



September 12, 2024

Governor Katie Hobbs
c/o General Counsel Bo Dul bdul@az.gov

Arizona Department of Water Resources Director Thomas Buschatzke
tbuschatzke@azwater.gov

Dear Governor Hobbs and Director Buschatzke,

RE: (1) The Governor and the Arizona Department of Water Resources Director have violated their obligation to review and to revoke Babocomari Development Group's Analysis of 100-year Adequate Water Supply.

(2) The Governor and the Arizona Department of Water Resources Director must correct the consumer warnings in each and every 100-year Designation of Adequate Water Supply in the Fort Huachuca/Sierra Vista area to remedy ongoing violations of the consumer protection statute, A.R.S. § 44-1522.

The Governor and the Director of the Arizona Department of Water Resources ("ADWR") have violated their obligation to review and to revoke [Babocomari Development Group's Analysis of 100-year Adequate Water Supply](#) ("Designation").

Babocomari Development Group's Analysis must be revoked because its proposed pumping will infringe on the federally reserved water rights of the San Pedro Riparian National Conservation Area ("SPRNCA").

In fact, by 2114, 60% to 70% percent of the Babocomari Development Group's well water withdrawn from the location superimposed illustrates the fact

that well by 2114 will be water denied SPRNCA in violation of SPRNCA's federal water rights

We sent you a similar complaints [on July 16, 2024, regarding the Pueblo Del Sol 100-year Designation of Water Adequacy](#) and on [August 30, 2024, regarding the Buffalo Soldier Ranch 100-year Designation of Water Adequacy](#) , [September 9, 2024, regarding Ranchos San Pedro 100-year Designation of Water Adequacy](#), and [September 9, 2024, regarding Kinjochity Ranch's 100-year Designation of Water Adequacy](#) frustrated that, in a year, the Governor and the ADWR Director had done nothing to respond to August 25, 2023, Adjudication Court's [Decree](#) mandating monitor well water levels in nine wells to provide for fulfillment of the San Pedro Riparian National Conservation Area's ("SPRNCA's) federal reserved water rights and had done nothing to revoke Pueblo Del Sol's, Buffalo Soldier Ranch's, Ranchos San Pedro's, and Kinkochity Ranch's erroneous 100-year Designations of Adequate Water Supply to protect SPRNCA water rights.

Similarly, with respect to the Babocomari Development Group's Analysis of 100-year Water Adequacy, the Governor and the ADWR Director are also (1) allowing the violation of quantified SPRNCA federal reserved water rights, and (2) are blatantly violating their legal responsibilities.

We incorporate the July 16, 2024, Pueblo Del Sol, the August 30, 2024, Buffalo Soldier Ranch, the September 9, 2024, Ranchos San Pedro, and the September 9, 2024, Kinkochity Ranch correspondence into this Babocomari Development Group complaint so as to not needlessly repeat the same facts.

As you know, on August 25, 2023, the Adjudication Court issued its ["ORDER QUANTIFYING FEDERAL RESERVED WATER RIGHTS FOR SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA."](#) This order quantified SPRNCA federally reserved water rights and required that groundwater levels be maintained at nine monitoring wells within SPRNCA.

In its August 25, 2023, Order, the Adjudication Court published the following table after stating, "...the United States is decreed a federal reserved water right to the following groundwater elevations at nine monitoring wells within SPRNCA for the protection of the riparian area:"

Well Name	Location	Elevation at Top of Casing (ft.) (Datum: NAD83, NAVD88, GEOID03)	Water Level Elevation (ft.)
Palominas Well #5	31°20' 40.63704" -110° 08' 03.50040"	4267.6	4246.1
Hereford South monitoring well	31 ° 26' 23.09794" -110° 06' 29.80706"	4153.4	4143.9
Hereford North monitoring well	31° 26' 38.29823" -110° 06' 26.63238"	4155.1	4145.7
Cottonwood monitoring well	31° 31' 10.56285" -110° 07' 46.70368"	4087.1	4070.7
Lewis Springs monitoring well	31 ° 33' 10.83449" -110° 08' 18.97124"	4049.9	4040.9
Moson Spring monitoring well	31° 36' 42.38970" -110° 10' 03.33506"	3989.25	3975.5
Boquillas #2 monitoring well	31° 40' 59.98193" -110° 11' 22.02455"	3896.95	3879.05
Boquillas #1 monitoring well	31° 41' 23.56147" -110° 11' 11.74585"	3878.0	3862.2
Summers monitoring well	31° 47' 34.61492" -110° 13' 03.70638"	N/A	3717.3

In the interim, since our July 16, 2024, correspondence/complaint, important new applicable information has become available that needs to be incorporated into the record.

Most importantly, since our July 16, 2024, complaint correspondence, new monitoring well information has been released by the United States Geological Survey ("USGS") revealing that four of nine SPRNCA monitoring wells have fallen below court-mandated levels in violation of federal water rights. And water levels in a fifth well are on a downward trend and edging closer to a violation.

The declining water levels show that the area's [historic cumulative groundwater pumping](#) of approximately 2 million acre-feet since 1940 is overtaking efforts to mitigate the local groundwater extraction.

The declining water levels are consistent with the predictions of every recent hydrology study, [MacNish, et al \(2009\)](#), [GeoSystems \(2010\)](#), [Lacher \(2011\)](#), [Meixner and Randle \(2014\)](#), [USGS \(2014b\)](#), [Integrated Hydro \(2016\)](#), [USGS \(2017\)](#), [Eastoe \(2017\)](#), [Meixner \(2018\)](#), [Lacher \(2018\)](#), [Eastoe \(2018\)](#), [Integrated Hydro \(2019\)](#), [Eastoe \(2020\)](#), and [USGS \(2020\)](#), which document the failing health of the San Pedro River owing to the capture or interception of SPRNCA water by local wells.

The City of Sierra Vista and Cochise County promised to [“balance the area’s water deficit by 2011.”](#) They [admitted their failure](#) in 2014. But just balancing the water budget [will not make up for the Fort’s, the Sierra Vista’s and Cochise County’s massive historic groundwater pumping deficits.](#)

The latest SPRNCA monitoring well water levels and the mandatory water levels for the violated monitoring wells are:

[Palominas #5](#), 4,244.1 feet (mandatory level 4,246.1 feet) (June 14, 2024)

[Cottonwood](#), 4,067.13 feet (mandatory level 4,070.7 feet) (June 24, 2024)

[Boquillas #2](#), 3,878.28 feet (mandatory level 3,879.05 feet) (June 20, 2024)

[Summers](#), 3,715.48 feet (mandatory level 3,717.3) (June 20, 2024)

The [Lewis Springs monitoring well](#) is reflecting a downward water level trend with a water level of 4,041.39 feet on June 24, 2024, where the mandatory water level is 4,040.9 feet.

In 2014, USGS published [Simulated Effects of Ground-Water Withdrawals and Artificial Recharge on Discharge to Streams, Springs, and Riparian Vegetation](#)

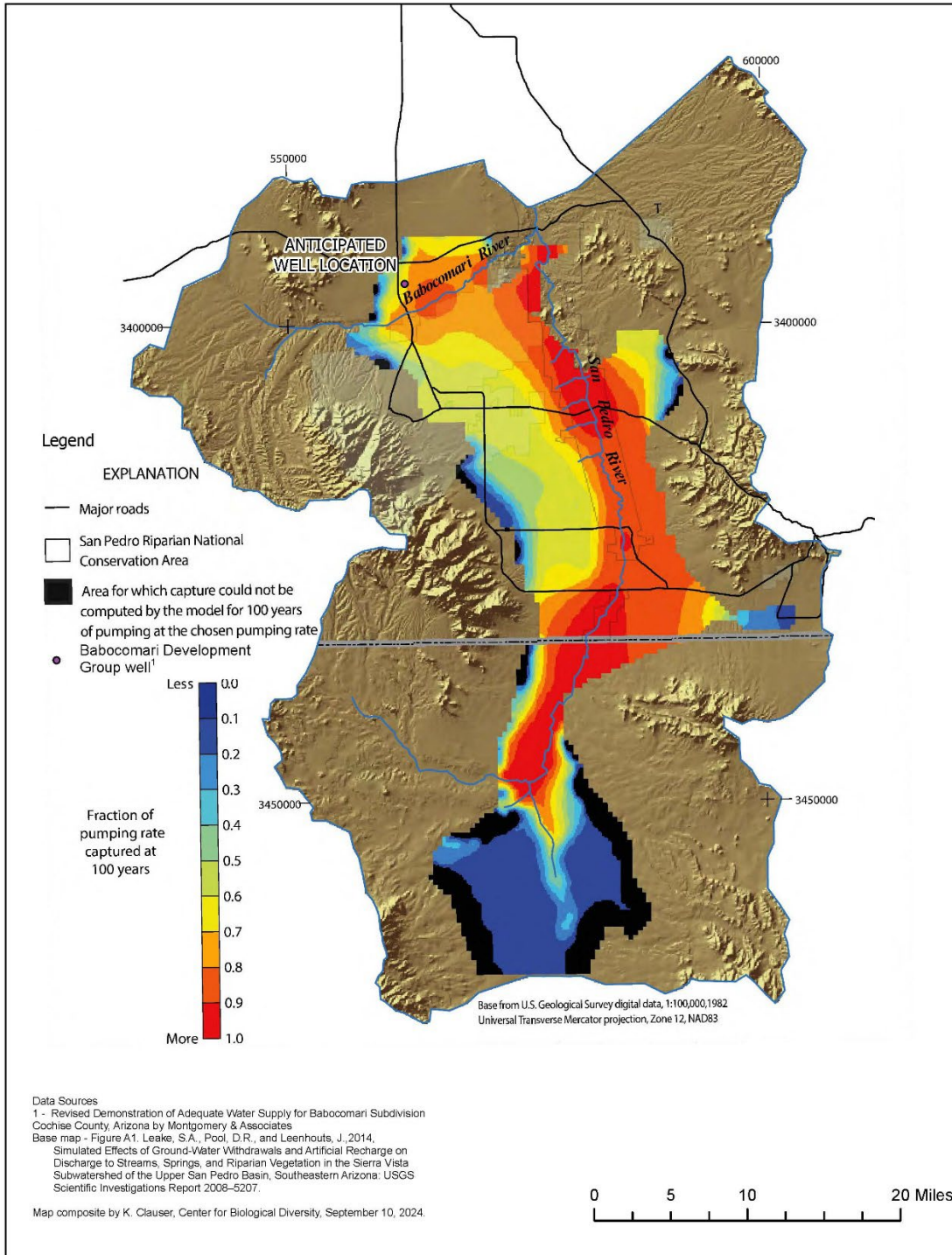
[in the Sierra Vista Subwatershed of the Upper San Pedro Basin, Southeastern Arizona.](#) (“USGS (2014)”)

This publication establishes, by geographic location, the percentage of a well’s water withdrawn that is water captured or denied SPRNCA.

The “anticipated location of pumping well” comes from Babocomari Development Group’s Revised Demonstration of Adequate Water Supply for Babocomari Subdivision Cochise County, Arizona.

By the year 2114, between 60% and 70% of the water withdrawn by the Liberty Utilities well supplying Babocomari Development Group’s 964 homes will be water denied SPRNCA.

The following map from USGS (2014) with the Babocomari Development Group's anticipated well location superimposed illustrates the fact that 60% to 70% percent of the water withdrawn from the well by 2114 will be water denied SPRNCA in violation of SPRNCA's federal water rights:



In addition, [the U.S. Fish and Wildlife Service has observed](#),

“Recent groundwater modeling (GeoSystems Analysis 2010) suggests that effects from historical groundwater withdrawals in the regional aquifer (1940 to 2003; PBA Section 3.5.6) would result in reduced flows in the Babocomari River.”

Because sufficient groundwater is not legally available for 100 years, the Governor and ADWR are required to review and to revoke Babocomari Development Group’s Analysis of 100-year Adequate Water Supply.

The responsibilities of the Governor and the ADWR Director and the A.R.S. statutes being violated by the Governor and the ADWR Director with respect to failure to reevaluate and revoke the Babocomari Development Group’s Analysis of 100-year Water Adequacy are identical to those clearly laid out in our [August 15, 2024, Complaint for Special Action, Declaratory and Injunctive Relief](#) regarding the Pueblo Del Sol 100-year Designation of Adequate Water Supply.

We hope that the Governor and the ADWR Director will choose to obey the law requiring reevaluation and revocation of the Babocomari Development Group’s Analysis of 100-year Adequate Water Supply to avoid further enforcing litigation.

Besides the 100-year Designations of Adequate Water Supply for Pueblo Del Sol, Buffalo Soldier Ranch, Kinjockity Ranch, Ranchos San Pedro and Babocomari Development Group, ADWR has issued another 65 100-year designations since November 11, 1988, when the [U.S. Congress created SPRNCA](#) “to protect the riparian habitat” reserving “a quantity of water sufficient to fulfill the purposes of” SPRNCA and ordering that the “Secretary [of Interior] shall file a claim for the quantification of such rights in an appropriate stream adjudication.”

The ADWR website at, <https://www.azwater.gov/aaws/aaws-overview>, states,

“The **Adequate Water Supply Program** operates outside of the AMAs. It ensures that the water adequacy or inadequacy is disclosed in the public report provided to potential first purchasers and that any

water supply limitations are described in promotional or advertising material.”

Failing to clearly notify prospective home buyers violates A.R.S. § 44-1522.

A.R.S. § 44-1522 states,

“Section 44-1522 - Unlawful practices; intended interpretation of provisions ... The act, use or employment by any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.”

In the [January 8, 2024, State of the State address](#), as Governor, you said,

“... for too long, we have allowed development that skirted our smart and commonsense consumer protections for water availability.” ...

Nonetheless, for Babocomari Development Group’s prospective homeowners, consumer protections are being ignored.

We copy Attorney General Kris Mayes with this correspondence to assure that you stop violating Arizona’s consumer protection statute, A.R.S. § 44-1522.

Please let us know if you will be initiating a review of Babocomari Development Group’s Analysis of 100-year Designation voluntarily or if you need us to file a lawsuit to force you to obey the law.

If you have any questions, please contact, Dr. Robin Silver at (602) 799-3275; or rsilver@biologicaldiversity.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin Silver". The signature is fluid and cursive, with a prominent initial "R" and "S".

Robin Silver, M.D.
Co-Founder and Board Member

CC: Attorney General Kris Mayes