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**IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

CENTER FOR BIOLOGICAL  
DIVERSITY; SAN PEDRO ALLIANCE;  
ROBIN SILVER;

Plaintiffs,

v.

KATHLEEN M. HOBBS, in her capacity as  
governor of Arizona; ARIZONA  
DEPARTMENT OF WATER  
RESOURCES; THOMAS BUSCHATZKE,  
in their capacity as Director of the Arizona  
Department of Water Resources,

Defendants.

Case No. CV2024-016330

**VERIFIED FIRST AMENDED  
COMPLAINT FOR SPECIAL  
ACTION, DECLARATORY AND  
INJUNCTIVE RELIEF**

Pursuant to Rule 4, *Arizona Rules of Procedure for Special Actions*, A.R.S. §§ 12-2021, 12-1831, and 12-1801, and pursuant to Ariz. R. Civ. P. 15(a)(1)(B), Plaintiffs Center for Biological Diversity, San Pedro Alliance, and Robin Silver, by and through undersigned counsel, hereby file their First Amended Complaint (marked-up version attached hereto to show respects in which the First Amended Complaint differs from the existing complaint) and allege as follows:

**SUMMARY OF THE CASE**

1. The Arizona Department of Water Resources (“ADWR”), and Thomas Buschatzke, the director of ADWR (“Director”) (collectively, “ADWR Defendants”), have failed to perform their mandatory duty to conduct a review of the Upper San Pedro Basin

1 (“Basin”) to determine whether active management practices are required to preserve long-  
2 term, reliable groundwater supplies in the Basin.

3 2. The ADWR Defendants have also abused their discretion by ignoring  
4 incontrovertible scientific data showing that groundwater is threatened in the Basin and thus  
5 failing to initiate proceedings to designate the Basin as a subsequent active management  
6 area (“AMA”) pursuant to A.R.S. § 45-412 *et seq.*

7 3. Groundwater use in the Basin exceeds an amount necessary to preserve the  
8 existing supply of groundwater for future needs.

9 4. Absent the Court’s intervention, residents of the Basin are unlawfully denied  
10 the benefit of active management practices set out in Arizona’s Groundwater Code (A.R.S.  
11 § 45-401 *et seq.*).

12 5. The ADWR Defendants’ failure to perform their mandatory duty “to  
13 conserve, protect and allocate the use of groundwater resources of the state” (A.R.S. § 45-  
14 401) by failing to conduct a review of the Basin and/or to exercise their discretion to initiate  
15 proceedings to designate the Basin as a subsequent AMA is an abandonment of their duties  
16 as the steward of Arizona’s water future.

17 6. Kathleen M. Hobbs, as governor of Arizona, has violated her constitutional  
18 duty to ensure that the Director faithfully fulfils his mandatory duties under the  
19 Groundwater Code.

20 7. Plaintiffs thus bring their action to compel the ADWR Defendants to comply  
21 with their statutory obligations to protect the long-term, reliable water supply in the Basin.

22 8. Special action relief is appropriate here because Plaintiffs have no other  
23 remedy at law to compel Defendants to perform their mandatory duties.

24 9. Plaintiffs also seek declaratory relief against the Governor, declaring that the  
25 Governor’s failure to instruct the Director to conduct a review of the Basin and to initiate  
26 proceedings to designate the Basin a subsequent AMA is a violation of her constitutional  
27 duty to ensure that the Groundwater Code, in particular, A.R.S. § 45-412(C) and (A) are  
28 faithfully executed

10. The Court should grant special action relief compelling the ADWR Defendants to perform their non-discretionary duties and to exercise their discretionary duties based on incontrovertible scientific data showing that the Basin will run out of a long-term, reliable water supply in the absence of active management practices and other protections afforded by the Groundwater Code.

**PARTIES**

11. Plaintiff Center for Biological Diversity (“Center”) is a non-profit membership corporation with its main office in Tucson, Arizona. The Center works through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center is actively involved in species and habitat protection issues worldwide, including throughout the southwestern United States, and actively advocates for increased protections for species and their habitats and landscape connectivity in Arizona and specifically in the Basin.

12. Plaintiff the San Pedro Alliance is a coalition of local, Arizonan, regional, national and international member organizations, some of whose members reside in the Basin. The Alliance works to protect and safeguard the San Pedro River. In a letter dated September 20, 2023, the Alliance submitted a written request to the Director, asking for the designation of the Basin as a subsequent AMA. The Director failed to respond to this request.

13. Plaintiff Robin Silver is a landowner in the Basin. He is a co-founder and board member of the Center and a board member of the San Pedro Alliance.

14. Many of Plaintiffs' members and board members live and own property in the Basin, and rely on a long-term, reliable supply of accessible groundwater in the Basin.

15. Defendant Kathleen M. Hobbs is the governor of Arizona. The Arizona Constitution requires that the Governor “shall transact all executive business with the officers of the government” and “shall take care that the laws be faithfully executed.” Ariz. Const. Article 5, Section 4. Governor Hobbs appointed the Director who serves at her pleasure. A.R.S. § 45-102(C). Governor Hobbs has exerted her authority over the

1 management of water resources by ADWR. She has publicly declared that she “will take  
2 decisive action to protect Arizona’s water future. ... For too long, we have allowed  
3 development that skirted our smart and commonsense consumer protections for water  
4 availability; that “we cannot continue to let individuals and corporations exploit these  
5 loopholes and rob us of our water future.” She has “directed the Arizona Department of  
6 Water Resources to finalize a new pathway for water providers and communities who have  
7 historically relied on groundwater resources.” And, consistent with her powers to act, she  
8 also promised “to safeguard Arizona’s water for tomorrow ... to those who have spent years  
9 refusing to act: if you don’t, I will.” Moreover, in response to a letter from the Arizona  
10 Attorney General dated April 17, 2023, addressed to the Director of ADWR (regarding the  
11 obligations under the Groundwater Code), the Governor herself responded (in place of and  
12 for the Director), instructing that, among other things, “suggestions or concerns” “about the  
13 agency that I oversee” must be directed to the Governor and her staff.

14 16. Defendant ADWR is a state agency and is a public body subject to a writ of  
15 mandamus under the common law, the Rules of Procedure for Special Actions, and A.R.S.  
16 §§ 12-2021 *et seq.*

17 17. Defendant Thomas Buschatzke is the current Director of ADWR, tasked with  
18 the obligation to conduct § 45-412(C) reviews and the authority to initiate proceedings to  
19 designate AMAs under A.R.S. § 45-412 *et seq.* He is a public officer subject to a writ of  
20 mandamus under the common law, the Rules of Procedure for Special Actions, and A.R.S.  
21 §§ 12-2021 *et seq.*

## 22 **JURISDICTION AND VENUE**

23 18. This Court has jurisdiction over this action pursuant to A.R.S. §§ 12-2021,  
24 12-123, 12-1801, 12-1803, 12-1831, as well as Ariz. R. P. Spec. Act. 4(a).

25 19. Venue in Maricopa County is proper pursuant to Ariz. R. P. Spec. Act. 4(b).

## 26 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

### 27 **I. Defendants are responsible for protecting Arizona’s groundwater**

28 20. The Arizona Legislature has made its intent clear: “The legislature finds that

1 the people of Arizona are dependent in whole or in part upon groundwater basins for their  
2 water supply and that in many basins and sub-basins *withdrawal of groundwater is greatly*  
3 *in excess of the safe annual yield* and that this is *threatening to destroy* the economy of  
4 certain areas of this state and is *threatening to do substantial injury* to the general economy  
5 and welfare of this state and its citizens.” A.R.S. § 45-401(A) (emphasis added).

6 21. The Legislature therefore “declared” it is “the public policy of this state that  
7 in the interest of protecting and stabilizing the general economy and welfare of this state  
8 and its citizens *it is necessary to conserve, protect and allocate* the use of groundwater  
9 resources of the state and to provide a framework for the *comprehensive management and*  
10 *regulation* of the withdrawal, transportation, use, conservation and conveyance of rights to  
11 use the groundwater in this state.” A.R.S. § 45-401(B) (emphasis added).

12 22. The Legislature delegated authority to ADWR and the Director: “The director  
13 has *general control and supervision* of surface water, its appropriation and distribution, and  
14 of *groundwater* to the extent provided by this title.” A.R.S. § 45-103(B) (emphasis added).

15 23. A.R.S. § 45-105(B)(1) mandates that the “director *shall...* exercise and  
16 perform all powers and duties vested in or imposed on the department and adopt and issue  
17 rules necessary to carry out the purposes of this title.” (emphasis added).

## 18 **II. Protections offered by active management practices preserve groundwater**

19 24. A.R.S. § 45-411 established four initial active management areas in Arizona.

20 25. A.R.S. § 45-412(A) allows the Director to designate an area as a subsequent  
21 active management area if the director determines that *inter alia* that “active management  
22 practices are necessary to preserve the existing supply of groundwater for future needs.”

23 26. A.R.S. § 45-412(C) mandates that the director “shall periodically review all  
24 areas which are not included in an active management area to determine whether such areas  
25 meet any of the criteria for active management areas prescribed in this section.”

26 27. The protections offered by the Groundwater Code’s designation of a basin as  
27 an AMA serve to manage finite groundwater resources, and thus protect groundwater levels  
28 from further decline.

1           28.     Without the protections offered by the Groundwater Code’s designation of a  
2 basin as an AMA, there are very few constraints on continued depletion of groundwater  
3 levels. *See*, for example, A.R.S. § 45-453.

4           29.     The Groundwater Code heavily regulates groundwater withdrawals. *See* Title  
5 45, Chapter 2, Articles 2, 3, 4, 5, 6, 7, 8, 8.1, 9, 10, 11, 12.

6           30.     In particular, the Groundwater Code contains more rigorous provisions for  
7 new subdivisions inside AMAs. The Code prohibits the sale or lease of subdivided land in  
8 an AMA without demonstration of an assured water supply (“AWS”). A.R.S. § 45-576.

9           31.     To obtain a certificate of AWS, the statute requires a demonstration of: (1)  
10 Physical, legal and continuous water availability for 100 years; (2) Compliance with water  
11 quality standards; (3) Financial capability to construct the delivery system and related  
12 features; (4) Consistency with the AMA’s management plan; and (5) Consistency with the  
13 AMA’s management goal. A.R.S. § 45-576(A) and (M).

14          32.     Also, the Code requires that “management plans” and “management goals”  
15 must be established for each AMA. A.R.S. §§ 45-562 and 45-563.

16          33.     In safe-yield AMAs, consistency with the management goal requires the  
17 applicant to show that water demand will be met primarily with non-groundwater supplies.

18          34.     Within an AMA, an authority (legal right or permit) is required in order to  
19 pump groundwater from non-exempt wells (wells that pump more than 35 gallons per  
20 minute). A.R.S. § 45-512.

21          35.     A.R.S. § 45–563(A) requires the Director to promulgate management plans  
22 for each AMA for five management periods, and provides that “the plans shall include a  
23 *continuing mandatory conservation program* for all persons withdrawing, distributing or  
24 receiving groundwater designed to achieve reductions in withdrawals of groundwater.”

25          36.     ADWR recognizes and touts the benefits of AMAs. “The 1980 Arizona  
26 Groundwater Code recognized the need to aggressively manage the state’s finite  
27 groundwater resources to support the growing population and economy.”<sup>1</sup> Because of  
28

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<sup>1</sup> *See* <https://www.azwater.gov/ama/active-management-area-overview>. ₂

1 current AMAs, “Municipal Use – 87% of statewide water use is under mandatory  
2 conservation program requirements,” and “Industrial Use – 72% of statewide water use is  
3 under mandatory conservation program requirements.”<sup>2</sup>

4 37. Groundwater in the Basin will benefit from, and irretrievable harm be  
5 prevented by, active management practices being implemented in the Basin, as enforced by  
6 the designation of the Basin as a subsequent AMA. Active management practices contribute  
7 to the protection and preservation of groundwater resources, and reduce the rate of aquifer  
8 depletion.

### 9 **III. The Basin and its human community**

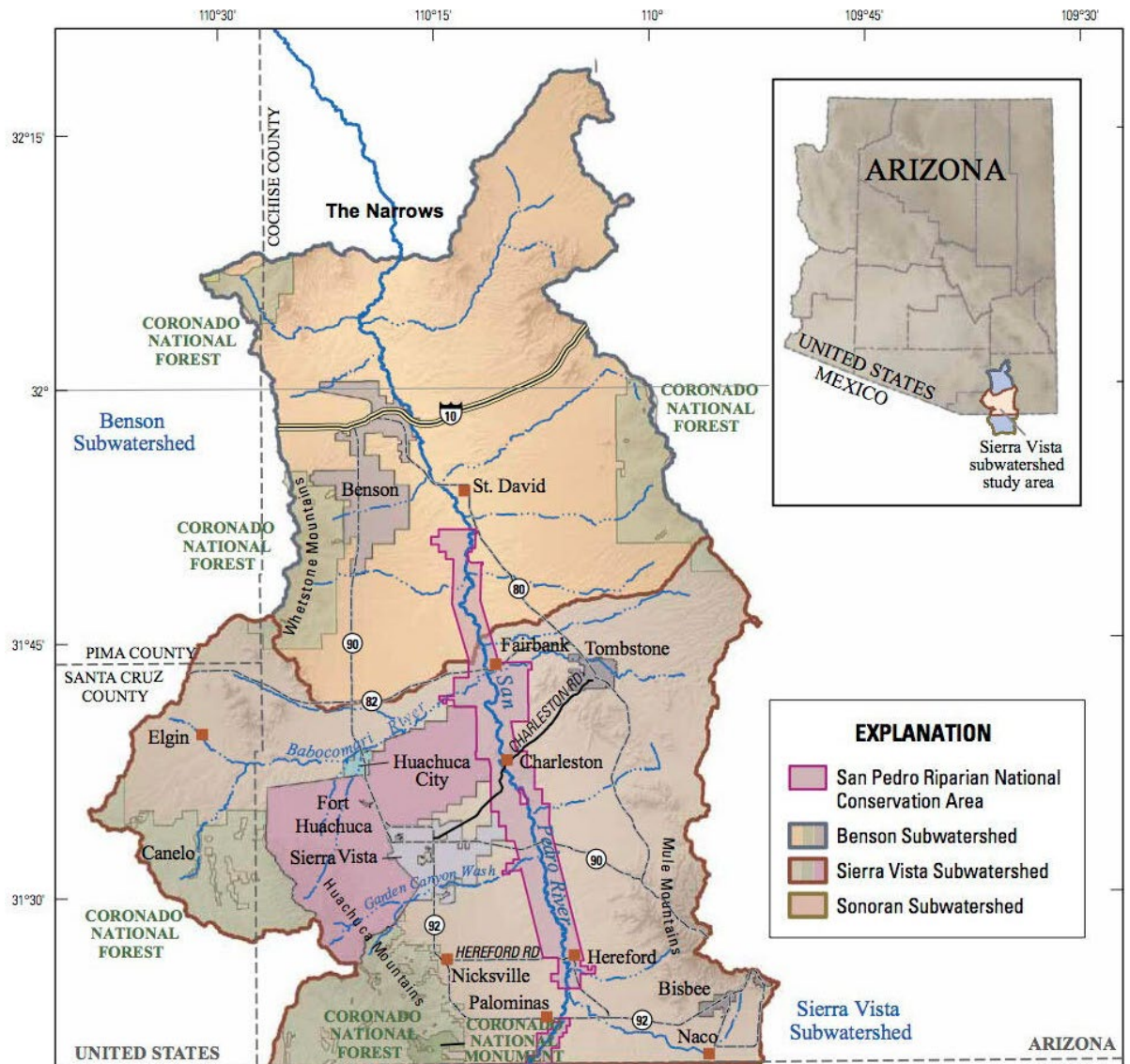
10 38. The Basin is located in southeastern Arizona about 50 miles southeast of  
11 Tucson. The Basin boundaries were designated by ADWR on July 20, 1982, pursuant to  
12 A.R.S. §45-403 and §45-404.

13 39. The Basin boundaries are defined by ADWR as “the surface watershed of the  
14 San Pedro River from the Republic of Mexico downstream to the area referred to as ‘The  
15 Narrows’ north of Benson, and in addition, the upper drainage areas of Hot Springs and  
16 Kelsey Canyons which enter the San Pedro River north of ‘The Narrows.’”

17 40. The boundaries of the Basin are the outer boundaries of the following “Map  
18 of the Upper San Pedro Basin and the Sierra Vista Subwatershed” produced by the United  
19 States Geological Survey (USGS):<sup>3</sup>

20  
21  
22  
23  
24  
25  
26  
27 <sup>2</sup> See <https://www.azwater.gov/sites/default/files/2022-12/AMAFACTSHEET2016%20%281%29.pdf>

28 <sup>3</sup> See <https://www.usgs.gov/media/images/map-upper-san-pedro-basin-and-sierra-vista-subwatershed>



41. The Basin includes the communities of Sierra Vista, Benson, Bisbee, Tombstone, Huachuca City, and the Fort Huachuca Military Reservation, with a current population of approximately 100,000.

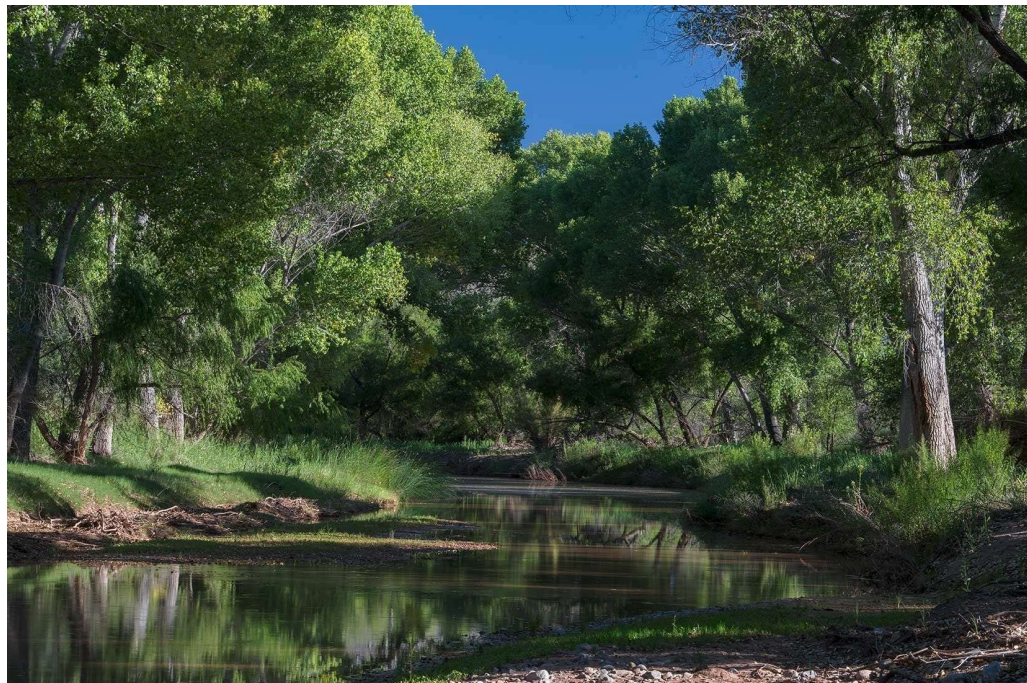
42. Growing, completely groundwater-dependent residential communities are prevalent and planned in the Basin, including at Sierra Vista, where there is a new planned community of almost 7,000 homes using approximately 4,800 acre-feet/year for and at Benson, where there is a new planned community of 28,000 homes. *See photograph looking northeast over Sierra Vista and the Basin taken from the Fort Huachuca Mountains*



(photograph credited to Dr. Robin Silver):



43. The San Pedro River that flows through the heart of the Basin is the last of the undammed, free-flowing rivers in the desert Southwest. *See* photograph of the San Pedro River in the Basin (photograph credited to Dr. Robin Silver):



44. The San Pedro River supports a rich riparian corridor that is critical to local and regional biological diversity.

45. The Basin is located in an arid region, the landscape of which is characterized by lowland deserts interspersed with isolated mountain ranges.

46. Groundwater is currently the sole source of water for human residents in the Basin.

47. Groundwater also sustains the health of the riparian ecosystem and provides base flows for the San Pedro River.

48. Each year, millions of songbirds migrate between their wintering ground in southern Mexico and Central America, and their summer breeding areas in the U.S. and Canada. In order to cross the landscapes of the Sonoran and Chihuahuan Deserts successfully, these songbirds congregate along some of the few north-south corridors where they can find food, water, and shelter. The San Pedro River is one of the last of these corridors.

49. Over the last 100 years, human settlement and activity in the Basin have been sustained by pumping from the aquifer that lies beneath the Basin.

50. Human activities, especially groundwater withdrawal, have contributed to the degradation of the San Pedro ecosystem and the alteration of the river's flow from a largely perennial to a largely ephemeral stream system.

51. Human communities that have flourished in the Basin have only been able to do so because of the availability of surface and groundwater.

52. The groundwater aquifer that currently solely supports the Basin sustains the municipal, agricultural, and industrial land uses that exist in the Basin.

53. The federal government is the largest single user of groundwater in the Basin.

#### **IV. The San Pedro Riparian National Conservation Area**

54. The Basin includes the 55,000-acre San Pedro Riparian National Conservation Area ("SPRNCA").

55. In 1988, Congress established the SPRNCA to "protect the riparian area and

1 aquatic, wildlife, archaeological, paleontological, scientific, cultural, educational and  
2 recreational resources of the public lands surrounding the San Pedro River.” *See* 16 U.S.C.  
3 § 460xx-1(a).

4 56. The SPRNCA spans the San Pedro River in the Basin.

5 57. Congress created an accompanying federal reserved water right to fulfill  
6 SPRNCA’s conservation purpose and ordered the Secretary of the Interior to “file a claim  
7 for the quantification of such rights in an appropriate stream adjudication.” *Id.* § 460xx-  
8 1(d).

9 58. On August 24, 2023, Maricopa County Superior Court in the Gila River  
10 stream adjudication issued an order quantifying federal reserved water rights for the  
11 SPRNCA (“Order”).<sup>4</sup>

12 59. SPRNCA’s quantified water rights are based on mean monthly surface water  
13 flows as well as a “federal reserved water right to [described] groundwater elevations at  
14 nine monitoring wells.” Order, p. 54-55.

15 60. “In the scheme of priorities, the claims of the federal government (based on  
16 its vast holdings of national forests, military reservations, and recreational areas) and of the  
17 Indians rank high. While the amount of water actually used by these entities may have been  
18 negligible until recent times, the magnitude of the right to use water on these lands has been  
19 far from negligible.” *United States v. Superior Ct. In & For Maricopa Cnty.*, 144 Ariz. 265,  
20 270 (1985).

21 61. The court found that “Federal rights necessitate a gallon-for-gallon reduction  
22 in the amount of water available for water-needy state and private appropriators.” *Id.*  
23 (internal citations omitted).

24 62. The Order establishes that federal reserve water rights must be accounted for  
25 and included in any evaluation of water availability in the Basin.

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26  
27 <sup>4</sup> *See* Order Quantifying Federal Reserved Water Rights for San Pedro Riparian National  
28 Conservation Area dated August 24, 2023, issued in Maricopa County Case No. W1-11-  
232, available at  
[https://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/  
W1-11-232-Brain-OR-fed-res-rights-8-25-23.pdf](https://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/W1-11-232-Brain-OR-fed-res-rights-8-25-23.pdf).

63. The Order also established specific well levels that must be maintained to fulfill federal reserve water rights.

64. At least four of those well levels already fall below mandated levels, thereby establishing that the Sierra Vista Sub-watershed of the Basin is overdrawn, and federal reserved water rights are being violated.

65. Overdrawing of the aquifer and violating federal reserved water rights is also occurring in the Benson Sub-watershed of the Basin.

#### **V. Considerable evidence shows groundwater is declining in the Basin**

66. ADWR is in possession of data showing that groundwater is declining in the Basin.

67. According to ADWR's website, "ADWR staff collected 764 water-level measurements in Water Year 2007 and 523 measurements in WY 2019." ADWR concluded that "[t]he report shows *considerable evidence of groundwater declines* in many areas" in the Basin.<sup>5</sup> (emphasis added).

68. "Depth to water" increased (that is, the water levels were found to have *declined*) in 77.5 percent of wells; it remained unchanged in 3.7 percent of wells; and, it decreased (that is, the water levels were found to have risen) in 18.8 percent of wells. *Id.*

69. In 2016, in a report entitled "Hydrological Conditions and Evaluation of Sustainable Groundwater Use in the Sierra Vista Subwatershed, Basin, Southeastern Arizona" ("2016 USGS Report"),<sup>6</sup> the United States Geological Service ("USGS") looked at water conditions as of 2012 and warned that "[g]roundwater available for the environmental needs of the subwatershed, especially for discharge to the San Pedro River (base flow), *has been declining since at least the 1930s.*" 2016 USGS Report p. 10 (internal citations omitted) (emphasis added).

70. The 2016 USGS Report concluded that "[s]ustainable use of groundwater is thus dependent, at a minimum, on *stabilizing groundwater discharge into the San Pedro River.*" *Id.* (emphasis added).

<sup>5</sup> Publicly available at <https://www.azwater.gov/news/articles/2021-08-03>.

<sup>6</sup> Available at [https://pubs.usgs.gov/sir/2016/5114/sir20165114\\_v1.3.pdf](https://pubs.usgs.gov/sir/2016/5114/sir20165114_v1.3.pdf).

1           71. According to the 2016 USGS Report, “[i]f pumping across the subwatershed  
2 were to completely stop tomorrow, *the cone of depression would continue to spread* and its  
3 effects, including *decreases in natural discharge to the riparian area and river*, would  
4 continue for decades.” *Id.* at p. 77 (emphasis added).

5           72. According to the 2016 USGS Report, “[r]egional *aquifer groundwater levels*  
6 in the Fort Huachuca area *are clearly in decline*, and this is interpreted as *decreasing the*  
7 *tendency for groundwater to flow toward the San Pedro River.*” (*Id.* at p. 17) (emphasis  
8 added).

9           73. According to the 2016 USGS Report, “[w]ithout significant mitigation  
10 measures, it is likely too late already to prevent declining water levels from reaching the  
11 San Pedro River riparian area from Charleston to Tombstone.” (*Id.* at p. 77) (emphasis  
12 added).

13           74. The Report concluded that “there are a number of indicators that reflect  
14 *degrading conditions* in other parts of the subwatershed. The vast majority of these sites  
15 were found downgradient from the pumping centers of Sierra Vista and Fort Huachuca and  
16 can generally be seen as *expressions of the cone of depression and capture of water* that  
17 would otherwise have discharged to the riparian area and near-stream alluvial aquifer  
18 near the San Pedro River. These included *consistent decreases in water levels* in many  
19 regional-aquifer wells near to and downgradient of the Sierra Vista and Fort Huachuca  
20 pumping centers, horizontal-gradient declines across Fort Huachuca, *long-term declines* in  
21 base-flow discharge at stream-gaging stations (Charleston, Tombstone, Lower Babocomari,  
22 and Palominas), increasing trends in stable isotopes indicative of *decreased groundwater*  
23 *discharge* to the Babocomari River near the Lower Babocomari gaging station and to the  
24 San Pedro River near Palominas, and two river reaches that have *remained essentially dry*  
25 during the driest time of the year throughout the period of record.” (*Id.* at p. 78) (emphasis  
26 added).

27           75. There is a direct connection between the groundwater and the SPRNCA San  
28 Pedro River surface water or streamflow.



1        76. The number of wells has skyrocketed in the Basin to supply a growing  
2 population, more than doubling from 3,592 wells in 1987 to 8,765 wells in 2017, according  
3 to ADWR data.<sup>7</sup>

4        77. Sufficient water to provide for the needs of the San Pedro River within  
5 SPRNCA is a metric that must be accounted for in any evaluation of the availability of  
6 groundwater within the Basin. With issuance of the Order the amount of water necessary  
7 to provide for SPRNCA has now been established.

8        78. That groundwater within the Basin is already being overdrawn and is over  
9 allocated is established by multiple hydrological reports including [Lacher \(2011\)](#), [Integrated](#)  
10 [Hydro \(2016\)](#), [USGS \(2017\)](#), [Eastoe \(2017\)](#), [Meixner \(2018\)](#), [Lacher \(2018\)](#), [Eastoe \(2018\)](#),  
11 [Integrated Hydro \(2019\)](#), [Eastoe \(2020\)](#), and [USGS \(2020\)](#).

12        79. “[P]umping alone is responsible for all simulated baseflow declines between  
13 2000 and 2100. In general, the simulations predict that much of the San Pedro and  
14 Babocomari rivers will cease to have perennial baseflow over the next century as a result  
15 of increased groundwater pumping.” [Lacher \(2011\)](#), p. 4.

16        80. “In general, the simulations predict that, in the absence of any major water  
17 use changes in the basin, much of the San Pedro and Babocomari rivers will cease to have  
18 perennial baseflow over the next century due to the widespread impacts of projected  
19 groundwater pumping.” *Id.*, at 51.

20        81. “Until the aquifer begins to accrete storage (the annual water budget balance  
21 becomes greater than 0) there will be no reduction in the cumulative deficit, *and until*  
22 *additional management measures are undertaken*, it is unlikely that there will be further  
23 progress made toward this goal.” [Upper San Pedro Partnership, 2013](#), Water management  
24 of the regional aquifer in the Sierra Vista Subwatershed, Arizona—2011 report to Congress:  
25 Washington, D.C., U.S. Department of Interior, 16, p. v (emphasis added).

26        82. Unfortunately, wells and Certificates of Adequacy in the Basin have been  
27

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28 <sup>7</sup> See Governor’s Water Augmentation, Innovation and Conservation Council’s September  
12, 2019 slideshow, available at [https://www.documentcloud.org/documents/6454263-  
2019-09-12-Governors-Water-Council-presentation.html](https://www.documentcloud.org/documents/6454263-2019-09-12-Governors-Water-Council-presentation.html), p. 40-45.

1 approved by ADWR without careful consideration of the legal availability of the  
2 groundwater being pumped, including that not a single Certificate of Adequacy in the Basin  
3 considered federal reserved water rights. *See Silver v. Pueblo Del Sol Water Company*, 244  
4 Ariz. 553, 566, ¶ 46 (2018).

5 83. Consequently, the extraction of groundwater within the Basin is over  
6 allocated and it is likely that a significant percentage of the groundwater already being  
7 pumped from each well may be impairing established water rights in the Basin.

8 84. For example, in July 2012, ADWR granted a Sierra Vista developer (Pueblo  
9 Del Sol Water Company) permission to remove groundwater for the building of an  
10 additional 6,959 homes requiring a total annual groundwater demand of 4,870.39 acre-feet  
11 per year.

12 85. ADWR failed to consider the SPRNCA rights when it evaluated Pueblo Del  
13 Sol's PDS application.

14 86. And, as another example, on June 1, 2016, the City of Benson approved the  
15 development of Vigneto for 28,000 new groundwater dependent homes based on ADWR's  
16 July 14, 2008 approval of Benson's Certificate of Adequacy.

17 87. Just like ADWR's other Certificates of Adequacy in the Basin, Benson's July  
18 14, 2008 Certificate failed to account for SPRNCA federal water rights even though  
19 pumping of groundwater as the result of Benson's Certificate will reduce flows to the  
20 northern SPRNCA and cause drying as established by Integrated Hydro (2016), Eastoe  
21 (2017), Eastoe (2018), and Eastoe (2020).

22 88. Upon information and belief, Defendants are in possession of additional  
23 scientific data, which Plaintiffs do not possess, incontrovertibly showing that residents of  
24 the Basin are unlawfully being denied the benefits of active management practices provided  
25 by Arizona's Groundwater Code.

## 26 **CLAIMS FOR RELIEF**

### 27 **COUNT I**

28 **Special Action (A.R.S. § 12-2021) – Violation of A.R.S. § 45-412(C)**  
**(The ADWR Defendants)**

1           89. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

2           90. A.R.S. § 45-412(C) provides that “[t]he director **shall** periodically review all  
3 areas which are not included within an [AMA] to determine whether such areas meet any  
4 of the criteria for [AMA]s as prescribed in this section.” (emphasis added).

5           91. Courts may issue a writ of mandamus to any “person [or] corporation ... on  
6 the verified complaint of the party beneficially interested, to compel, where there is not a  
7 plain, adequate and speedy remedy at law, performance of an act which the law specially  
8 imposes as a duty resulting from an office ...” A.R.S. § 12-2021.

9           92. Special action relief is appropriate when “the defendant has failed to exercise  
10 discretion which he has a duty to exercise; or to perform a duty required by law as to which  
11 he has no discretion.” Ariz. R. P. Spec. Act. 3(a).

12           93. The ADWR Defendants have a mandatory duty to “periodically review” the  
13 Basin to determine whether it requires the protections offered by an AMA. A.R.S. § 45-  
14 412(C).

15           94. The ADWR Defendants have failed to undertake such a review since 2005.

16           95. The Director refused to undertake such a review, despite a request from  
17 Plaintiffs asking for such review.

18           96. The 2005 Report (which ADWR undertook pursuant to its obligations under  
19 A.R.S. § 45-412(C)) was undertaken 20 years ago, on data up to 2001, which is now almost  
20 25 years old.

21           97. Conditions that impact such a review have changed dramatically in the Basin.

22           98. The ADWR Defendants’ failure to undertake a review of the Basin violates  
23 A.R.S. § 45-412(C).

24           99. The ADWR Defendants’ failure to undertake a review of the Basin violates  
25 Defendants’ duties under A.R.S. §§ 45-401(A), 45-401(B), 45-103, and 45-105(B)(1)  
26 because the ADWR Defendants failed to in their duty to conserve, protect and allocate the  
27 use of groundwater resources in the Basin or to provide a framework for the comprehensive  
28 management and regulation of the withdrawal, transportation, use, conservation or



1 conveyance of rights to use groundwater in the Basin.

2 100. Notably, the Arizona Attorney General raised concerns that the Director has  
3 failed to address the need for new AMAs and thereby failed in this duty. On April 17, 2023,  
4 the Arizona Attorney General wrote to the Director, taking the position that “groundwater  
5 circumstances have changed greatly since 1980 [the enactment of the Groundwater Act],”  
6 and that “ADWR appears not to have engaged in the analysis of potential new AMAs  
7 necessary to adjust to those changes,” noting that “two studies of [the Basin] in a forty-year  
8 period *does not satisfy the statutory duty to periodically review* ‘all areas which are not  
9 included within an [AMA],’ as A.R.S. § 45-412(C) requires.”<sup>8</sup> (emphasis added).

10 101. Plaintiffs have no other equally plain, speedy, and adequate remedy at law to  
11 enforce Defendants’ mandatory obligations under A.R.S. § 45-412(C).

12 102. Plaintiffs are entitled to special action relief compelling the ADWR  
13 Defendants and their agents to undertake a review of the Basin to determine whether it  
14 meets the criteria for active management practices as prescribed in A.R.S. § 45-412(A).

## 15 COUNT II

### 16 Special Action (A.R.S. § 12-2021) – Violation of A.R.S. §§ 45-412(A) and 45-413(A)

#### 17 (The ADWR Defendants)

18 103. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

19 104. A.R.S. § 45-412(A) provides that: “The director may designate an area which  
20 is not included within an initial active management area, pursuant to § 45-411, as a  
21 subsequent active management area if the director determines that *any* of the following  
22 exists: 1. *Active management practices are necessary to preserve the existing supply of*  
23 *groundwater for future needs.* 2. Land subsidence or fissuring is endangering property or  
24 potential groundwater storage capacity. 3. Use of groundwater is resulting in actual or  
25 threatened water quality degradation.” (emphasis added).

26 105. A.R.S. § 45-413(A) provides that, if the director proposes to designate a  
27 subsequent AMA, the director must hold a public hearing to consider “(1) whether to issue

28 <sup>8</sup> See letter dated April 17, 2023, available at  
<https://www.azag.gov/sites/default/files/2023-04/waterletter20232.pdf>.

1 an order declaring the area an” AMA, and “(2) the boundaries and any sub-basins” of the  
2 proposed AMA.

3 106. A.R.S. § 45-413(C) provides that, at such public hearing, the director “shall  
4 present the factual data in their possession in support of the proposed action.”

5 107. Special action relief is appropriate here to require Defendants to exercise their  
6 discretion in a way that is not arbitrary or unjust and does not constitute an abuse of  
7 discretion.

8 108. The ADWR Defendants’ failure to exercise their authority under A.R.S. §§  
9 45-412(A) and 45-413(A) is arbitrary action because it is unreasoning action, without  
10 consideration and in disregard of the facts and circumstances showing that active  
11 management practices are necessary to preserve the existing supply of groundwater for  
12 future needs of the Basin.

13 109. The ADWR Defendants’ failure to exercise their authority under A.R.S. §§  
14 45-412(A) and 45-413(A) is an abuse of discretion because it fails to consider the relevant  
15 facts showing that active management practices are necessary to preserve the existing  
16 supply of groundwater for future needs of the Basin.

17 110. The ADWR Defendants abused their discretion under A.R.S. § 45-412(A) by  
18 ignoring scientific data showing that groundwater levels are declining in the Basin to such  
19 an extent that active management practices are necessary to preserve the existing supply of  
20 groundwater for future needs, and thus the ADWR Defendants must exercise their  
21 discretion to consider whether designation of a subsequent active management area is  
22 needed in the Basin.

23 111. As shown above, scientific data indisputably shows that groundwater levels  
24 in the Basin are declining to such an extent that without active management practices the  
25 existing supply of groundwater will not meet future needs of the Basin.

26 112. The ADWR Defendants’ failure to exercise their authority under A.R.S. § 45-  
27 412(A) is arbitrary because their inaction and failure to consider the need for subsequent  
28 AMAs was disregards the facts and circumstances before the ADWR Defendants which

1 incontrovertibly show that, without active management practices in place, the Basin will no  
2 longer be able to support the future water needs of its residents and its visitors.

3 113. The ADWR Defendants failure to exercise their authority under A.R.S. § 45-  
4 412(A) is unjust because the residents of the Basin and all beneficiaries of the SPRNCA,  
5 including Plaintiffs, will suffer the long-term irreversible harm that will result from the  
6 Basin inevitably running out of groundwater in the absence of active management practices.

7 114. The ADWR Defendants' failure to exercise their authority under A.R.S. § 45-  
8 412(A) is an abuse of discretion because the ADWR Defendants has failed to consider the  
9 relevant facts, as set out above, which incontrovertibly show that the Basin will run out of  
10 groundwater in the absence of active management practices.

11 115. The facts set out above show that "active management practices are necessary  
12 to preserve the existing supply of groundwater for future needs." A.R.S. § 45-412(A).

13 116. The ADWR Defendants' decision not to initiate proceedings under A.R.S. §  
14 45-413 to designate the Upper San Pedro Basin a subsequent AMA ignores substantial  
15 evidence, which incontrovertibly shows that active management practices are necessary to  
16 preserve the existing supply of groundwater for future needs of the Basin.

17 117. The ADWR Defendants' decision not to initiate proceedings under A.R.S. §  
18 45-413 is unreasonable in light of the facts set out above.

19 118. The ADWR Defendants' failure to exercise their authority under A.R.S. §§  
20 45-412(A) and 45-413(A) violates their acknowledged duty under the Groundwater Code,  
21 as "steward of Arizona's water future," to "ensure long-term, reliable water supplies to  
22 support the continued economic prosperity"<sup>9</sup> of the Upper San Pedro Basin.

23 119. The ADWR Defendants' failure to initiate proceedings to designate the Upper  
24 San Pedro Basin as an AMA violates the ADWR Defendants' duties under A.R.S. §§ 45-  
25 401(A), 45-401(B), 45-103, and 45-105(B)(1) because the ADWR Defendants failed in  
26 their duty to conserve, protect and allocate the use of groundwater resources in the Basin or

27  
28 <sup>9</sup> See ADWR slide presentation in support of Gila Bend AMA dated January 30, 2024, p.  
37, available at [https://www.azwater.gov/sites/default/files/2024-01/2024.01\\_30%20Subsequent%20AMAs%20Presentation-forweb.pdf](https://www.azwater.gov/sites/default/files/2024-01/2024.01_30%20Subsequent%20AMAs%20Presentation-forweb.pdf).

1 to provide a framework for the comprehensive management and regulation of the  
2 withdrawal, transportation, use, conservation or conveyance of rights to use groundwater  
3 in the Basin.

4 120. On September 20, 2023, Plaintiff San Pedro Alliance sent a request to the  
5 Director to designate the Basin as an AMA.

6 121. Plaintiffs included hydrology studies documenting the Basin aquifer  
7 overdrafting since 2005.

8 122. Neither the Director nor anyone from ADWR responded to the request.

9 123. Plaintiffs have no other adequate remedy at law to compel Defendants to  
10 exercise their authority under A.R.S. §§ 45-412(A) and 45-413(A) based on  
11 incontrovertible facts showing that active management practices are necessary to preserve  
12 groundwater in the Basin for future needs.

13 124. Plaintiffs are entitled to special action relief compelling the ADWR  
14 Defendants and their agents to initiate proceedings under A.R.S. § 45-413, including  
15 holding a public hearing pursuant to A.R.S. § 45-413(A) and present evidence pursuant to  
16 A.R.S. § 45-413(C) to consider whether to designate the Upper San Pedro Basin a  
17 subsequent AMA.

### 18 **COUNT III**

#### 19 **Declaratory Judgment (A.R.S. § 12-1831) and Injunctive Relief (A.R.S. § 12-1801)**

#### 20 **Violations of A.R.S. §§ 45-412(C), 45-412(A) and 45-413(A)**

#### 21 **(The ADWR Defendants)**

22 125. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

23 126. Courts have authority to “declare rights, status, and other legal relations  
24 whether or not further relief is or could be claimed. . . . The declaration may be either  
25 affirmative or negative in form and effect; and such declarations shall have the force and  
26 effect of a final judgment or decree.” A.R. S. § 12-1831.

27 127. Any party “whose rights, status or other legal relations are affected by a  
28 statute” may bring an action to determine “any question of construction” of the statute, and

1 “obtain a declaration of rights, status or other legal relations thereunder.” A.R.S. § 12-1832.

2 128. A plaintiff may seek relief under the Uniform Declaratory Judgment Act if  
3 they can show the issue is ripe and they have standing. A.R. S. § 12-1831.

4 129. Both requirements are met here. An actual and justiciable controversy exists  
5 regarding Defendants’ abandonment of their duty under A.R.S. § 45-412(C) to conduct a  
6 review to determine whether the Upper San Pedro Basin meets the criteria for active  
7 management practices as prescribed in A.R.S. § 45-412(A), and whether he has abused their  
8 discretion by failing to initiate proceedings to designate the Upper San Pedro Basin a  
9 subsequent AMA.

10 130. Plaintiffs have direct standing because they are dependent on the groundwater  
11 supplies that Defendants’ inaction threatens. Moreover, an organization has  
12 representational standing if it has “a legitimate interest in an actual controversy involving  
13 its members” and “judicial economy and administration will be promoted” by conferring  
14 standing. *Armory Park Neighborhood Ass’n v. Episcopal Cmty. Servs. in Ariz.*, 148 Ariz.  
15 1, 6 (1985).

16 131. Plaintiffs have a real interest in the questions to be resolved here. They include  
17 residents and historic users of groundwater in the Basin and also have interests in natural  
18 resources and ecosystems that depend on groundwater availability in the Basin, and  
19 therefore would be the beneficiaries of active management practices when they are  
20 implemented through the Basin’s designation as an AMA.

21 132. Depletion of the aquifer has a direct impact on Plaintiffs because they (as  
22 residents), as well as the natural resources that they care about, depend on the aquifer.

23 133. Plaintiffs’ interests in the ecosystems that are supported by the groundwater  
24 such as SPRNCA’s federal reserved water rights are also injured by the lack of active  
25 management practices in the Basin to ensure those reserved rights are not infringed.

26 134. Additionally, courts have authority to grant injunctions. A.R.S. § 12-1801.

27 135. Defendants have no discretion to refuse to perform their duty required by  
28 A.R.S. § 45-412(C).

136. Defendants have abused their discretion in failing to exercise their authority under A.R.S. §§ 45-412(A) and 45-413(A).

137. Declaratory and injunctive relief is necessary to ensure Defendants do not violate the Groundwater Code.

138. Absent an injunction compelling Defendants and their agents to conduct a review of the Upper San Pedro Basin as required by A.R.S. § 45-412(C), Plaintiffs will have no means to protect the groundwater upon which they depend. This will cause irreparable harm to Plaintiffs, and to the people of the Upper San Pedro Basin.

139. Absent an injunction compelling Defendants and their agents to initiate proceedings pursuant to A.R.S. § 45-413, Plaintiffs will have no means to protect the groundwater upon which they depend. This will cause irreparable harm to Plaintiffs, and to the people of the Basin.

**COUNT IV**  
**Declaratory Judgment (A.R.S. § 12-1831)**  
**Violation of Ariz. Const. Article 5, Section 4**  
**(The Governor)**

140. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

141. The Arizona Constitution requires that the Governor “shall transact all executive business with the officers of the government” and “shall take care that the laws be faithfully executed.” Ariz. Const. Article 5, Section 4.

142. A.R.S. § 41-101(A)(1) provides that “[t]he governor ... [s]hall supervise the official conduct of all executive and ministerial officers.”

143. Governor Hobbs has exerted her authority over groundwater management.

144. Governor Hobbs formed the Governor’s Water Policy Council. She appointed the Director to be the chair. All the members of the council are appointed by the Director and they report directly to the Governor. The function of the council is to provide the Governor with “analysis and recommendations for groundwater management outside current Active Management Areas.”

145. In January 2024, the Governor's administration (for the first time since the

1 adoption of the Groundwater Code) took some steps towards designating an AMA (in Gila  
2 Bend Groundwater Basin). It was the Governor who was publicly praised and criticized for  
3 this decision (not the Director nor ADWR).

4 146. As set out above, the Director is in violation of A.R.S. § 45-412(C) and (A).

5 147. Governor Hobbs' failure to instruct the Director to conduct a review of the  
6 Basin is a violation of her constitutional duty under Ariz. Const. Article 5, Section 4 to  
7 ensure that the Groundwater Code, in particular, A.R.S. § 45-412(C), is faithfully executed.

8 148. Governor Hobbs' failure to instruct the Director to initiate proceedings to  
9 designate the Basin an AMA is a violation of her constitutional duty under Ariz. Const.  
10 Article 5, Section 4 to ensure that the Groundwater Code, in particular, A.R.S. § 45-412(A),  
11 is faithfully executed.

12 149. An actual and justiciable controversy exists regarding the Governor's  
13 violation of her constitutional duty to ensure that the Director faithfully carries out his duties  
14 under the Groundwater Code, in particular, to conduct a review of the Basin and to initiate  
15 proceedings to designate the Basin an AMA.

16 150. Plaintiffs have a real interest in the questions to be resolved here. They include  
17 residents and historic users of groundwater in the Basin and also have interests in natural  
18 resources and ecosystems that depend on groundwater availability in the Basin, and  
19 therefore would be the beneficiaries of active management practices when they are  
20 implemented through the Basin's designation as an AMA.

21 151. Depletion of the aquifer has a direct impact on Plaintiffs because they (as  
22 residents), as well as the natural resources that they care about, depend on the aquifer.

23 152. Plaintiffs' interests in the ecosystems that are supported by the groundwater  
24 such as SPRNCA's federal reserved water rights are also injured by the lack of active  
25 management practices in the Basin to ensure those reserved rights are not infringed.

26 153. Declaratory relief is necessary to ensure the Governor does not violate her  
27 constitutional duty to ensure that the Director faithfully carries out his duties under the  
28 Groundwater Code.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiffs respectfully request that this Court order the following relief:

A. Granting Plaintiff's request for a declaratory judgment and injunction declaring that the ADWR Defendants' failure to conduct a review of the Upper San Pedro Basin pursuant to A.R.S. § 45-412(C) is unlawful and compelling the ADWR Defendants to comply with A.R.S. § 412(C), by a date certain no more than one year after the order is issued.

B. Granting Plaintiff's request for special action relief in the form of an order compelling the ADWR Defendants to conduct a review of the San Pedro River Basin pursuant to A.R.S. § 45-412(C) to determine whether the San Pedro River Basin meets the criteria for a subsequent AMA, by a date certain as detailed in section A above.

C. Granting Plaintiff's request for a declaratory judgment and injunction declaring that the ADWR Defendants' failure to initiate proceedings pursuant to A.R.S. § 45-413 is unlawful and compelling the ADWR Defendants to exercise their authority under A.R.S. §§ 45-412(A) and 45-413(A) by a date certain as detailed in section D below.

D. Granting Plaintiff's request for special action relief in the form of an order compelling the ADWR Defendants to initiate proceedings pursuant to A.R.S. § 45-413(A) to designate the Upper San Pedro Basin a subsequent active management area, which order will include:

1. That the Director must hold a public hearing pursuant to A.R.S. § 45-413 by a date certain no more than six months after the order is issued;
2. That, prior to the public hearing, the Director must collect factual data relating to groundwater rates of decline in the Basin, including but not limited to a hydrology review of the Basin, statistical review of groundwater level data, groundwater demands from municipal, industrial, agricultural, and all other uses, including the federal government at both Fort Huachuca and the SPRNCA, and facts relevant to each factor in A.R.S. § 45-412(A), to be presented at the public hearing pursuant to A.R.S. § 45-413(C); and



3. An order that, if, after the public hearing, the Director does not designate the Basin a subsequent AMA, the Director must issue written findings justifying why the Basin does not meet the standards set out in A.R.S. § 45-412(A) by a date certain, no more than three months after the hearing required under by section D.1 above.

E. Declaring that the Governor's failure to instruct the Director to conduct a review of the Basin is a violation of her constitutional duty under Ariz. Const. Article 5, Section 4 to ensure that the Groundwater Code, in particular, A.R.S. § 45-412(C), is faithfully executed.

F. Declaring that the Governor's failure to instruct the Director to initiate proceedings to designate the Basin an AMA is a violation of her constitutional duty under Ariz. Const. Article 5, Section 4 to ensure that the Groundwater Code, in particular, A.R.S. § 45-412(A), is faithfully executed.

G. An order directing Defendants to pay the Plaintiffs' reasonable attorneys' fees and costs pursuant to A.R.S. § 12-341, 12-348, 12-2030, A.R.S. § 12-1840, Ariz. R. P. Spec. Act. 4(g), or any other applicable provision of law or equitable principle, including the attorney general doctrine; and

H. Grant the Plaintiff such other and further relief as the Court deems just and proper.

DATED this 16<sup>th</sup> day of September, 2024.

**HOFMEYR LAW, PLLC**

/s/ Adriane J. Hofmeyr

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Adriane J. Hofmeyr

*Attorney for Plaintiff***s**

ORIGINAL of the foregoing E-filed  
with the Court this 16<sup>th</sup> day of September, 2024,  
via TurboCourt with a copy sent to:

The Honorable Scott Blaney  
c/o Erin Kelly, Judicial Assistant  
erin.kelly@jbazmc.maricopa.gov

COPIES of the forgoing sent by email  
on September 16, 2024 to:

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I am a co-founder and current board member of Plaintiffs Center for Biological Diversity and San Pedro Alliance. I have read the foregoing Verified First Amended Complaint for Special Action, Declaratory and Injunctive Relief and, to the best of my knowledge, information and belief, the statements made therein are true and correct.

Executed this 16<sup>th</sup> day of September 2024.

Oliver Price

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