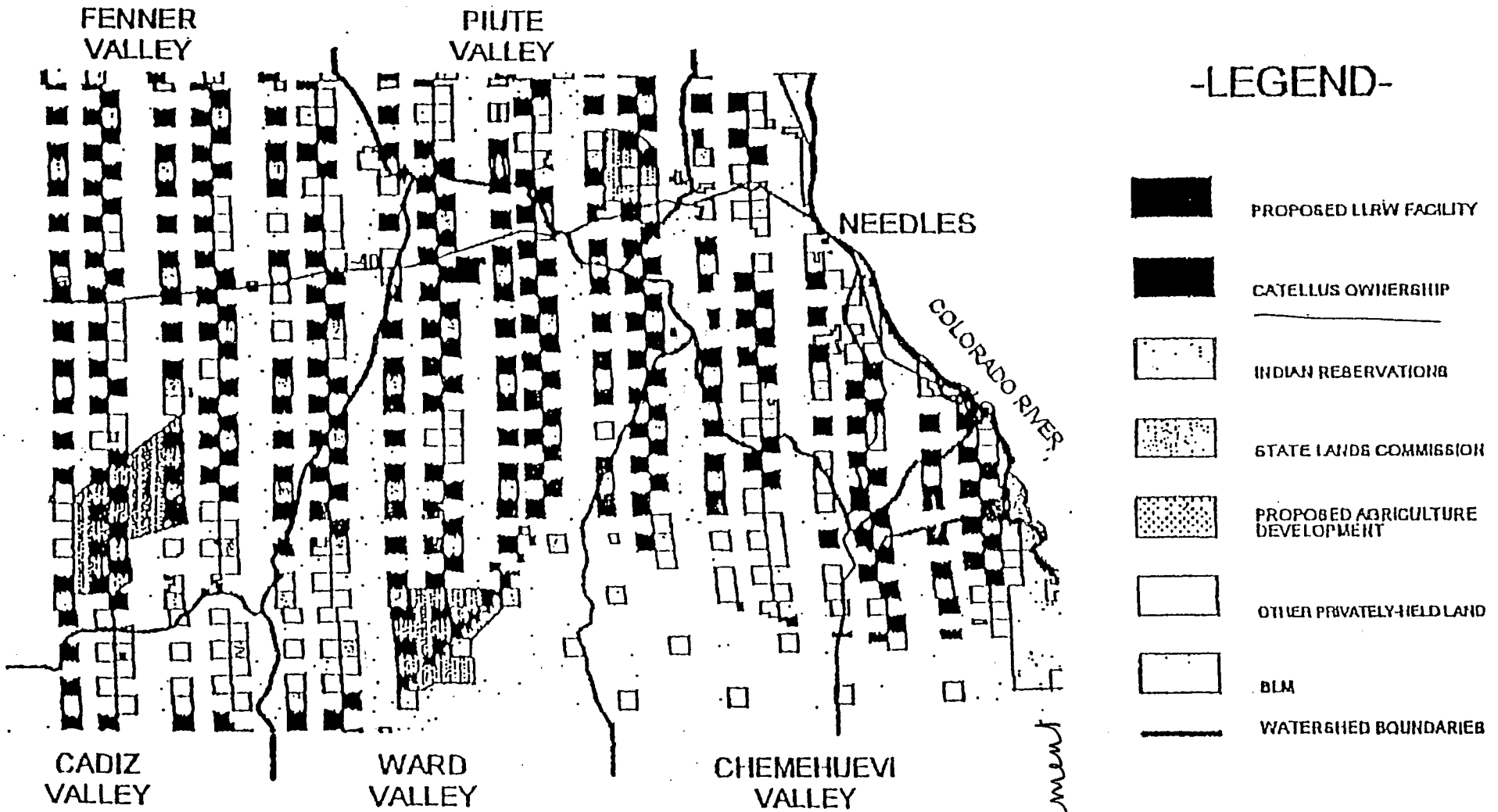
JN 1504



RJORIE M. MIKELS  
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land, CA 91786

METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA  
Box 54153  
Los Angeles, CA 90054-0153

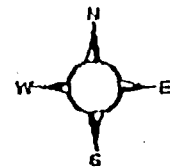
# Ward Valley Area Property Ownership



*Exhibit "D"*

*Refer to comment*

*P4-29*



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Miles



**RECEIVED**  
BUREAU OF LAND MNGMT.  
99 MAY 24 AM 10: 17  
CALIF. DESERT DISTRICT  
RIVERSIDE. CA.

Marjorie Musser Mikels  
Attorney at Law  
201 N. First Avenue  
Upland, CA 91786  
(909) 981-2030

May 23, 1999

James Williams, Supervisory Realty Specialist  
BUREAU OF LAND MANAGEMENT  
California Desert District  
6221 Box Springs Boulevard  
Riverside, CA 92507

RE: Scope of Analysis of draft EIS/EIR for proposed Cadiz Water Storage and Dry-Year Supply Program Pipelines

Dear Mr. Williams:

I have previously submitted written comment to Metropolitan Water District concerning this project, a copy of which was forwarded to your office in March, 1999. Those comments are hereby incorporated by reference, and a copy is attached hereto for your convenience.

] p4-36

Before the Bureau of Land Management expends public funds for an EIS/EIR, I respectfully request that the issues discussed below be addressed. These issues take precedence over any discussion of the inescapable and devastating environmental consequences of the proposed project, and go to the issue of the legality of the "project" itself.

] p4-37

The issues addressed herein are:

1. Inadequate Definition of Agency Roles and Source of Authority for MWD to serve as lead agency to conduct environmental studies on their attempted water grab of indigenous groundwater.
2. Failure to Amend the California Desert Plan before consideration of a site specific project within the California Desert Conservation Area.
3. The value of the public resources (water) being expropriated by the MWD and a private corporation, (Cadiz) and the economic benefits the public may

] p4-38

] p4-39

] p4-39

expect, if any, in consideration for this gift of groundwater to be exported and appropriated by the project proponents.

p4-39

4. The legal grounds by which the project proponents claim to have appropriation rights to this valuable public resource they plan to carry away via pipelines laid across public land.

p4-40

5. Public Policy Issues including the Doctrine of Public Trust.

p4-41

On behalf of myself and numerous other citizens of the County of San Bernardino, I respectfully request these issues to be addressed before any further public funds are utilized in studies of this project which I have reasonably dubbed, "Owens Valley Revisited".

p4-42

**1. PLEASE DEFINE RESPECTIVE AGENCY ROLES AND AUTHORITY FOR PROCEEDING IN ANY MANNER WITH THIS PROJECT.**

p4-43

I was surprised in March, 1999, to learn that Metropolitan Water District (MWD herein) and not the BLM was conducting the scoping for the EIS. MWD has, to my knowledge, no jurisdiction in the area of San Bernardino County from which it is attempting to appropriate water for its profit and sale to coastal region users. I was surprised that BLM had no representatives at either the scoping session held in March at Cadiz, nor at the meeting held that same evening in Needles, CA, the community whose ground water resources will be depleted by Cadiz and MWD's appropriation. Perhaps BLM perceives its only role to be to conduct the EIS/EIR regarding the pipeline to transport indigenous water to Cadiz, since that pipeline will traverse our public land. However, I understand MWD intends to pump and take water from the aquifers underlying public land in Fenner and Ward Valleys, which will reasonably be expected to severely impact present and future uses of public land and resources there. Much of that land overlying the groundwater to be appropriated is owned by the federal government, managed by the Bureau of Land Management, on behalf of the people. So why is not the BLM conducting the EIS/EIR regarding the taking of that water? Please explain the roles, legally and practically of the different agencies in this water grab. Is BLM merely driving the get-away car for the water heist, or is your agency participating in the appropriation of a public resource for private gain?

For sometime, there have been attempts in Sacramento to pass legislation which would, by some stretch of the imagination, grant MWD powers of the

State. MWD wants legal authority to grab water in one part of the state for their own use, merely by asserting their customers have a more beneficial use in mind for the water than the use to which it is currently being employed. Many bills have been introduced. One, a couple years ago, would have given the governor power to appoint a 15-member board, instead of the manner in which the board of directors is currently comprised, appointment by the various member water agencies comprising MWD with additional members based on land valuation within the respective districts. That proposal caused James T. Edwards, President of the Foothill Municipal Water District to write on May 1, 1997,

“As proposed in SB 926 and AB 928, Metropolitan would effectively be transformed into another arm of state government, with a board composed of political appointees that could conceivably represent political interests that are not consistent with the Metropolitan member agencies’ needs in securing a reliable water supply at the lowest possible cost for Southern California. . . . local control and governance of Metropolitan must be maintained.”

Those bills were not enacted. This year, MWD and Hayden and Kelly have been trying more subtle means to make it appear MWD has “state-wide” authority. In addition to making the MWD comply with conflict of interest reporting requirements (which are standard for most public officials but did not seem to apply to this powerful agency) and passing legislation prohibiting MWD from using rate payer money to conduct intrusive investigations into the personal lives of “whistleblowers” in an attempt to destroy individual’s reputations, Senate Bill 60 (Hayden) requires the district, “in cooperation with specified entities, to participate in considering programs of groundwater recharge and replenishment, watershed management, habitat restoration, and environmentally compatible community development utilizing the resource potential of the Los Angeles River, the San Gabriel River, **or other southern California rivers**, including the storm water runoff from these rivers.”

I request the BLM to answer the public as to whether those five words in Senate Bill 60, (“or other southern California rivers”) are the authority being relied on to allow MWD to be lead agency on their proposal to take the water in Fenner and Ward Valleys (hydraulically the same water in the connecting basins), and appropriate it for their own use and profit. If not, what is the law being relied on for such authority? Sen. Kelly had some bills this year that would require MWD to make economic interest reports, but then to dip in the tax payers’ coffers for millions of dollars to reimburse MWD for the costs of “complying with the state mandate”. Does that convert MWD into an arm of the state so they can go anywhere and claim any county’s water as its own, just

P4-43

because MWD has a good beneficial need for it? Are they allowed to be the lead agency all over the state now, to turn your rural area into a waste land because "we need your water more than you do"?

p4-43

## **2. ISN'T THE DESERT PLAN AMENDMENT NECESSARY BEFORE A SITE-SPECIFIC PLAN FOR CONVEYING OUR WATER TO CADIZ IS CONSIDERED?**

BLM's notice (#CA 060-99-38) states: "The proposed project will include a draft plan amendment to the California Desert Conservation Area Plan to allow the 35-mile long pipeline or aqueduct to be placed outside an existing utility corridor".

p4-44

It is encouraging to know that BLM now remembers that the California Desert Plan exists. We have not forgotten the continuing struggle against the Ward Valley Nuclear Dump. The BLM facilitated the direct sale of land in Ward Valley to be used for radioactive waste storage and disposal, ignoring the fact that no use classification or element exists in the Desert Plan that would allow dumping of that lethal poison on our public lands. We recall the EIS for a nuclear dump was conducted under the guise of "indemnity selection" initially, later switched to "direct sale", all without the Category II Plan Amendment called for in the Congressionally-approved Desert Plan and without the public hearings necessitated by NEPA.

So now BLM seems to understand the necessity of a plan amendment. But should not that plan amendment, with concomitant public hearings, be conducted first before a site-specific plan is proposed for EIS/EIR? Doesn't the plan amendment require independent establishment of "site suitability criteria"? We, the public, have not even been given the text of the proposed plan amendment. Is it going to say: "New use of public land: pumping groundwater aquifers dry so water districts from remote regions of the state can 'appropriate' and convey the water to basins owned by private corporations for 'storage', thus reaping private profit from water owned by the people, under the rubric of 'dry-year storage'"? Is that the new plan amendment? If so, lets put that amendment out for public comment and see if the citizenry believes this to be a "beneficial and reasonable use" of their publicly-owned land and underlying water resources. If so, enact the plan amendment and then BLM can put the new "use" out for public proposals and bid. Perhaps some other landowner, other than Cadiz, has an empty groundwater storage basin they would like to fill with the people's water. Perhaps an alternative bidder might even be willing to pay the taxpayers for our water, instead of pretending that

holding the stolen resource is a "public service" for which they should be paid. Paying for the "get-away car" or pipeline that MWD intends to use to steal (excuse me, "appropriate") the water is hardly just compensation for taking the public's largest groundwater resource, is it?

P4-44

### 3. WHAT IS THE VALUE OF THE PUBLIC RESOURCE THE PROJECT PROPONENTS INTEND TO EXPROPRIATE FOR THEIR PRIVATE GAIN?

While BLM is commenting on the above-referenced policy and planning issues, (i.e., why they aren't doing the plan amendment first), could someone please do an accounting analysis? If Catellus is correct, that 30 million acre feet of water lies in the groundwater aquifers under Ward and Fenner Valleys, and water is being sold today for \$459 per acre foot in San Diego, is the water under that public land really worth \$13,770,000,000—almost \$14 billion dollars? And if that is incorrect, could you please tell the public how much our management company (i.e., the BLM charged with "managing our public lands") believes our "indigenous" water is worth? And if the BLM has not calculated the value of the water MWD and Cadiz intends to pump and pipe out of our public lands, why not? And Mr. Williams, would you agree that if you were the "realty specialist" for a private company and you were about to give away \$14 billion of your employer's assets without consent of your employer that you might not only be fired but prosecuted for embezzlement or misappropriation of funds? Why do not the citizens of the United States deserve the same ethics and fiduciary responsibility that some corporate entity enjoys of its employees? Do we not deserve to vote, or at least have public comment on whether we wish to give away \$14 billion, before we comment on the "environmental issues"? When do we get to talk about the *economic* issues?

P4-45

I hereby register my lack of consent to the repeat of Owens Valley that is being considered here, and state that any expenditures of public funds for environmental studies of this ill-conceived plan is a waste of public funds for which the Bureau of Land Management, and its officials, should be held legally responsible.

I hereby respectfully request BLM's written response as to why a plan amendment is not being proposed **first** (with public hearings held on the plan amendment), **before** a site specific project is proposed and thousands of dollars of taxpayer money are wasted processing environmental studies for the benefit of Cadiz and MWD. Why is Cadiz receiving special treatment? Why should Metropolitan Water District be allowed to put their pipes across our land to

P4-46

take our water to Cadiz? Why are we doing a scoping on the project at all if such a project is not currently permitted by the California Desert Plan? If the water needs to be stored, what is wrong with the location in which it is now "stored"? Why should the water go to Cadiz's salty degraded basin? Why is the BLM even contemplating using public lands and public funds to aid and abet a private corporation in the theft of our public resources for private profit, all in contravention of state water law, and a congressionally approved land use plan?

p4-46

#### 4. UNDER WHAT LAW IS THIS "PROJECT" INVOLVING THE EXPROPRIATION OF PUBLIC WATER RESOURCES FOR PRIVATE GAIN BEING PROCESSED?

In your analysis of what law controls the issue of whether BLM, as manager of public lands in the Ward and Fenner Valleys, may allow MWD and Cadiz to appropriate water underlying those lands and export it for use in MWD's service coastal service areas, your attention is invited to the following:

##### 1. State Water Law applies.

The United States Supreme Court held in the New Melones Dam case, United States v. California, 438 U.S. 645 (1978) where the United States was seeking a permit to appropriate water for storage behind the dam from an intra-state river, the Stanislaus, that state water law controlled. Reliance on the case of Arizona v. California, which dealt with interstate water was misplaced.

p4-47

##### 2. Even the Federal Government Acknowledges the Evils of Water Grabs and speculative water transfers.

It should be noted that even when the Bureau of Reclamation was established and given the right to sell irrigation water to farmers, the 57<sup>th</sup> Congress wanted to prevent "the possibility of speculative use of water rights" (H. Rep. No. 1468, 57<sup>th</sup> Cong., 1<sup>st</sup> Sess., 6-7 [1902]). Rep. Mondell of Wyoming, in charge of the bill on the House Floor said: "The settler or landowner who complies with all the conditions of the act secures a perpetual right to the use of a sufficient amount of water to irrigate his land, but this right. . . only extends to the use of the water on and for the tract originally irrigated. These most important provisions of the law prevent all the evils which come from recognizing a property right in water with power to sell and dispose of the same elsewhere and for other purposes than originally intended. It is much better to risk the individual hardships which will inevitably occur under a provision of appurtenance than to risk the evils certain to result from unlimited authority to transfer water rights." 35 Cong. Rec. 6679 (1902).

3. State Law gives the landowner the right to pump the groundwater below his property for use on the land overlying the aquifer. He shares that right with other owners of land over the aquifer. Katz v. Walkinshaw, 141 Cal. 116, 134 (1903).

Use of the water being tied to the land has been recognized and upheld in California law because land without water is often worthless, and normally groundwater, used on the overlying land, will percolate directly downward in response to gravity, replenishing the underlying groundwater supply.

California law gives precedence to overlying users in recognition that if one person can for his individual profit sell or transfer the water on which others rely, he can destroy the whole community and render the neighborhood or area uninhabitable. Owens Valley is an example.

As between the owners of land overlying strata of percolating waters, the rights of each to the water are limited, in correlation with those of others, to his "reasonable use" thereof when the water is insufficient to meet the needs of all. (Katz at 135-136). **The right is not dependent on continuous use and it cannot be extinguished for nonuse.** (Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist. (1935) 3 Cal.2d 489; Wright v. Goleta Water District (1985) 174 Cal. App.3d 74).

Appropriators are entitled only to surplus water in the basin, that is, that amount of the safe yield, and those rights are subordinate to cumulative needs of all overlying users, whose rights are paramount to appropriative rights. (City of Los Angeles v. City of San Fernando (1975) 14 Cal. 3d 199, and City of Pasadena v City of Alhambra (1949) 33 Cal.2d 908.)

People like Brian Gray of Hastings Law School (who helped draft water transfer proposed law) and Sen. Jim Costa have been trying for several years to change water law to facilitate ease in groundwater transfers, no doubt for the profits of corporations like Western Water and Cadiz. But so far, those laws have not been enacted. And the court in the case of Baldwin v. Tehama County, (1994) 31 Cal. App 4<sup>th</sup> 166 affirmed that counties, (and citizens by voter initiative) have the right to protect their future economic interests in their groundwater by limiting groundwater exports.

Communities do not have to become wastelands just because some neighboring big city claims they can make a more "beneficial use" of a rural area's groundwater.

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Given all the above, and before BLM gets to the issue of whether MWD's pumping will significantly affect the environment in the Ward and Fenner Valleys, the public has a right to know:

1. Who are the overlying landowners of the aquifer from which the water will be pumped to put into the pipeline that will traverse public land en route to Cadiz? Wildlands Conservancy executive director, David Myers, told me on April 1, 1999, that Wildlands is buying all of Catellus' land holdings in Ward Valley, but not Fenner Valley.

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Wildlands says it will "eventually" transfer the land it is buying to the United States Government, since Congress is being requested to fork over \$36 million of federal funds to aid the purchase by this non-profit corporation of land owned by Catellus. Wildlands is contributing \$18.6 million to the acquisition of 438,000 acres. Will Wildlands, before conveying the land over to the public, first sell off the groundwater rights to Cadiz or MWD? Is Catellus selling its water rights in Fenner to MWD or Cadiz? Has there been any determination that any proposed sales are of "surplus" water? Is the federal government selling its overlying landowner rights to Cadiz or MWD? Or is the BLM just sitting by while the public's water rights go unprotected, allowing these rights to be appropriated without compensation or even objection? Does Cadiz own land in Fenner? Are they currently pumping any water there for beneficial use on the overlying land? Have they ever filed a "Notice of Extraction and Diversion of Water" with the State Water Resources Control Board? What use rights have actually been established in these valleys? By whom? For what use? How is the determination of "surplus" being quantified?

2. Have there been any determinations as to whether these basins actually will recharge themselves? Or is this water being taken after determination that the water in those basins is a one-time non-renewable resource and that Cadiz and MWD have more of a right than anyone else, including the public, to exploit this resource? If so, who made this determination, when, how, and why?
3. What is the City of Needles' interest in the water under the Ward/Fenner Valleys, as a municipality whose wells are recharged from that aquifer?
4. Who are the transferors?
5. Do the transferors have a transferable quantifiable right to transfer any water? How did they acquire that right? From whom and when?

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6. Will the transfer operate to the injury of a vested water right holder or the environment?

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7. Since the water is being transferred out of the basin, what legal restrictions apply?

] p4-54

8. How is transferring water out of these aquifers going to impact the Lower Colorado River which is already drying up?

] p4-55

These issues are very important because we the people, the public, are the owners of the overlying land in these basins and as such have priority rights to the groundwater underlying our land. Who and when and why and how did we lose those rights so that now MWD and Cadiz come in to take our water and we get to comment only on the environmental impacts of the pipeline?

] p4-56

It should be noted this "project" bears no similarity to the Imperial Irrigation District transfer of their "conserved" water to San Diego. In that case, Imperial farmers receive water from the Colorado River through their contracts with the Bureau of Reclamation, and have well-established rights and use patterns. They intend to sell their "surplus" or "conserved" water to San Diego and convey it over MWD's aqueduct. They promise none of the water they "farm" will be from leaving fields fallow—they are just going to save, so they can sell water they receive for \$13.50 per acre foot, to San Diego where it goes for \$450.00 per acre foot. They have a contract, long negotiated. We may have questions about why these people should reap such tremendous profits off of tax-subsidized water, but at least the terms are out in the open and people all over the state can review and comment.

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In this project, we have a huge outside water district going beyond its district boundaries to an aquifer under public land where they have established no historical use rights and made no prior beneficial use of the water for farming the overlying land. The district intends to install wells, pump the water, and take it far away for their own customer's use. This does not look like Conjunctive Use, or Rights of an appropriator. It looks like theft or conversion. What is the BLM's and the MWD's theory of its rights and ownership?

If MWD claims to own this water by prescription, (five years of open, notorious, hostile adverse use against the rights of the legal owner), then they need to be reminded, that one cannot acquire property and water rights by prescription on public lands. People v. Shirokow (1980) 26 Cal. 3d 301.

The little announcement sent out by the BLM fails to address any of the above issues, or provide any information about what the proposed project actually is. We aren't told who owns the water, who is getting the water, on what grounds, legally or equitably, they claim rights to this valuable resources. We are given no economic analysis or description of the public interest as opposed to the private interests involved. The announcement is woefully inadequate to even commence a scoping of environmental issues—first we need to know what is the project—and thus far the public has not been adequately informed.

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## 5. THE PROPOSED PROJECT FLIES IN THE FACE OF SOUND ETHICAL PUBLIC POLICY.

The BLM holds the land and water in the project area in **PUBLIC TRUST** for not only the citizens and natural creatures living today in reliance on that land and water, but for future generations. BLM is charged with responsibility to manage this land and water for purposes of sustainability and maximum safe yield. We all saw what the last great water grab at Owens Valley did—death, destruction and continuing environmental and health degradation for years to come.

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Before we give away the water at Fenner and Ward Valleys we need to consider the following policy issue. We taxpayers in the County of San Bernardino have been severely and inordinately impacted by the United States' war machine. Weapons contractors, Lockheed, Kaiser, and Aerojet, (along with the huge military bases in our county) have dumped poisons in our groundwater, many of which cannot be removed. Plutonium in the sewers at Norton AFB, Perchlorate and trichloroethylene, at the Lockheed Mentone plume, and depleted uranium, perchlorate, nerve gas and arsenic in the Aerojet site in the Chino Hills can be "treated" only by dilution of the groundwater with clean supplies of water until "acceptable levels" of the polluting substances are obtained.

Our small water districts, and our ratepayers are being charged exorbitantly high prices for water, purchased by our water companies from the MWD to inject into our groundwater wells. Now, MWD intends to take for free the water out of our county's largest groundwater aquifer, to sell back to us so we can dilute the wells polluted by weapons manufacturers. These corporations who polluted our wells are some of the largest in the world, with budgets larger than that of most countries.

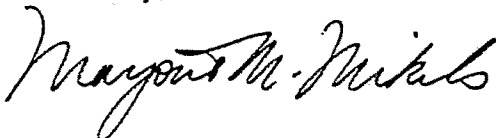
I suggest that the United States and its weapons manufacturers be required to reimburse the people of the county of San Bernardino the cost of every gallon, and every acre foot of water that our local water districts must purchase to inject into our wells to restore our groundwater to "safe" levels for drinking, bathing, and irrigation of our food crops. I suggest that MWD pay the \$14 billion dollars to the county of San Bernardino for the water they intend to take from our indigenous groundwater supplies. They can get reimbursed by Lockheed Martin, Aerojet, Kaiser, GE, GD and all the other military contractors who have polluted our urban valley. After all, Congress voted to give the military another \$15 billion of taxpayer money to make weapons of mass destruction only last week. I speculate that Lockheed has the money.

What is being proposed instead is that San Bernardino County residents not only have our urban groundwater basins polluted, but that MWD be permitted to take our desert water for free, then sell it back to our local water districts at enormously high prices, so they can be driven out of business. Water districts all over our region are folding. MWD has been blasting through our mountains to lay their pipes, has been sucking up every bit of water from our region to fill its new Eastside Reservoir in Hemet, all the time holding us hostage with their high prices.

Now, on March 30, 1999, MWD announced its new **Manager**, Ronald R. Gastelum, attorney and official for BKK, the toxic waste company that poisoned the water in West Covina. Such a wonderful new partnership is being forged: the preeminent polluters of the Los Angeles Basin with MWD, the water giant, serving as lead agency to determine the environmental impact of MWD itself stealing the public's water.

What about you, Mr. Williams? Do you think Mr. Gastelum will care about the desert tortoise, when MWD decides if it should be allowed to take \$14 Billion of water from that protected species' habitat? I respectfully request that the Bureau of Land Management go no further with this proposed "project" until the public has answers to all the above questions.

Sincerely,



MARJORIE MUSSER MIKELS

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## **STATE WATER POLICY**

**Water: Davis adviser taps a Capitol aquifer**

**Sacramento Bee - Sunday, Jan 23, 2000**

**Commentary By Tom Philp, Bee associate editor**

To most Californians, the water bond on the March ballot is an unfamiliar collection of projects. But to Keith Brackpool, chief executive officer of Cadiz Inc., it contains a key that could unlock a treasure. Buried in the fine print of the water bond is a provision, inserted behind the scenes in the Legislature's final hours last September, that makes a Brackpool project eligible for a public subsidy. The project would tap water beneath the Mojave Desert and sell it to Southern California communities.

Brackpool's ambiguous behind-the-scenes role in water policy and attending key private meetings with officials and with legislators struggling to write the water bond raises familiar political and ethical questions, ones that go back as far as the days when the railroads dominated the state Capitol.

Why has a major campaign contributor and Brackpool gave an estimated \$133,000 to then-candidate Gray Davis' 1998 campaign and become by all appearances Gov. Davis' top water adviser? When is it appropriate for a governor to skirt his

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own paid staff and call on a corporate executive to help formulate public policy on issues in which his company has a direct stake?

Brackpool is a newcomer to the inner circle of California's water politics. When Pete Wilson was governor, "we did not have any business on policy issues with him that I can recall," said former Resources Secretary Doug Wheeler.

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But under Davis, Brackpool frequently attends the most important private water discussions of state and federal officials. Key legislators, quick to sense his clout, recruited Brackpool to help with last-minute negotiations to place a water bond on the March ballot.

"Brackpool is in there formulating policy on a regular basis. Undisguised," said Tom Graff, a senior attorney with the Environmental Defense Fund who has been an insider in California water politics for 28 years. "It is not that he is hiding it or the governor's hiding it."

Far from it. "Those two just really clicked," said Davis spokesman Michael Bustamante. "There is no question about the fact that the governor looks to Keith Brackpool as a key adviser to him on water."

And how does Brackpool perceive his role in water policy? Davis "uses outside people extensively," Brackpool said in an interview at his corporate headquarters, from which he can look down from the 16th story at Santa Monica Beach. "When I'm sitting in [the governor's office], the focus is to give [Davis] some of my advice," says Brackpool. "I'm one of several people that, on water issues, he will sit and listen to."

But no other water adviser has experienced such a combination of private access to power and recent public success with his business:

In its first incarnation, that water bond had nothing in it for the Mojave water project. Somewhere during those last-minute, behind-the-scenes negotiations, language was inserted into the bond that would qualify Cadiz' partner, the Metropolitan Water District, to receive a subsidy of up to \$50 million for their joint Mojave project. Brackpool denies he played any role in crafting that language during those private negotiations .

Davis invited Brackpool to join him on an overseas trip last autumn to meet with President Hosni Mubarak of Egypt, where Brackpool's company will manage the construction of a massive canal network to convert 100,000 acres of desert into farmland with water imported from the Nile River. A few weeks after the visit, Brackpool's company formally announced that Saudi Prince (Amir) al Waleed Bin Talal Bin Abdul-Aziz   whose wealth in 1998 was second only to Bill Gates, according to Forbes Magazine   had committed \$300 million to the project. "It was a project we were involved in," before that meeting with Mubarak, said Brackpool. "There was nothing that occurred that aided the project."

Brackpool plainly acknowledges the different roles he plays: an adviser, a liaison, a company executive. "We're a public company," he says. "Every single asset we have is publicly disclosed and fully disclosed. Everybody knows the projects we're involved in." When with Davis, "when I'm sitting in that room, the focus of that room is to give him some of my advice, which is entirely up to him to take or not."

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His advice contrasts with the frequently strident positions of farmers, environmentalists and cities that, left to their own devices, have created years of political gridlock.

"The tradition in this industry has been everybody fights from their own corner, nobody offers compromise, everybody ... boringly recites their own position conference after conference, meeting after meeting," Brackpool says. In water, "everybody could learn a lot by learning about the art of compromise."

The message has apparently so captivated Davis that the governor uses Brackpool much as he does a top political appointee. Yet his precise role inside government, and the precise limits of his political power, are impossible to pin down.

Several regular participants in water policy discussions, including U.S. Interior Secretary Bruce Babbitt, declined to discuss Brackpool's role in the Davis administration. This reluctance is a measure both of Brackpool's perceived power and their worry about the consequences of publicly commenting on Davis' governing style. What's publicly known, though, gives important glimpses into how water politics is played these days in clubby Sacramento, where the line between California's private sector and public policy is getting blurrier by the day.

Under the Mojave may lie a key piece to Southern California's looming water puzzle. For years, 16 million people have filled their sinks with Colorado River water that doesn't belong to them. It belongs to other Western states. Now those states, dealing with their own growing pains, want their share of the Colorado back. Southern California must learn to live within its means. This inevitably will mean storing extra Colorado River water that is available only in wet years and diverting it toward suburbia in dry years. But how? And where? Perhaps the desert?

"The best thing about being in this business is that this is a problem we have to solve," said the British-born, 42-year-old Brackpool. His firm gets its name from the a dry lake in the Mojave Desert, roughly half-way between Barstow and the Colorado River. In 1983, the small company began to buy desert there. Not just any desert, this was the land above an isolated and largely unused aquifer storing perhaps as much water as 20 Folsom Lakes. Cadiz began as a farming operation, converting at first a few hundred acres into farm fields. As late as 1995, it had only \$543,000 in sales, not

exactly the financial profile of a big player in California politics.

How times changed, and quickly. In 1996, with capital from the stock market, Cadiz swallowed a troubled company many times its size, Sun World International, and its 19,000-some acres of farmland around the San Joaquin Valley. "Cadiz has no financial ability to pull off a transaction of this size," an attorney for Sun World shareholders predicted at the time. He was wrong.

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Within just a few years, Brackpool had lined up the once-struggling Sun World as the manager of an Egyptian water project operating on a scale greater than California's massive aqueduct system. Meanwhile in Sacramento, he and his companies began spending just about as much money on political contributions as they had generated back in 1995 in total sales.

Cadiz hired as a lobbyist former Democratic legislator Rusty Areias (now Davis' chief of state parks). Brackpool got to know state Sen. Jim Costa, chairman of the Senate Water and Agriculture Committee; a picture of the two is on display in Brackpool's office. Last year, Brackpool recruited another influential Democrat, former Merced Congressman Tony Coelho, chairman of Al Gore's presidential campaign, as a company director (\$25,000 a year, plus an initial 25,000 shares in stock options).

As Brackpool began familiarizing himself with the Democratic candidates for governor and met Davis, "I was genuinely not only impressed, but surprisingly impressed," he said. On water policy, "you can get into a very real, very deep debate extremely quickly."

The 1998 election was a unique window of opportunity for the company. Not only was California to have a new governor, but Cadiz was about to have a shot at realizing its long-term dream of converting its Mojave holdings into a massive underground reservoir.

Brackpool, says Wheeler, "made this decision, I think, that he would support a candidate whose views were comparable to his, picked the right candidate, and that investment, quote unquote, has borne fruit for him."

Political fruit, perhaps. The financial fruit has yet to ripen, but may soon.

The Cadiz Groundwater Storage and Dry-Year Supply Program needs a customer. The likely one is the primary purveyor of water for Southern California, the Metropolitan Water District. On Aug. 14, 1998, Cadiz signed "principles of agreement" with Metropolitan outlining a deal to connect Cadiz Valley with the Met's system.

The two would share the cost of building an estimated \$150 million worth of canals, pumps and pipes to move water back and forth between Cadiz' landholdings and the aqueduct connecting the Colorado to Los Angeles.

Remember that Cadiz' share of the construction costs is roughly \$75 million. Here are the potential revenues of this deal for Cadiz:

Metropolitan, according to the principles of agreement, would pay Cadiz approximately \$115 million to convey Metropolitan's water diverted from the Colorado and store it under the Mojave.

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Metropolitan would also pay about \$230 per acre foot (enough water for two Southern California families for a year) in today's dollars for native desert water extracted by Cadiz from the Mojave over a 50-year period. Cadiz says Metropolitan would get 1.5 million acre feet "at a minimum." At \$230 an acre foot, that translates into \$345 million in today's dollars. A draft environmental document suggests 2 million acre-feet of water for sale. That translates into \$460 million.

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Given such revenues and Metropolitan's huge customer base & the district has annual revenues of nearly \$1 billion & one wouldn't think it would be hard for them to finance the Mojave project. But that didn't keep somebody from looking for taxpayer help. The California Legislature last summer was putting together the largest water bond in state history. Its two primary architects, Assemblyman Mike Machado (D-Linden) and Sen. Jim Costa (D-Fresno), were struggling to find the right projects and language to win the votes of two-thirds of the Legislature.

Enter Brackpool.

"One of the things I had been asked to do by Senator Costa and Assemblyman Machado was to sit down with the governor and talk to him to see what he wanted to see in the bond," Brackpool said. As for the specific details in the bond, "I didn't play any role in any of the language at all."

But somebody did. And that somebody was looking after Cadiz.

Last Sept. 9, when Costa and Machado unveiled their water bond bill & AB 1584 & it proposed \$200 million in subsidies for new ground-water projects in California. But the projects had to meet certain conditions. For Cadiz, one condition was a killer & Section 79181(b)(2).

Ground-water projects, it specified, must "limit the extraction of the ground water to not more than the water that is stored or recharged by the project participants," read 79181 (b) (2). In ground-water basins like the Central Valley, which have many users, this condition is essential. Such over-drafted basins need bona fide water banks, in which deposits and withdrawals are balanced. No deposit, no return.

"It sounds to me that Cadiz would not qualify [for bond subsidy] under the first provision," said Kevin O'Brien, a Sacramento attorney who specializes in water law.



But when the lawmakers, after meeting in private with Brackpool and other negotiators, unveiled their retooled water bond for a final vote, Section 79181 had a new subsection. Suddenly a whole new batch of ground-water projects were worthy of subsidies: Those that comply "with all laws and contract terms governing the extraction, appropriation and use of ground water by the project participants."

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In layman's language, that means a water project can suck more water from the ground than it puts in, so long as all the neighbors agree that's OK. And that's particularly OK with Cadiz. In the Mojave, Cadiz basically has no neighbors.

"The interesting thing about the Cadiz project is that they essentially are the landowner," said O'Brien.

"That is a unique situation," said Machado. "Theoretically he could extract that to zero under current conditions. Keith stands as the only person to be impacted if he no longer has water."

This Cadiz-friendly provision in the water bond had little or no public debate. Textbooks describe law-making as a public process, requiring an open vetting of proposals in hearings, with proponents and opponents clearly identified. But in the final hours of a legislative session, when lawmakers are scrambling to finish the public's business, most of the action takes place in private.

"It does have a little bit of an aroma to it," says Jim Knox, executive director of Common Cause of California. "I think a lot of people felt that there were specific provisions in the water bond included for Keith Brackpool that were not accorded to other individuals with personal financial interests."

Davis' spokesman Bustamante says that any raised eyebrows about Brackpool are simply unfair.

"There's a cynicism in politics about how money provides influence," he said, predicting that Davis and Brackpool would have bonded regardless of the campaign support. Any focus on the contributions is "totally discounting the fact that this guy is one of the foremost experts on water policy in the world." Beyond being "damn smart on the issue of water," Brackpool, says Bustamante, "is just a nice guy."

Niceties aside, why should all state taxpayers underwrite the Mojave project with Cadiz through water bonds, instead of having Metropolitan's ratepayers finance it through their monthly water bills?

"We have made decisions collectively in this state that the water system is common to the people of California in terms of the benefits derived by a

strong water system. That is how we've gone about funding things," said Brackpool. The alternative is for every region in the state to "exist solely on its own rate base."

That said, Brackpool acknowledges the policy problems of offering subsidies for water projects. "There are very few water districts that have ever seen a bad project if the money was being given to them," he said. "You ought to give priority by bringing in either private matching funds, local matching funds or federal matching funds."

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In short, Brackpool is saying, the taxpayers should be paying to support projects like his public-private venture in the Mojave. "From a business perspective," he said, "it is an exciting area to be in long-term. There is a problem. It needs to be solved. I think a lot of money is going to be thrown at it to get it solved."

## STATE WATER POLICY

Editorial: Wielding water power:

Should a big campaign contributor be inside adviser?

Sacramento Bee - Sunday, Jan 23, 2000

Last Dec. 15, eight of the most powerful figures involved in shaping California water policy met privately in Sacramento. The group included Interior Secretary Bruce Babbitt and three of his top lieutenants. Chief of Staff Lynn Schenk and two top state officials represented the governor. The eighth person was a major campaign contributor of Gov. Gray Davis, water entrepreneur Keith Brackpool.

As detailed in a Forum story today by The Bee's Tom Philp, Brackpool is an intriguing player in California's gridlocked world of water politics. His firm is on the cutting edge of many water projects, seeking to do everything from storing water under the Mojave Desert to converting Egyptian desert into farmland with a massive new aqueduct system tapping the Nile River. Brackpool's message of pragmatism and compromise often seems a welcome departure from the typical battles amid the dysfunctional family of traditional water warriors. It's understandable that Davis would seek his advice.

What is not understandable -- or acceptable -- is for Davis to use a campaign contributor interchangeably with his official administration. Everyone involved in that Dec. 15 meeting was required by law not to influence public policy decisions that could impact their private investments -- everybody, that is, except Brackpool. Anybody receiving a public paycheck is covered by conflict-of-interest laws, but when the flow of money goes the other way -- from consultant to governor -- conflict-of-interest laws don't apply.

Brackpool's penetration of Sacramento's halls of power raises any number of

questions. Would Davis have been drawn to Brackpool had he not contributed more than \$100,000 to the governor's campaign? Can an executive with private, corporate interests set aside those interests to provide balanced advice on public policy? If Brackpool is acting as a consultant on water issues, shouldn't he be paid -- even if only nominally -- so that the protections of conflict-of-interest laws and regulations would apply?

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Legislators' behavior can be just as clubby and worrisome as that in the executive branch. Brackpool says he was invited to private meetings with key lawmakers last summer as they tried to negotiate the final details of a \$2 billion water bond now before voters as Proposition 13 on the March ballot. During those private sessions, the bond somehow came to include a potential \$50 million subsidy that could fund Los Angeles' Metropolitan Water District in partnering with a Brackpool firm. Legislators should conduct such lawmaking in public, not in private meetings attended by invitation only.

Water decisions are as central to California's future as they are inherently controversial. Failing to conduct such crucial public business in public -- or failing to maintain arms-length relationships among the players -- simply invites trouble. The basic point is simple, indeed: Campaign contributors who aren't required to obey conflict of interest laws shouldn't be transacting the public's business. #