

**HOFMEYR LAW, PLLC**  
Adriane J. Hofmeyr  
Arizona State Bar No. 025100  
3849 E. Broadway Blvd., #323  
Tucson, Arizona 85716  
Telephone: (520) 477-9035  
Adriane@hofmeyrlaw.com  
Filings@hofmeyrlaw.com

**EARTHJUSTICE**  
Heidi McIntosh\*  
Stuart Gillespie\*  
633 17<sup>th</sup> Street, Suite 1600  
Denver, CO 80202  
(303) 623-9466  
hmcintosh@earthjustice.org  
sgillespie@earthjustice.org

*\*Pro hac vice application forthcoming*

*Attorneys for Plaintiffs Center for  
Biological Diversity, San Pedro  
100 and Robin Silver*

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

CENTER FOR BIOLOGICAL  
DIVERSITY; SAN PEDRO 100; ROBIN  
SILVER;

Plaintiffs,

v.

KATHLEEN M. HOBBS, in her capacity as  
governor of Arizona; ARIZONA  
DEPARTMENT OF WATER  
RESOURCES; THOMAS BUSCHATZKE,  
in his capacity as Director of the Arizona  
Department of Water Resources; PUEBLO  
DEL SOL WATER COMPANY, Real Party  
in Interest,

Defendants.

Case No.

**VERIFIED 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, Plaintiffs Center for Biological Diversity, San Pedro 100, and Robin Silver, by and through undersigned counsel, allege as follows:

**SUMMARY OF THE CASE**

1. The Arizona Department of Water Resources (“ADWR”) and Thomas Buschatzke, the director of ADWR (“Director”) (collectively, “the Director”), have failed to perform their mandatory duty to review the [100-year Designation of Adequate Water](#)

1 Supply (“Designation”) issued to Castle & Cooke’s Pueblo Del Sol Water Company  
2 (“Pueblo Del Sol” or “PDS”) for its proposed 7,000-unit development in the Sierra Vista  
3 Subwatershed of the Upper San Pedro River Basin.

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

7 3. The Designation authorizes PDS to pump 4,870 acre-feet of groundwater per  
8 year from the Sierra Vista Subwatershed. Even though that amount is roughly equivalent  
9 to the yearly baseflow of the River, ADWR issued a 100-year designation of adequate  
10 water supply assuring prospective homebuyers that Pueblo Del Sol’s groundwater supply  
11 would be available for one-hundred years. The Designation did not consider the federal  
12 reserved rights for the San Pedro Riparian National Conservation Area (“SPRNCA”)  
13 because, as ADWR has argued, they were not quantified at that time.

14 4. On August 25, 2023, the Maricopa Superior Court quantified SPRNCA’s  
15 federal reserved right. The Court reserved for SPRNCA minimum groundwater elevations  
16 at nine monitoring wells along the San Pedro River. These reserved rights carry a priority  
17 date of November 18, 1988, the date that Congress created SPRNCA, and the date from  
18 which SPRNCA water rights are assigned.

19 5. Groundwater levels have already declined below the minimum levels  
20 reserved to SPRNCA. Groundwater is not therefore legally available for Pueblo Del Sol as  
21 is currently approved by the Designation. In fact, modeling demonstrates that existing  
22 pumping is currently capturing, and will continue to increasingly capture, water flows  
23 towards the River, infringing upon BLM’s federal reserved water rights in the SPRNCA.

24 6. Yet, the Director refuses to review the now inaccurate Designation despite  
25 the fact that Pueblo Del Sol can no longer demonstrate that 4,870 acre-feet per year of  
26 groundwater is legally available for the next 100 years. Prospective homebuyers who rely  
27 on the Designation—which is obsolete now that the court has quantified SPRNCA’s federal  
28 reserved right—are at risk of running out of water.

7. The Director's failure to review the Designation violates A.R.S. § 45-108(B), A.R.S. § 45-108(I)(1), and A.A.C. R12-15-715(C), and is an abandonment of his mandatory duties as the steward of Arizona's groundwater future.

8. Plaintiffs thus bring this special action to compel the Director to comply with his mandatory obligations to conduct a review the Designation in order to conserve, protect, and allocate the groundwater resources of the Sierra Vista Subwatershed in accordance with legal requirements.

9. Plaintiffs also seek declaratory relief against the Governor, declaring that the Governor's failure to instruct ADWR and the Director to conduct a review of the Designation is a violation of her constitutional duty to ensure that the Groundwater Code, in particular, A.R.S. § 45-108(B), § 45-108(I)(1) and A.A.C. R12-15-715(C), are faithfully executed.

10. Special action relief pursuant to A.R.S. § 12-2021 and the *Arizona Rules of Procedure for Special Actions* is appropriate here because Plaintiffs have no other plain, adequate and speedy remedy at law to compel Defendants to perform their mandatory duties, which they have abdicated.

## 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 Sierra Vista Subwatershed. The Center has members who are landowners and residents in the Sierra Vista Subwatershed. The Center addressed a [complaint to the Director and the Governor](#) on July 16, 2024, requesting they take the actions claimed herein, to which they have not responded.

12. Plaintiff San Pedro 100 is a local group whose members are landowners and

1 residents in the Sierra Vista Subwatershed. The San Pedro 100 works to protect and  
2 safeguard the San Pedro River.

3 13. Plaintiff Robin Silver is a landowner in the Sierra Vista Subwatershed. He is  
4 a co-founder and board member of the Center. With standing pursuant to A.R.S. § 45-  
5 108.01(B) as a landowner in the Sierra Vista Subwatershed, Dr. Silver was a party to the  
6 administrative proceedings and related litigation involving ADWR's issuance of the  
7 Designation.

8 14. Many of Plaintiffs' members and board members are residents and  
9 landowners in the Sierra Vista Subwatershed, and rely on a long-term, reliable supply of  
10 accessible groundwater in the Sierra Vista Subwatershed.

11 15. Defendant Kathleen M. Hobbs is the governor of Arizona. The Arizona  
12 Constitution requires that the Governor "shall transact all executive business with the  
13 officers of the government" and "shall take care that the laws be faithfully executed." Ariz.  
14 Const. Article 5, Section 4. Governor Hobbs appointed the Director who serves at her  
15 pleasure. A.R.S. § 45-102(C). Governor Hobbs is actively involved in the management of  
16 water resources by ADWR. She has publicly declared that she "will take decisive action to  
17 protect Arizona's water future. ... For too long, we have allowed development that skirted  
18 our smart and commonsense consumer protections for water availability; that "we cannot  
19 continue to let individuals and corporations exploit these loopholes and rob us of our water  
20 future." She has "directed the Arizona Department of Water Resources to finalize a new  
21 pathway for water providers and communities who have historically relied on groundwater  
22 resources." And, consistent with her powers to act, she also promised "to safeguard  
23 Arizona's water for tomorrow ... to those who have spent years refusing to act: if you don't,  
24 I will." Moreover, in response to a [letter](#) from the Arizona Attorney General dated April 17,  
25 2023, addressed to the Director of ADWR (regarding the obligations under the Groundwater  
26 Code), the Governor herself [responded](#) (in place of and for the Director), instructing that,  
27 among other things, "suggestions or concerns" "about the agency that I oversee" must be  
28 directed to the Governor and her staff.

1           16. Defendant ADWR is a state agency and is a public body subject to a writ of  
2 mandamus under the common law, the Rules of Procedure for Special Actions, and A.R.S.  
3 §§ 12-2021 *et seq.*

4           17. Defendant Thomas Buschatzke is the director of ADWR, tasked with the  
5 ongoing duty to review adequate water supply designations. He “has general control and  
6 supervision of surface water, its appropriation and distribution, and of groundwater to the  
7 extent provided by this title.” A.R.S. § 45-103(B).

8           18. Defendant Buschatzke is a public officer subject to a writ of mandamus under  
9 the common law, the Rules of Procedure for Special Actions, and A.R.S. §§ 12-2021 *et seq.*

10          19. Defendant Pueblo Del Sol Water Company is the holder of the Designation  
11 and is named herein pursuant to Rule 2, *Arizona Rules of Procedure for Special Actions*, as  
12 a real party in interest.

### 13                                   **JURISDICTION AND VENUE**

14          20. This Court has jurisdiction over this action pursuant to A.R.S. §§ 12-2021,  
15 12-123, 12-1801, 12-1803, 12-1831, as well as Ariz. R. P. Spec. Act. 4(a).

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

### 17                                   **LEGAL BACKGROUND**

#### 18           **I.       The Director and ADWR are responsible for protecting Arizona’s** 19 **groundwater**

20          22. In 1980, the Arizona legislature passed the Groundwater Management Act  
21 (the Groundwater Code) in recognition of the serious threat posed by unchecked  
22 groundwater pumping within the state. A.R.S. §§ 45-401 *et seq.*

23          23. The Groundwater Code recognizes that: “[I]n many basins and sub-basins  
24 withdrawal of groundwater is greatly in excess of the safe annual yield and ... this is  
25 threatening to destroy the economy of certain areas of this state and is threatening to do  
26 substantial injury to the general economy and welfare of this state and its citizens.” A.R.S.  
27 § 45-401(A).

28          24. The Legislature “declared” it is “the public policy of this state that in the

1 interest of protecting and stabilizing the general economy and welfare of this state and its  
2 citizens it is necessary to conserve, protect and allocate the use of groundwater resources of  
3 the state and to provide a framework for the comprehensive management and regulation of  
4 the withdrawal, transportation, use, conservation and conveyance of rights to use the  
5 groundwater in this state.” A.R.S. § 45-401(B).

6 25. The Groundwater Code seeks to “provide a framework for the comprehensive  
7 management and regulation” of groundwater in Arizona. *Id.* § 45-401(B).

8 26. The Groundwater Code delineated the groundwater basins within the state  
9 and placed them in two categories: 1) “active management areas,” or “AMAs,” in which  
10 developers must demonstrate an “assured water supply;” and 2) areas outside the AMAs,  
11 which would be governed by another regime. A.R.S. §§ 45-402(2) & (13), 45-403, 45-411.

12 27. 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).

15 28. 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.”

18 29. A.R.S. § 45-105(B)(8) mandates that the “director shall... investigate and  
19 take appropriate action on any complaints alleging withdrawals, diversions, impoundments  
20 or uses of surface water or groundwater that may violate this title or the rules adopted  
21 pursuant to this title.”

## 22 **II. Adequate Water Supply Program**

23 30. The adequate water supply designation process originated as a mechanism for  
24 protecting consumers against unscrupulous developers who sold subdivided property that  
25 lacked an adequate water source.

26 31. In areas outside of AMAs, like the Sierra Vista Subwatershed, a county may  
27 require a developer to obtain an adequate water supply designation from ADWR before  
28 approving a new subdivision. A.R.S. § 11-823(A).

1           32. Cochise County requires developers to obtain an adequate water supply  
2 designation before it will approve a final plat for subdivision. *See* Cochise County  
3 Subdivision Regulations § 408.03; A.R.S. § 11-823(A).

4           33. The Director of ADWR “shall evaluate the proposed source of water for the  
5 subdivision to determine whether there is an adequate water supply for the subdivision.”  
6 A.R.S. § 45-108(B).

7           34. “Adequate water supply” means both of the following: (1) sufficient  
8 groundwater, surface water or effluent of adequate quality will be continuously, legally, and  
9 physically available to satisfy the water needs of the proposed use for at least 100 years; (2)  
10 the financial capability has been demonstrated to construct the water facilities necessary to  
11 make the supply of water available for the proposed use. A.R.S. § 45-108(I)(1) and (2); and  
12 see A.A.C. R12-15-713(E).

13           35. As relevant here, to qualify for a designation of adequate water supply, an  
14 applicant must demonstrate that sufficient supplies of water are “legally available to meet  
15 the applicant’s estimated water demand, according to the criteria in R12-15-718.” A.A.C.  
16 R12-15-714(E).

17           36. “Legal availability” means an applicant has the legal authority (1) to withdraw  
18 and use groundwater for reasonable and beneficial use under A.R.S. § 45-453, and (2) to  
19 deliver that groundwater pursuant to a certificate of convenience and necessity (“CC&N”).  
20 A.A.C. R12-15-718(B)(3)(a), (C); and *see Silver v. Pueblo Del Sol Water Company*, 244  
21 Ariz. 553, 566, ¶ 12 (2018).

22           37. The federal reserved water rights doctrine “effectively modifies the doctrine  
23 of reasonable use, as codified in A.R.S. § 45-453, because it restricts an overlying  
24 landowner’s right to pump groundwater to the extent required to preserve the waters  
25 necessary to accomplish the purpose of a federal reservation.” *Silver v. Pueblo Del Sol*  
26 *Water Company*, 244 Ariz. *supra*, ¶ 13 (2018) (internal citations omitted). Thus, a use that  
27 infringes on federal reserved water rights is not “reasonable and beneficial.”

28           38. ADWR must accommodate federal reserved rights for it “may not ignore

1 them.” *In re Gen. Adjudication of All Rts. to Use Water in Gila River Sys. & Source*, 195  
2 Ariz. 411, 422, 989 P.2d 739, 750 (1999).

3 39. The Director “may revoke a designation when the director finds that the water  
4 supply may become inadequate.” A.R.S. § 45-108(F).

5 40. The water provider has an ongoing duty to provide annual reports that include  
6 specific information about the amount of its pumping, among other things, including  
7 “information the Director may reasonably require to determine whether the designated  
8 provider continues to meet the criterial for designation of adequate water supply.” A.A.C.  
9 R12-15-715(A)(6).

10 41. The Director “shall” review designations of AWS and must do so “at least  
11 every 15 years to determine whether the designation should be modified or revoked.”  
12 A.A.C. R12-15-715(C).

13 42. The Director has the authority to modify a designation of AWS “for good  
14 cause.” A.A.C. R12-15-715(D).

15 43. The Director has the authority to revoke a designation of AWS if the Director  
16 determines that “the designated provider has less water, according to the criteria in R12-15-  
17 714(E), than the amount required for a 100-year supply for the provider’s current demand,  
18 committed demand, and projected demand for the next two calendar years.” A.A.C. R12-  
19 15-715(E).

## 20 **FACTUAL BACKGROUND**

### 21 **I. ADWR’s designation of Adequate Water Supply for Pueblo Del Sol**

22 44. Pueblo Del Sol is a private water company, whose service area covers 4,807  
23 acres in the Sierra Vista Subwatershed, in the City of Sierra Vista, Cochise County, Arizona.

24 45. Pueblo Del Sol’s service area is about 4.5 to 5 miles west of the San Pedro  
25 River.

26 46. Pueblo Del Sol’s service area includes Castle and Cooke’s proposed master  
27 planned community called Tribute Master Planned Community (“Tribute”).

28 47. Tribute plans to develop up to 6,959 new residential units, the majority of



1 which will be supplied by water from groundwater pumped by Pueblo Del Sol.

2 48. On June 23, 2011, Pueblo Del Sol filed an application for an adequate water  
3 supply designation with ADWR pursuant to A.R.S. § 45-108 and A.A.C. R12-15-714.

4 49. In its amended application, Pueblo Del Sol stated that it plans to extract  
5 4,870.39 acre-feet per year (“AFY”) from the aquifer.

6 50. On May 17, 2013, ADWR issued a Decision and Order designating Pueblo  
7 Del Sol as having a 100-year designation of adequate water supply (the Designation).

8 51. The Designation concluded that Pueblo Del Sol had demonstrated that  
9 4,870.39 acre-feet per year of groundwater will be physically, continuously, and legally  
10 available for at least 100 years.

11 52. An express condition of the Designation is that “pursuant to A.A.C. R12-15-  
12 715, the Director may, at any time, revoke this Designation if the findings of fact or the  
13 conclusions of law upon which the Designation is based change or are invalid, or if an  
14 adequate water supply no longer exists.”

15 53. In the Designation, ADWR did not consider whether federal water rights  
16 reserved to the SPRNCA (see below) would impact “whether there is an adequate water  
17 supply for the subdivision.” A.R.S. § 45-108(B).

18 54. ADWR did not consider SPRNCA’s federal reserved water rights because the  
19 “federal reserved water rights ... have *not yet been quantified*,” and thus “it would be  
20 impossible for DWR ... to determine what the impacts potentially could be on BLM’s  
21 SPRNCA water rights... claims due to Pueblo Del Sol’s proposed groundwater pumping.”  
22 See ADWR’s Pre-Hearing Memorandum dated November 5, 2012, submitted during the  
23 administrative hearing preceding the Designation, p. 12:6-11 (emphasis added).

24 55. In upholding the Designation, the Arizona Supreme Court agreed that  
25 “ADWR is not required to consider *unquantified* federal reserved water rights under its  
26 physical availability or legal availability analysis.” *Silver v. Pueblo Del Sol Water*  
27 *Company*, 244 Ariz., *supra*, ¶ 46 (emphasis added).

28 56. ADWR represented to the Supreme Court that, *once federally reserved water*

1 *rights are quantified*, if “Pueblo groundwater pumping on this project is going to infringe  
2 on the federally reserved water rights,” then ADWR has “an obligation to consider that in  
3 determining legal availability.” *See* transcript of oral argument to the Supreme Court on  
4 March 8, 2018 (“Transcript”), p. 22; *see also Silver, supra*, ¶ 43.

5 57. Having held that *unquantified* water rights need not be considered by ADWR,  
6 the Supreme Court held that “the statutory scheme explicitly contemplates that a change in  
7 circumstances may result in the revocation of an adequate water supply designation.” *Id.* ¶  
8 40, citing A.R.S. § 45-108(F).

9 58. ADWR has “continuing jurisdiction over Pueblo’s designation” to “modify  
10 or revoke” Pueblo’s Designation, which “assures Pueblo’s compliance with the  
11 requirements for a designation of adequate water supply, which serves the consumer  
12 protection goal of A.R.S. § 45-108(I).” *See* ADWR Supplemental Brief to the Arizona  
13 Supreme Court dated February 9, 2018, p. 18-19.

14 59. Pueblo Del Sol represented to the Supreme Court that “prospective  
15 homebuyers” are “technically on notice by the statute that the *department can change at*  
16 *any time the determination*” (in response to a question from Justice Brutinel regarding “what  
17 notice does a consumer have that at some point the Gila River adjudication is going to  
18 decide that they don’t get to use any water in the aquifer”). *See* Transcript, p. 13 (emphasis  
19 added).

### 20 **III. The Superior Court Quantifies SPRNCA’s Federal Reserved Water** 21 **Rights in 2023**

22 60. The San Pedro River flows north from northern Mexico through southeastern  
23 Arizona until its confluence with the Gila River. The San Pedro River is the last free-  
24 flowing, undammed river in the desert Southwest. It is home to one of the most precious  
25 and rare wetland ecosystems in the Southwestern United States.

26 61. In 1988, Congress recognized the importance of the San Pedro River and its  
27 outstanding resources when it designated 36 miles of the river’s upper basin as a riparian  
28 conservation area. 16 U.S.C. § 460xx. The purpose of the SPRNCA is “to protect the

1 riparian area and the aquatic, wildlife, archaeological, paleontological, scientific, cultural,  
2 educational, and recreational resources of the public lands surrounding the San Pedro  
3 River.” *Id.*

4 62. Congress explicitly reserved federal water rights for the SPRNCA in “a  
5 quantity of water sufficient to fulfill the purposes” of the SPRNCA. 16 U.S.C. § 460xx-l(d).

6 63. These federal reserved water rights have a priority date of November 18,  
7 1988. *Id.*

8 64. Congress directed the Secretary of the Interior to file a claim to quantify these  
9 rights for the SPRNCA in the appropriate stream adjudication. *Id.* BLM first filed a  
10 statement of claim in Arizona’s long-running stream adjudication for the Gila River (“*In re*  
11 *The General Adjudication of the Gila River System and Source*) in 1989. BLM  
12 subsequently filed two amended claims for federal water rights for the SPRNCA. It sought  
13 federal reserved water rights to streamflow and groundwater.

14 65. On August 25, 2023, in the Gila River General Stream Adjudication Case No.  
15 W1-11-232, the Maricopa County Superior Court issued “[Order Quantifying Federal](#)  
16 [Reserved Water Rights for San Pedro Riparian National Conservation Area.](#)”

17 66. The Superior Court held that BLM was entitled to the “minimal amount” of  
18 water sufficient to fulfill the purpose of SPRNCA. Based on that “minimal need” standard,  
19 the court quantified the amount of streamflow necessary and the minimal water levels that  
20 must be maintained in monitoring wells to support SPRNCA.

21 67. The Superior Court held that “a federal reserved water right for a sufficient  
22 amount of water must include groundwater elevations because neither surface water nor  
23 water from recharge and conservation efforts will suffice to support SPRNCA.”

24 68. The Superior Court issued a finding of fact that “the United States is decreed  
25 a federal reserved water right to the following groundwater elevations at nine monitoring  
26 wells within the 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

69. The Superior Court chose these monitoring sites because the data showed “a relatively stable long-term trend of water level elevations in close proximity to the San Pedro River channel since the time of SPRNCA’s establishment.”

70. The Superior Court found that groundwater levels at each of these monitoring wells represent the minimum “amount of water sufficient to maintain SPRNCA’s riparian area.”

71. In a subsequent, [February 2024, submission to the Adjudication Court](#), Modeling Report No. 29, ADWR stated “...represented in the model are groundwater elevations at nine monitoring wells within the San Pedro Riparian National Conservation Area (SPRNCA) for which the court has decreed federal reserved water rights for the protection of the riparian area (**Table 1-1**).” “**Table 1-1**” is identical to the Superior Court’s decreed Table included in paragraph 68 above.

**IV. Groundwater Levels Have Already Dropped Below the Minimum Decreed Levels**

72. Groundwater levels have dropped below minimum levels decreed by the Superior Court at two of the monitoring wells.

73. The Superior Court decreed that the [Cottonwood monitoring well](#) may not drop below a minimum elevation of 4070.7 feet (NAVD 1988).

74. According to monitoring data, groundwater elevations at the Cottonwood monitoring well have remained below 4070.7 feet for more than two years. On April 18, 2024, the groundwater elevation at the Cottonwood well was 4069.07 feet. On June 24, 2024, the Cottonwood monitoring well had dropped to an elevation of 4066.77 feet.

75. The Superior Court decreed that the [Summers monitoring well](#) may not drop below a minimum elevation of 3717.3 feet (NAVD 1988).

76. As of June 20, 2024, the Summers monitoring well has dropped to an elevation of 3715.48 feet. Elevations at the monitoring well have remained below 3717.2 feet since November 2023.

77. Two other monitoring wells, Palominas Well #5 and Boquillas #2 are very close to violating the minimum level decreed by the Superior Court's finding of fact.

78. The Superior Court decreed that the Palominas monitoring well may not drop below an elevation of 4246.1 feet above NAVD 1988.

79. As of June 14, 2024, the Palominas Well #5 monitoring well has dropped to an elevation of 4246.77 feet.

80. The Superior Court established that the Boquillas #2 monitoring well may not drop below an elevation of 3879.05 feet above NAVD 1988.

81. As of June 20, 2024, the Boquillas #2 monitoring well has dropped to an elevation of 3879.83 feet.

82. These violations and imminent violations of the decreed SPRNCA monitoring well levels are consistent with every recent hydrology study documenting SPRNCA's failing health owing to the capture or interception of SPRNCA water by local

1 wells. These studies include [MacNish, et al \(2009\)](#), [GeoSystems \(2010\)](#), [Lacher \(2011\)](#),  
2 [Meixner and Randle \(2014\)](#), [USGS \(2014b\)](#), [Integrated Hydro \(2016\)](#), [USGS \(2017\)](#),  
3 [Eastoe \(2017\)](#), [Meixner \(2018\)](#), [Lacher \(2018\)](#), [Eastoe \(2018\)](#), [Integrated Hydro \(2019\)](#),  
4 [Eastoe \(2020\)](#), and [USGS \(2020\)](#).

5 83. There is a direct hydrologic connection between the groundwater aquifer in  
6 the Sierra Vista Subwatershed and SPRNCA.

7 84. [ADWR notes](#), “groundwater and surface water form an interconnected  
8 hydrologic system in which quantities of water are exchanged between the stream and the  
9 aquifer based on changing hydrological conditions...”

10 85. The [U.S. Geological Survey \(“USGS”\) notes](#), “Ground water in the Sierra  
11 Vista subwatershed generally flows from recharge areas near the mountains through sand  
12 and gravel of the upper and lower basin fill to discharge areas along the San Pedro and  
13 Babocomari Rivers...Ground water discharges near the two streams as base flow, small  
14 springs near the San Pedro River, and evapotranspiration through phreatophytes...The  
15 distribution of water-level altitudes in wells during January 1998 (Arizona Department of  
16 Water Resources, unpub. Data, 1998) defines the regional ground-water flow  
17 system...Water-level gradients toward the San Pedro River indicate that ground water  
18 discharges to the river...”

19 86. Even [Pueblo Del Sol’s own consulting hydrologist notes](#) that the groundwater  
20 system that supplies the residents of the Sierra Vista is an integral component of the  
21 hydrologic system of the entire subwatershed and is hydraulically connected to the surface  
22 waters of the SPRNCA.

23 87. The aquifer in the Sierra Vista Subwatershed provides the river’s “base  
24 flows,” or water that seeps out of the aquifer and into the river. “Base flows” sustain the  
25 river year-round, regardless of seasonal rainfall or snowmelt.

26 88. Groundwater pumping in the Sierra Vista Subwatershed creates a cone of  
27 depression that intercepts water that would otherwise sustain the San Pedro River’s base  
28 flows, springs, and vegetation.

1 89. ADWR approved 3,605 wells in the Sierra Vista Subwatershed from  
2 November 18, 1988, the date from Congress assigned SPRNCA's federally reserved water  
3 rights through September 11, 2023.

4 90. Pumping from these wells continues to deplete the aquifer.

5 **V. Credible Evidence Shows that PDS's Supply Is Not Legally Available**  
6 **Due To The SPRNCA**

7 91. The Superior Court's quantification of the SPRNCA water rights, coupled  
8 with the ongoing depletion of the aquifer, trigger ADWR's obligation to review PDS's  
9 adequacy determination.

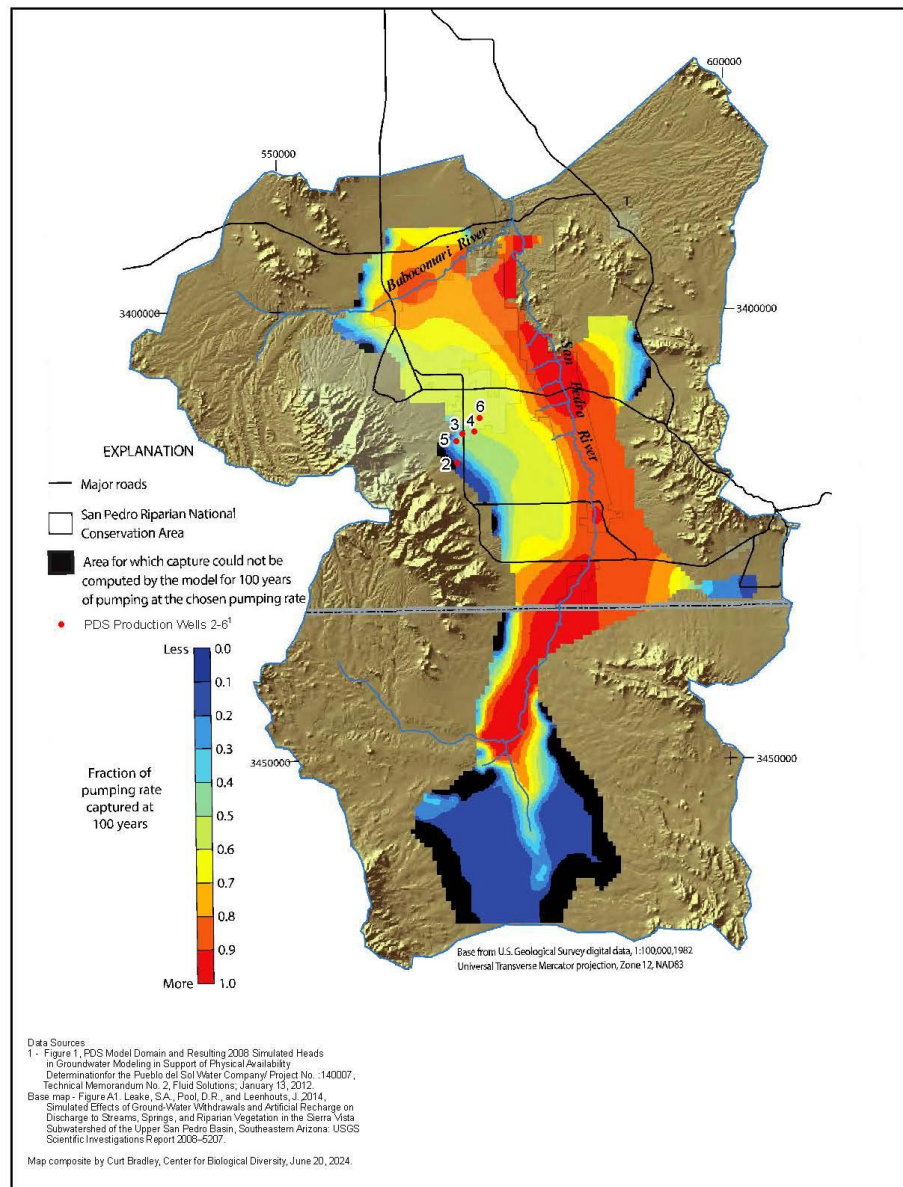
10 92. In addition to the 3,605 wells already permitted in the Sierra Vista  
11 Subwatershed by ADWR, Pueblo Del Sol's proposed pumping will exacerbate the dropping  
12 of groundwater levels by capturing groundwater reserved to SPRNCA.

13 93. Pueblo Del Sol's Designation-approved pumping of 4,870.39 acre-feet per  
14 year would equal the San Pedro River's total annual baseflow of 4,890 acre-feet per year.

15 94. A [2014 United States Geological Survey \("USGS"\) report](#) entitled "Simulated  
16 Effects of Ground-Water Withdrawals and Artificial Recharge on Discharge to Streams,  
17 Springs, and Riparian Vegetation in the Sierra Vista Subwatershed of the Upper San Pedro  
18 Basin, Southeastern Arizona" establishes, by geographic location of a well, the amount of  
19 water this is being and will be depleted from SPRNCA's federal reserved water right.  
20 USGS finds that, in 2024, up to 10% of the water being pumped by Pueblo Del Sol's wells  
21 is water already being captured or denied from SPRNCA. The report establishes that, by  
22 2064, in 50 years, the amount being captured or denied will be up to 30%. And by the year  
23 2114, at the end of the 100-year required period of assured availability, between 10% and  
24 60% of proposed groundwater pumping in the vicinity of Pueblo Del Sol wells will deplete  
25 water that is included within SPRNCA's senior federal reserved water right.

26 95. These findings are graphically demonstrated, by superimposing Pueblo Del  
27 Sol's wells on the USGS map of the zones of the amount of well-captured or water denied  
28 SPRNCA by 2114:





96. [According to a 2013 study by Meixner and Randle](#) entitled “Modeling the Impact of Increased Pumping from the Pueblo Del Sol Water Company in the Upper San Pedro Basin,” “when groundwater extraction at the four PDS wells is increased to a total of 4870.39 AF/yr, the baseflow at every gaining reach of the San Pedro River is less than the baseflow in the ‘base case’ scenario. The updated model also predicts that the San Pedro River’s baseflow is continuously decreasing every year under current pumping conditions without any further expansion. However, when pumping is increased at the PDS wells, the model indicates that the rate of decreasing baseflow in the San Pedro River is accelerated



1 at every gaining reach.”

2 97. Evidence shows that Pueblo Del Sol’s groundwater supply is not legally  
3 available because its proposed pumping would infringe on groundwater reserved to  
4 SPRNCA.

5 98. Despite its representation to the Arizona Supreme Court that quantification of  
6 the SPRNCA rights would trigger a review of the adequacy designation, ADWR has not  
7 done so. In spite of overwhelming new information that supports revocation of the  
8 Designation, ADWR has failed to review the Designation to take into account SPRNCA’s  
9 federally reserved right, the monitoring data, and groundwater modeling to determine  
10 whether Pueblo del Sol proposed pumping is legally available for 100 years.

### 11 **STANDARD OF REVIEW**

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

16 100. Special action relief is appropriate when “the defendant has failed to exercise  
17 discretion which he has a duty to exercise; or to perform a duty required by law as to which  
18 he has no discretion.” Ariz. R. P. Spec. Act. 3(a); *see also Arizona Bd. Of Regents v. State*  
19 *ex. rel. State of Arizona Pub. Safety Ret. Fund Manager Adm’r*, 160 Ariz. 150, 155 (App.  
20 1986).

21 101. “An action is in the nature of mandamus if it seeks to compel a public official  
22 to perform a non-discretionary duty imposed by law.” *Stagecoach Trails MHC, L.L.C. v.*  
23 *City of Benson*, 231 Ariz. 366, 370 ¶ 19 (2013).

24 102. “Ordinarily [mandamus] is invoked to compel the doing of a purely  
25 ministerial act. But it will always lie to require an administrative body to *exercise its*  
26 *discretion* which the law makes it its duty to perform, even though it cannot require it to be  
27 exercised in any particular manner.” *Arizona State Highway Commission v. Superior Ct. of*  
28 *Maricopa Cnty.*, 81 Ariz. 74, 77 (1956) (internal citations omitted) (emphasis added).

103. “The general rule is that if the action of a public officer is *discretionary* that discretion may not be controlled by mandamus. This rule, however, is qualified by the provision that if it clearly appears that the officer has acted *arbitrarily and unjustly and in the abuse of discretion*, the action may still be brought.” *Id.* (emphasis added).

104. “Arbitrary action” means “unreasoning action, without consideration and in disregard of the facts and circumstances.” *Maricopa Cnty. Sheriff’s Off. v. Maricopa Cnty. Emp. Merit Sys. Comm’n*, 211 Ariz. 219, 222, ¶ 14 (2005). An “arbitrary” action is one taken “capriciously or at pleasure,” or an action taken “without adequate determining principle.” *Id.*

105. An agency “abuses its discretion” when it “misapplies the law or fails to consider the relevant facts.” *Simmons v. Ariz. Dep’t of Econ. Sec.*, 254 Ariz. 109, 111, ¶ 10 (App. 2022).

106. A court “review[s] *de novo* whether the [agency] properly applied the law to the facts, and we will affirm the decision if it is supported by any reasonable interpretation of the record and substantial evidence.” *Id.*

107. A court “may substitute [its] judgment for the agency’s conclusions about the legal effect of facts.” *Id.*

108. In Arizona, a court owes no deference to an agency’s interpretation of the law or findings of fact. A.R.S. § 12-910(F); and *see Arizona Dep’t of Transportation v. Arizona Motor Vehicle, LLC*, 255 Ariz. 139, 528 P.3d 891, 897 (App. 2023).

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Special Action (A.R.S. § 12-2021)**

#### **Violations of A.A.C. R12-15-715(C), A.R.S. § 45-108(B) and § 45-108(I)(1) (ADWR and the Director)**

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

110. The Director “shall review” a designation for adequate water supply and must do so “at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked.” A.A.C. R12-15-715(C).

111. The Director shall use the standards in place at the time of review to determine whether to modify or revoke the designation. A.A.C. R12-15-715(F).

112. The Director must determine “whether there is an adequate water supply for the subdivision”—that is, adequate water is continuously, legally, and physically available to satisfy the water needs of the proposed use for at least 100 years. A.R.S. § 45-108(B); A.R.S. § 45-108(I)(1).

113. “Legal availability” means an applicant has the legal authority (1) to withdraw and use groundwater for reasonable and beneficial use under A.R.S. § 45-453. and *see Silver, supra*, ¶ 12.

114. The legal availability of the groundwater Pueblo del Sol proposes to pump pursuant to ADWR’s designation is limited by the now-quantified rights reserved to the SPRNCA. *Silver, supra*, at ¶ 12, 13.

115. The Arizona Supreme Court noted that ADWR conceded that it would have to acknowledge a quantified federal reserved water right if an applicant’s prospective groundwater pumping would infringe upon that right. ADWR’s concession arises from the fact that the federal reserved water rights doctrine restricts the otherwise permissible reasonable and beneficial use of groundwater, codified in § 45-453, to the extent required to preserve the waters necessary to accomplish the purpose of a federal reservation. *Silver, supra*, at ¶ 13

116. ADWR has conceded that, when the SPRNCA’s water rights were quantified, ADWR has “an obligation to consider” them in determining legal availability.

117. ADWR has also conceded that it has “continuing jurisdiction over Pueblo Del Sol’s Designation” to “modify or revoke” it in the event that the SPRNCA’s rights are quantified and Pueblo Del Sol’s pumping may “infringe on” those rights.

118. ADWR has breached its mandatory duty to review SPRNCA’s quantified federal reserved right to assess whether Pueblo del Sol has demonstrated that 4,870.39 acre-feet per year of groundwater will be legally available for at least 100 years. As a result, ADWR has not accounted for the fact that Pueblo del Sol’s groundwater supply is not

1 legally available because its proposed pumping would infringe on water protected by  
2 SPRNCA's federal reserved water rights.

3 119. Furthermore, the Director's inaction is arbitrary because it is "unreasoning  
4 action," "without consideration and in disregard of" the quantification of the SPRNCA's  
5 water rights and the fact that water levels at two wells in the Superior Court's findings of  
6 fact are already below decreed levels. *Maricopa Cnty. Sheriff's Off., supra*, at ¶ 14.

7 120. The Director's failure to review the Designation constitutes unreasonable  
8 delay and/or refusal to discharge a mandatory duty and/or an unreasonable failure to  
9 exercise discretion he has a duty to exercise since it fails to protect potential homebuyers at  
10 the Tribute development who could rely on an outdated and inaccurate Designation.

11 121. Moreover, the Director has violated his obligation under A.R.S. § 45-  
12 105(B)(8) to "investigate and take appropriate action on any complaints alleging  
13 withdrawals, diversions, impoundments or uses of surface water or groundwater that may  
14 violate this title or the rules adopted pursuant to this title." The Center addressed a complaint  
15 to the Director and the Governor requesting that they investigate and review ADWR's  
16 decision to issue the Designation given the Superior Court's quantification of SPRNCA's  
17 water rights—an action ADWR represented to the Supreme Court that it would undertake.  
18 Defendants failed to respond, investigate, and take action on this complaint.

19 122. Plaintiffs have standing to file this special action because, as residents and  
20 landowners in the Sierra Vista Subwatershed, their interests are directly and adversely  
21 affected by the Director's failure to take into account SPRNCA's quantified federal water  
22 rights in a review of the Pueblo Del Sol Designation. They are beneficially interested in  
23 compelling the Director to perform his public duties in protecting the groundwater resources  
24 of the Sierra Vista Subwatershed and in ensuring that the Groundwater Act is properly  
25 implemented and enforced and in ensuring that the Director lawfully and in good faith  
26 carries out his duties under A.R.S. § 45-108 and does not abuse his discretion under A.R.S.  
27 § 45-108. *See Arizona Pub. Integrity All., supra*, at ¶11.

28 123. An organization has representational standing if it has "a legitimate interest

1 in an actual controversy involving its members” and “judicial economy and administration  
2 will be promoted” by conferring standing. *Armory Park Neighborhood Ass 'n v. Episcopal*  
3 *Cnty. Servs. in Ariz.*, 148 Ariz. 1, 6 (1985).

4 124. Plaintiffs have no other plain, speedy, and adequate remedy at law to enforce  
5 the Director’s mandatory obligations under A.A.C. R12-15-715(C) to review the  
6 Designation to determine whether to modify or revoke it, to ensure groundwater is  
7 continuously, legally, and physically available to satisfy Pueblo Del Sol’s proposed use for  
8 at least 100 years. A.R.S. § 45-108(B); A.R.S. § 45-108(I)(1).

9 125. Plaintiffs are entitled to special action relief compelling the Director and  
10 ADWR to conduct a review of the Designation to determine whether to modify or revoke  
11 it.

12 **COUNT II**  
13 **Declaratory Judgment (A.R.S. § 12-1831)**  
14 **Violations of A.A.C. R12-15-715(C), A.R.S. § 45-108(B) and § 45-108(I)(1)**  
15 **(ADWR and the Director)**

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

17 127. Courts have authority to “declare rights, status, and other legal relations  
18 whether or not further relief is or could be claimed. . . . The declaration may be either  
19 affirmative or negative in form and effect; and such declarations shall have the force and  
20 effect of a final judgment or decree.” A.R. S. § 12-1831. “The declaratory judgment act is  
21 remedial and is to be liberally construed.” *Citizens’ Comm. for Recall of Jack Williams v.*  
22 *Marston*, 109 Ariz. 188, 192 (1973).

23 128. A plaintiff may seek relief under the Uniform Declaratory Judgment Act if  
24 they can show the issue is ripe and they have standing. *See Mills v. Ariz. Bd. of Tech.*  
25 *Registration*, 514 P.3d 915, 923 , ¶ 24 (Ariz. 2022).

26 129. A case is ripe if “there is an actual controversy between the parties.” *Id.* at  
27 923, ¶ 24.

28 130. An actual and justiciable controversy exists regarding the Director’s violation  
of his duty under A.A.C. R12-15-715(C) to conduct a review of the Designation to

1 determine whether to modify or revoke the Designation.

2 131. An actual and justiciable controversy exists regarding whether the Director  
3 has violated his obligations under A.A.C. R12-15-715(C) and/or abused his discretion  
4 under A.R.S. § 45-108(B) and A.R.S. § 45-108(I)(1) by failing to initiate proceedings to  
5 review the Designation given the quantification of the SPRNCA's federal reserved water  
6 rights and the data showing that groundwater in the Sierra Vista Subwatershed is already  
7 being overdrawn and overallocated.

8 132. The Director has no discretion to refuse to perform his duty required by  
9 A.A.C. R12-15-715(C), A.R.S. § 45-108(B) and § 45-108(I)(1).

10 133. The Director has abused his discretion in failing to exercise their authority  
11 under A.A.C. R12-15-715(C), A.R.S. § 45-108(B) and § 45-108(I)(1).

12 134. Plaintiffs have direct standing because they include landowners and residents  
13 of the Sierra Vista Subwatershed who are dependent on the groundwater supplies that the  
14 Director's inaction threatens.

15 135. An organization has representational standing if it has "a legitimate interest  
16 in an actual controversy involving its members" and "judicial economy and administration  
17 will be promoted" by conferring standing. *Armory Park Neighborhood Ass 'n v. Episcopal*  
18 *Cmty. Servs. in Ariz.*, 148 Ariz. 1, 6 (1985).

19 136. Declaratory relief is necessary to ensure the Director and ADWR do not  
20 violate the Groundwater Code.

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

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

25 138. The Arizona Constitution requires that the Governor "shall transact all  
26 executive business with the officers of the government" and "shall take care that the laws  
27 be faithfully executed." Ariz. Const. Article 5, Section 4.

28 139. As set out above, the Director is in violation of A.R.S. § 45-108(B), § 45-

1 108(I)(1) and A.A.C. R12-15-715(C) because he has failed to conduct a review of the  
2 Designation to determine whether to modify or revoke it.

3 140. The Governor's failure to instruct the Director to conduct a review of the  
4 Designation is a violation of her constitutional duty under Ariz. Const. Article 5, Section 4  
5 to ensure that the Groundwater Code, in particular, A.R.S. § 45-108(B), § 45-108(I)(1) and  
6 A.A.C. R12-15-715(C), are faithfully executed.

7 141. An actual and justiciable controversy exists regarding the Governor's  
8 violation of her constitutional duty to ensure that the Director faithfully carries out his duties  
9 under the Groundwater Code, in particular, to conduct a review of the Designation to  
10 determine whether to modify or revoke the Designation.

11 142. Declaratory relief is necessary to ensure the Governor does not violate her  
12 constitutional duty to ensure that the Director faithfully carries out his duties under the  
13 Groundwater Code.

14 **PRAYER FOR RELIEF**

15 WHEREFORE Plaintiffs respectfully request that this Court issue an order:

16 A. Granting Plaintiffs' request for special action relief and compelling the  
17 Director and ADWR to conduct a review of the Designation pursuant to A.A.C. R12-15-  
18 715(C), A.R.S. § 45-108(B) and § 45-108(I)(1) to determine whether it should be modified  
19 or revoked.

20 B. Alternatively, granting Plaintiffs' request for a declaratory judgment  
21 declaring that the Director and ADWR's failure to conduct a review of the Designation to  
22 determine whether it should be modified or revoked violates A.A.C. R12-15-715(C), A.R.S.  
23 § 45-108(B) and § 45-108(I)(1).

24 C. Declaring that the Governor's failure to instruct the Director to conduct a  
25 review of the Designation is a violation of her constitutional duty under Ariz. Const. Article  
26 5, Section 4 to ensure that the Groundwater Code, in particular, A.R.S. § 45-108(B), § 45-  
27 108(I)(1) and A.A.C. R12-15-715(C), are faithfully executed.

28 D. Directing the Defendants to pay the Plaintiffs' reasonable attorneys' fees and

1 costs pursuant to A.R.S. §§ 12-341, 12-348, 12-2030, 12-1840, Ariz. R. P. Spec. Act. 4(g),  
2 or any other applicable provision of law or equitable principle, including the attorney  
3 general doctrine; and

4 E. Granting the Plaintiffs such other and further relief as the Court deems just  
5 and proper.

6 DATED this 15<sup>th</sup> day of August 2024.

7  
8 **HOFMEYR LAW, PLLC**

/s/ Adriane J. Hofmeyr

Adriane J. Hofmeyr

*Attorney for Plaintiff*



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I am a co-founder and current board member Plaintiff, Center for Biological Diversity. I have read the foregoing Verified 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 15<sup>th</sup> day of August 2024.

Robin Silver