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LITIGATION

Desert water plan faces flood of suits

By Fiona Smith
Daily Journal Staff Writer

No, it's not a mirage — there is a huge amount of water sitting under the Mojave Desert, and one company is hoping to make money extracting and selling it to thirsty residents around Southern California.

And while Los Angeles-based Cadiz Inc. has managed to get local government approvals and sign up customers, its plan has also prompted a flood of opposition. In recent months, a neighboring salt mine operation, environmentalists, a labor union and a water rate-payer group have filed eight lawsuits to stop the project, arguing it would be an environmental disaster.

In January, project opponents will face their first court test as San Bernardino County officials, along with Cadiz, try to get one of the cases dismissed. The suit, filed by Cadiz's neighbor, Delaware Tetra Technologies, alleges Cadiz and the county entered into an unlawful groundwater management agreement. *Delaware Tetra Technologies Inc. v. County of San Bernardino*, CIVDS1205402 (San Bernardino Super. Ct., filed May 25, 2012).

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The water in question lies under the 70 square miles of land that Cadiz owns in a desolate area about 30 miles north of Joshua Tree National Park. The company uses a small amount to grow lemons and grapes but has been trying to sell the subterranean water for more than 10 years. Two similar plans by Cadiz failed to get backing.

Its current bid would extract an average of 326,000 gallons of water annually for the next 50 years. Cadiz would build a 43-mile pipeline from its property to connect to an aqueduct that carries Colorado River water to Southern California. Down the road, it would offer to store any excess Colorado River water for use in dry years.

The company has dubbed it the "water conservation recovery and storage project,"



Stan Sholik/Special to the Daily Journal

Robert S. Bower, an attorney with Rutan & Tucker LLP, contends Cadiz Inc.'s plan to extract and sell water under the Mojave Desert will hurt his client, Delaware Tetra Technologies, and damage the environment.

but opponents call it a water mining project that threatens the fragile desert ecosystem.

"This project is essentially the taking of a public resource — water — and privatizing it and ... selling it back to the public for a higher price," said Seth Shteir, with the National Parks Conservation Association. "It doesn't make sense to take fossil groundwater, a lot of this water was deposited in the last ice age ... to fuel unsustainable growth in Orange County."

His group, along with the Center for Biological Diversity and local chapters of the Audubon Society and Sierra Club, are concerned the groundwater pumping could harm wildlife and plants dependent on scarce desert water.

U.S. Sen. Dianne Feinstein, D-Cal., has also voiced her opposition, citing potential impacts on the nearby Mojave National Preserve, which she was instrumental in creating in 1994.

Tetra, which mines two dry lake beds for brine products used in agriculture and oil and gas production, fears the project could be a death sentence. Its operations rely on

water that seeps under the dry lake beds, but Cadiz's plan would suck up that water before it reaches them, said Robert S. Bower, an attorney with Rutan & Tucker LLP in Costa Mesa who is representing Tetra.

It is one of the most destructive water projects ever contemplated in the state, Bower said.

"Not only is it going to hurt Tetra, but the environment," Bower said. "It won't hurt Cadiz. They'll make a pile of money."

Cadiz has offered to drill deeper wells for Tetra to keep up its water supply, but the company has said that is not enough.

Along with Tetra and the environmental groups, a San Bernardino-based construction workers' union and an Orange County group calling itself Citizens and Ratepayers Opposing Water Nonsense have also sued. The lawsuits take aim at the environmental review of the project under the California Environmental Quality Act, or CEQA, and also allege violations of San Bernardino County's groundwater management ordinance. Most of the cases are in their early stages and are being coordinated in Orange County Superior Court.

Cadiz's president and general counsel, Scott S. Slater of Brownstein Hyatt Farber Schreck LLP, could not be reached for comment. But Cadiz spokeswoman Courtney Degener wrote in an email that "Cadiz has been a member of the desert community for over 25 years and has taken great care to ensure that the project will protect the environment through strong, long-term management and monitoring enforced by San Bernardino County."

Degener added, "There is a continuing need for water in Southern California and Cadiz is proud to offer an affordable, reliable water supply that protects the environment and creates new jobs and economic investment critical to the region's prosperity."

In order to sell such large amounts of water, Cadiz relied on studies that vastly overestimate how much rainfall replenishes the aquifer each year, said Shteir. Those studies were critical to getting CEQA approval, and critics have accused Cadiz of violating CEQA for, among many things, ignoring government studies that show a much lower replenishment rate.

The Orange County-based Santa Margarita Water District is also under legal attack, as it

is one of six water suppliers seeking to buy Cadiz water and led the project's environmental review process.

In CEQA documents, the water district defended the methods Cadiz used to estimate how much groundwater would be naturally replenished each year. Its results were peer reviewed, and even under scenarios in which groundwater replenishment was much lower, there was no significant environmental impact, according to the documents.

Critics also assailed the water district for leading the environmental review in the first place. Having an agency more than 200 miles away from the project handle the process was illegal under CEQA and robbed San Bernardino County residents of the ability to hold local officials accountable for project approvals, Tetra's Bower said.

In CEQA documents, the agency defended its decision, stating that it was legally permitted to take leadership because of its extensive involvement in getting the project off the ground. The water district is the single largest purchaser of Cadiz water and is part of a mutual water company and joint powers authority with Cadiz that will oversee

and construct the project, according to the documents.

The Rancho Santa Margarita-based water district said in an email that it approved the environmental review after "two years of extensive studies and public input" and that the plan "establishes a robust monitoring program to provide independent oversight" of project operations.

It is San Bernardino County that will provide that oversight, but opponents claim an agreement the county signed with Cadiz flouts an ordinance aimed at stopping the depletion of local groundwater.

San Bernardino exempted Cadiz from its local groundwater management law because "the county wanted to go beyond the ordinance to ensure the Cadiz project wouldn't have adverse impacts on the environment," said county spokesman David Wert. By exempting Cadiz from the ordinance, the county will do additional monitoring of the operation, he said.

The county's explanation is disingenuous, complains Shteir, and allows Cadiz to get around a ban on taking more out of the aquifer than is being replaced.

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