



November 18, 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: The Governor and the Arizona Department of Water Resources Director have violated their obligation to review and to revoke 16 invalid 100-year Designations of Adequate Water Supply in the Fort Huachuca/Sierra Vista area.

The Governor and the Director of the Arizona Department of Water Resources (“ADWR”) have violated their obligation to review and to revoke the 100-year Designation of Adequate Water Supply for each of the following 16 Fort Huachuca/Sierra Vista area developments (“Designations”).

These 16 developments with invalid 100-year Designation of Adequate Water Supply certificates include [Campstone](#), [Chaparral Village North](#), [Compass Point](#), [Covey Run](#), [Highland Park Estates](#), [Hobby Horse Ranch](#), [La Pradera Estates](#), [Los Ranchos Subdivision](#), [Mesa Verde Estates](#), [Rancho Arizona](#), [Rio Corte Estates](#), [Rio Mesa](#), [San Pedro Terrace](#), [The Ranch](#), [Tierra Del Sol Estates](#), and [Whetstone Mesa Estates #5](#).

The 100-year Designation of Adequate Water Supply for each of these developments must be revoked because the groundwater pumping from each development infringes on the federally reserved water rights of the San Pedro Riparian National Conservation Area (“SPRNCA”).

SPRNCA federally reserved water rights derive from the [U.S. Congress' November 11, 1988, SPRNCA creation](#) "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."

On October 5, 2024, we sent you a [compilation of 23 similar complaints](#) regarding, 23 developments with invalid 100-year Designation of Adequate Water Supply certificates. These developments include [Bella Sonoma](#), [Canada Vista](#), [Casa Antigua Condominiums](#), [Cimmaron Place](#), [Copper Pointe Estates](#), [Copper Sky Estates](#), [Coronado Commons](#), [Crossing Point](#), [Gatewood](#), [Grandeur Carmel](#), [Legends at Valiente Phase I](#), [Legends at Valient II](#), [London Square Two](#), [Oakmont Subdivision](#), [Ocotillo Villas](#), [Quail Hollow](#), [Pueblo Las Brisas](#), [Reflections at Valiente](#), [Remington Park West](#), [Sierra Court](#), [Sierra Springs](#), [Villas San Luis](#), and [Vistaview Estates](#).

We sent you 12 similar unanswered complaints regarding the review and revocation of other designations or adequacy analyses on July 16, 2024, regarding [Pueblo Del Sol](#); August 30, 2024, regarding [Buffalo Soldier Ranch](#); September 9, 2024, regarding [Ranchos San Pedro](#); September 9, 2024, regarding [Kinjockity Ranch](#); September 12, 2024, regarding [Babocomari Development Group's Babocomari Subdivision](#); September 16, 2024, regarding the [City of Benson's July 14, 2008, Designation of Water Adequacy for Vigneto](#); September 30, 2024, regarding [St. David Springs](#); September 30, 2024, regarding [Trinity Terrace](#); October 3, 2024, regarding [Crossroads Commerce Center Phase II](#); October 3, 2024, regarding [Campus Drive Business Park](#); October 3, 2024, regarding [Wildhorse II](#); and October 5, 2024, regarding [St. David Countryside Estates](#).

We incorporate every one of these previously served complaints in this complaint so as to not needlessly repeat the same facts.

We file these complaints frustrated that, in more than a year, the Governor and the ADWR Director (1) have done nothing to respond to the August 25, 2023, Adjudication Court's [Decree](#) mandating monitor well water levels in nine wells to provide for fulfillment of SPRNCA's federal reserved water rights; and (2) have done nothing to review, to reject, or to revoke the 100-year Adequate Water

Supply Designations, Analyses or Applications in the Fort Huachuca/Sierra Vista area to protect SPRNCA water rights.

For every one of these developments, the Governor and the ADWR Director are (1) allowing the violation of quantified SPRNCA federal reserved water rights, (2) are failing to protect the developments' homebuyers, investors, lenders and/or underwriters, and (3) are blatantly violating their legal responsibilities.

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, important new applicable information has become available that needs to be incorporated into the record.

Most importantly, new monitoring well information has been released by the United States Geological Survey ("USGS") revealing that five 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 are the result of the area's unmitigated, [historic, cumulative groundwater pumping deficit](#) of approximately 2 million acre-feet since 1940 that is overwhelming efforts to mitigate local groundwater pumping.

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](#), 4,066.15 feet (mandatory level 4,070.7 feet) (October 29, 2024)

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

[Boquillas 1](#), 3861.49 feet (mandatory level 3862.2 (June 20, 2024)

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

The mandatory water levels in two more of the monitoring wells are close to being violated.

These two monitoring wells' water levels that are close to being violated are LEWIS SPRINGS, ADJUDICATED LEVEL: 4040.9; [LEVEL ON 10/28/24: 4041.51](#); and, MOSON SPRING, ADJUDICATED LEVEL: 3975.5; [LEVEL ON 10/29/24: 3976.29](#).

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.

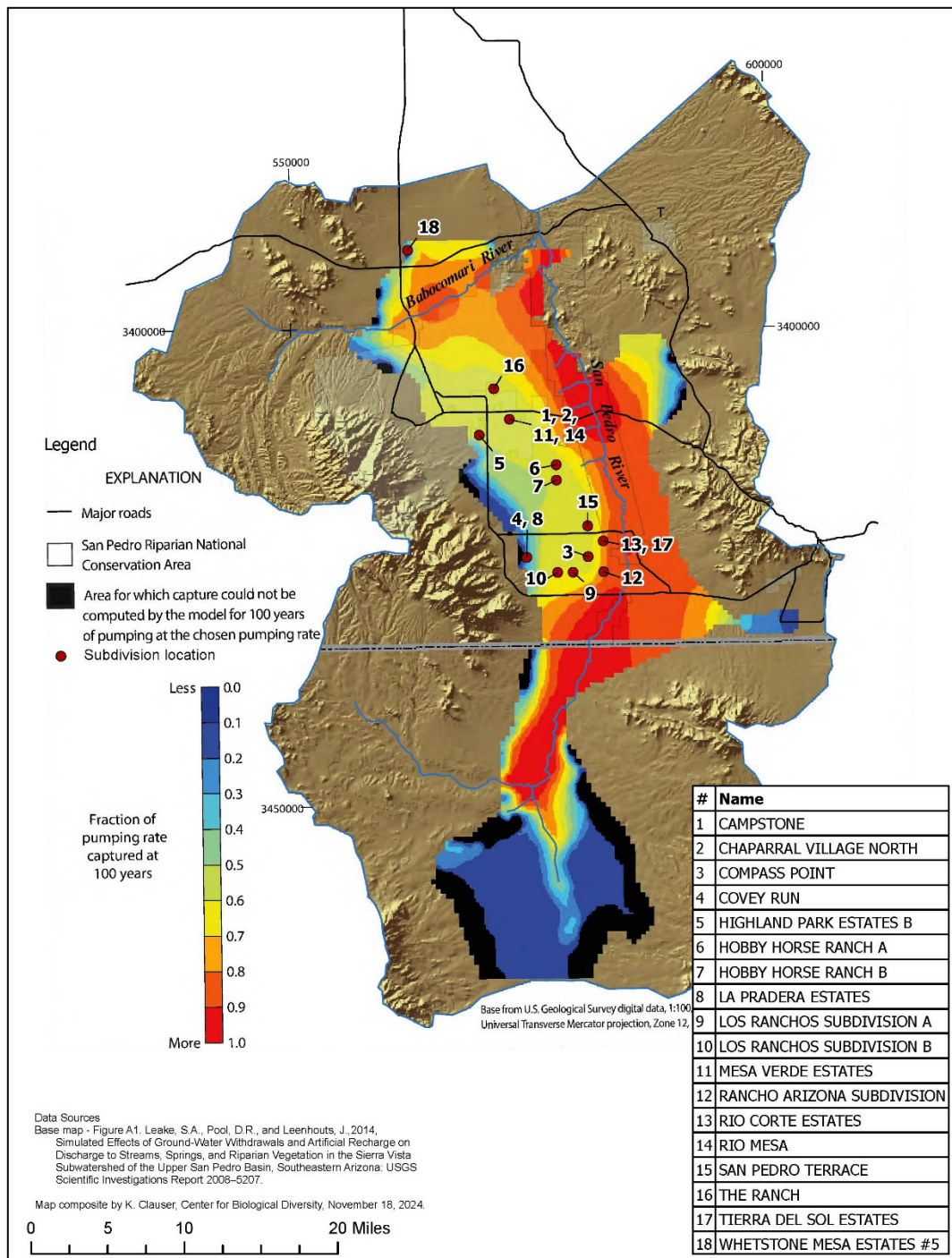
While the exact location of each development's well is not readily available on the ADWR website, nor is the exact location of each development's well found in the materials provided to us in ADWR's response to our Public Records Law requests, the locations of the developments are known and can be mapped.

We make the assumption the wells supplying each development are nearby these developments.

Based on this assumption that the wells supplying each development are nearby the development, we note that the developments addressed in this complaint are located in an area where, by the year 2114, between *20% and 80% of the water withdrawn by the wells will be water denied SPRNCA.

No home in any subdivision built based on a 100-year Designation of Adequate Water Supply, dated after [November 18, 1988](#), is grandfathered in.

The following map from USGS (2014), with the 16 developments superimposed, illustrates the fact that, by 2114, between 50% and 60% *of the water withdrawn from wells near the developments will be water denied SPRNCA in violation of SPRNCA's federal water rights:



Because sufficient groundwater is not legally available for 100 years for any of the 16 developments addressed in this complaint, the Governor and ADWR are required to review and to revoke each of the developments' 100-year Designation of 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 Designation of each of these developments are identical to those clearly laid out in our [August 15, 2024, Complaint for Special Action, Declaratory and Injunctive Relief](#) regarding Pueblo Del Sol's 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 these developments' Designations to avoid further enforcing litigation.

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.”

Such continuing deceptive, misrepresentation, and omission of the material fact that “legal availability of the water supply” can be determined and has been affirmatively now determined 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.”

Please immediately correct the violations of consumer law for the 16 developments addressed in this complaint.

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 the 16 developments addressed in this complaint, 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 the Designations for the 16 developments addressed in this complaint voluntarily or if you need us to file a lawsuit to force you to obey the law.

Please also note that while you have [agreed to review the Pueblo Del Sol designation](#) and that you have sent a [notice of review to Pueblo Del Sol](#), you have failed initiate a review of the designations for the other 35 developments previously noticed.

The 16 developments included in this complaint now make total of 51 designations awaiting mandated review and inevitable revocation.

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".

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

CC: Attorney General Kris Mayes