ARIZONA COURT OF APPEALS

DIVISION ONE

ARIZONA DEPARTMENT OF WATER RESOURCES, Petitioner, v. OPAL INVESTMENTS, LLC, a Utah limited liability company; and STEFF INVESTMENTS, LLC, a Nevada limited liability company, Respondents.	No. SA-26- Maricopa County Superior Court Case No.: LC2023-000020-001

PETITION FOR SPECIAL ACTION

Sambo (Bo) Dul (030313)
bdul@cblaywers.com
Austin C. Yost (034602)
ayost@cblawyers.com
Kelleen Mull (036517)
kmull@cblawyers.com
Caitlin Doak (037669)
cdoak@cblawyers.com
COPPERSMITH BROCKELMAN PLC
2800 N. Central Ave., Suite 1900
Phoenix, Arizona 85004
T: (602) 381-5469

Nicole D. Klobas (021350)
ndklobas@azwater.gov
Emily Petrick (034524)
epetrick@azwater.gov
ARIZONA DEPARTMENT OF WATER RESOURCES
1100 W. Washington St., Suite 310
Phoenix, Arizona 85007
T: (602) 771-8472

Attorneys for Petitioner
Arizona Department of Water Resources

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INTRODUCTION

Arizona's groundwater is finite and increasingly scarce. The Groundwater Management Act ("GMA") empowers the Arizona Department of Water Resources ("ADWR") to protect it by designating certain groundwater basins as irrigation non-expansion areas ("INAs"). The required process is detailed in statute. ADWR's Director (or a petition) initiates it, which triggers an immediate, temporary freeze on irrigation of new acres in the area pursuant to A.R.S. § 45-434. The Director then holds a public hearing, accepts evidence and public comments, and considers two questions: (1) whether insufficient groundwater exists to supply irrigation in the area at current withdrawal rates, and (2) whether establishing an active management area ("AMA") is unnecessary. *See* A.R.S. § 45-432(A). These are factual inquiries—the Director applies statutory criteria to a factual record and issues a decision. If both criteria are met, the Director may designate an INA, and the irrigation freeze becomes permanent.

For the first time in over four decades since the Legislature enacted the GMA, the superior court held that this INA designation process is

"rulemaking" subject to Arizona's Administrative Procedure Act ("APA") and that ADWR's designation of the Hualapai Valley Basin as an INA is a "rule." The court vacated the designation and "instructed" ADWR to comply with the APA before again designating the Hualapai Valley Basin as an INA. ADWR now petitions this Court for special action relief.

This Court should accept jurisdiction because the issues presented are purely legal questions of statewide importance and first impression that are likely to recur. Additionally, there is serious risk of harm to water users in the Hualapai Valley Basin, and the public more generally, if relief is denied, and an appeal from a final judgment would not be an "equally plain, speedy, and adequate remedy." RPSA 2(b)(2), 12(a).

The issues presented have sweeping implications for Arizona's groundwater management as the state's groundwater basins are under mounting pressure. ADWR has already received a petition from irrigation users to designate another area—the San Simon Valley Subbasin—as an INA. ADWR needs certainty about whether the GMA or APA's procedures apply if the petition is valid. If the superior court's ruling stands, ADWR can't designate an INA without first navigating the APA's rulemaking process—a process that conflicts with the GMA's

procedures and would delay critical decisions the Legislature intended to be swift. *See* A.R.S. §§ 45-435(C), 45-436(A).

The public interest demands prompt resolution. The Hualapai Valley Basin and those who rely on its groundwater resource face potential harms if special action jurisdiction and relief is not granted. The current state of confusion may lead to a rush to use groundwater in an attempt to take advantage of the disarray caused by the superior court's ruling and secure irrigation rights. This rush on irrigation would be a substantial waste of resources and further deplete groundwater in a basin ADWR has already determined lacks sufficient groundwater at current rates.

This Court should also step in because the superior court's holding is wrong. The APA does not apply for multiple independent reasons. First, an INA designation is not a rule. The APA applies only to agency statements that are of general applicability and that implement, interpret, or prescribe law or policy. A.R.S. § 41-1001(21). An INA designation does neither. It applies the GMA's statutory criteria to a specific basin's factual record, applies to only that one particular basin, and creates no new policy—the restrictions that an INA triggers were

promulgated by the Legislature, not by the Director in the designation order. Second, even if an INA designation were a rule, the Legislature created a different INA designation process through the GMA—a more specific statute whose procedures are incompatible with APA rulemaking.

This Court should accept jurisdiction, hold that ADWR's INA designations are not "rules" under the APA and that the INA designation process is not subject to APA rulemaking procedures, and remand for further proceedings consistent with that holding.

JURISDICTIONAL STATEMENT

"A special action may be brought" when a lower court "made a decision that was . . . an abuse of discretion, which can include a legal error." RPSA 4(c). Here, as explained below, INA designations are not rules subject to rulemaking under the APA. The superior court committed legal error holding otherwise and thus abused its discretion. *See, e.g.*, *McGuire v. Lee*, 239 Ariz. 384, 386 ¶ 6 (App. 2016) ("An abuse of discretion includes an error interpreting or applying the law.").

ADWR has no "equally plain, speedy, and adequate" remedy by appeal. RPSA 2(b)(2), 12(a). ADWR seeks review of a dispositive,

threshold, purely legal issue of first impression and statewide importance that will likely recur. Prompt resolution is necessary to avoid harms resulting from a possible rush to irrigate new lands in the Hualapai Valley Basin. Moreover, ADWR needs clarity about how to proceed with INA designations—especially given the pending petition to designate the San Simon Valley Subbasin as an INA. This Court should exercise its discretion, accept special action jurisdiction, and grant ADWR relief.

I. This petition presents a purely legal issue of first impression and statewide importance that's likely to recur.

This Court accepts special action jurisdiction when "an issue is one of first impression of a purely legal question, is of statewide importance, and is likely to arise again[.]" *Jordan v. Rea*, 221 Ariz. 581, 586 ¶ 8 (App. 2009) (citation modified). Each factor is present here.

First, the legal issues presented are "of first impression." RPSA 12(b)(3). No Arizona precedent holds that ADWR must comply with the APA to designate an INA. "The presence of a purely legal question of first impression, as is the case here, tends to favor the exercise of [this Court's] discretionary jurisdiction." *Cook v. Russell in & for Cnty. of Maricopa*, 258 Ariz. 265, 268 ¶ 12 (App. 2024); *see also, e.g.*, *Nordstrom v. Cruikshank*, 213 Ariz. 434, 438 ¶ 9 (App. 2006) (statutory interpretation

issues are reviewed "de novo," and "review of such issues by special action is particularly appropriate").

Second, this petition presents "issues that are likely to arise again." *State ex rel. Romley v. Martin*, 203 Ariz. 46, 47 ¶ 4 (App. 2002). ADWR recently received a petition to designate another subbasin—the San Simon Valley Subbasin—as an INA. [APP254–257] ADWR thus needs clarity about whether it must initiate rulemaking under the APA in conjunction with the process outlined in the GMA and how it must do so. Given the likelihood that "the issues raised here or substantially similar issues will arise again, the meaning of these statutes" is a matter of "statewide importance to the judiciary and the litigants who come before it." *Nordstrom*, 213 Ariz. at 438 ¶ 9 (citation modified); *see also, e.g.*, *Residential Util. Consumer Off. v. Ariz. Corp. Comm'n*, 582 P.3d 448, 453 ¶ 12 (Ariz. App. 2025) (accepting special action jurisdiction to provide a "time-sensitive clarification" on a legal issue) (citation modified).

II. This petition presents issues of statewide importance.

The issues presented in this case are "of statewide importance," RPSA 12(b)(4), because whether ADWR's INA designations are subject to rulemaking under the APA "affect[s] not just the parties involved[.]"

Matter of Guardianship/Conservatorship of Denton, 190 Ariz. 152, 154 (1997). The answer affects not only the Hualapai Valley Basin and San Simon Valley Subbasin, but also every basin that ADWR may designate as an INA in the future. Determining the "correct application" of the GMA and APA to "the circumstances in this case" is thus a matter of "statewide importance." *Sierra Tucson, Inc. v. Less ex rel. Cnty. of Pima*, 230 Ariz. 255, 257 ¶ 7 (App. 2012).

III. This Court should step in now because an appeal from a final judgment would be an inadequate remedy.

An appeal from a final judgment would not be an "equally plain, speedy, and adequate remedy." RPSA 2(b)(2), 12(a). Three considerations compel that conclusion.

First, ADWR faces an impossible choice without this Court's intervention. ADWR has received a petition to designate the San Simon Valley Subbasin as an INA. [APP254–257] After ADWR verifies the signatures on the petition (assuming there are enough valid signatures), ADWR must decide whether to initiate rulemaking under the APA and how to do so in conjunction with the procedures for designation set forth in the GMA. Contrary to the procedure followed since ADWR first designated a subsequent INA in 1981, the superior court held that the

APA applies. ADWR disagrees and seeks immediate appellate review. But ADWR cannot pursue an appeal because the superior court has not yet entered final judgment, leaving special action as the only available avenue for prompt appellate review.

Without this Court's intervention, ADWR faces an impossible choice. The GMA and the APA impose irreconcilable deadlines and conflicting procedural requirements. The GMA mandates an approximately four-month process, including initiation, notice, public hearing, and final determination. *See* A.R.S. §§ 45-435(C), 45-436(A–B). APA rulemaking, by contrast, looks nothing like the GMA's INA designation process. Rulemaking under the APA can take over a year, and it requires a notice of proposed rulemaking, public comment, agency response, review by the Governor's Regulatory Review Council ("GRRC"), and Governor approval before any final rule takes effect. *See* A.R.S. §§ 41-1022–1024; 41-1052. ADWR can't run both these processes concurrently because they are not designed to coincide. This Court's swift guidance is essential.

Second, the public interest demands prompt resolution. An INA prohibits only the irrigation of land for agriculture that was not irrigated

in the preceding five years. *See* A.R.S. § 45-437(B). When landowners learn that INA designation procedures may start, some will rush to irrigate large areas of uncleared land—presumably to make acres eligible for continued irrigation that would otherwise be frozen. ADWR has observed this behavior firsthand.[1] Unnecessary irrigation wastefully depletes the aquifer and undermines the Legislature's intent for establishing INAs. This threat is especially acute in the Hualapai Valley Basin right now. The superior court vacated the Director's Final Order but has not yet entered a final judgment. ADWR has requested but has not yet received clarification from the superior court on whether the temporary irrigation freeze remains in effect. And the superior court has not ruled on ADWR's motion to stay any final judgment pending appeal. This uncertainty leaves the Basin's groundwater vulnerable to the very rush of wasteful irrigation that the Legislature designed the irrigation freeze under § 45-434 to prevent.

[1] Annual Report, The Arizona Water Initiative (2016–2017), https://www.azwater.gov/sites/default/files/media/Arizona%20Water%20Initiative%20Annual%20Report.pdf ("There are also concerns that the looming possibility of increased groundwater regulation is causing a rush to irrigate new land to avoid losing the right to do so.").

Third, the Legislature directed this Court to prioritize this matter. "For the benefit of the people of this state, actions for judicial review under [the GMA] have precedence, in every court, over all other civil proceedings." A.R.S. § 45-407(B). This Court should thus accept jurisdiction and resolve this petition on the merits. *See, e.g.*, *Residential Util. Consumer Off.*, 582 P.3d at 453 ¶ 12 (accepting special action jurisdiction when this Court had "a statutory obligation to prioritize this case").

ISSUES PRESENTED

1. To designate an INA, the Director applies fixed statutory criteria to a specific basin's current factual record and issues a quasi-adjudicatory order that binds only one geographically-defined area, with no impact on any future INA determinations. Is an INA designation therefore not a "rule" under the APA because it is not "a statement of general applicability that implements, interprets or prescribes law or policy"?

2. If an INA designation is a "rule" under the APA, are the APA's rulemaking procedures nonetheless inapplicable because the Legislature

has prescribed an INA designation process that is irreconcilable with APA rulemaking?

STATEMENT OF FACTS

I. The Groundwater Management Act

Groundwater is a finite and critical resource in Arizona. In 1980, the Legislature enacted the GMA to "conserve, protect and allocate the use of groundwater resources" in the state. A.R.S. § 45-401(B). The GMA also "provide[s] a framework for the comprehensive management and regulation of the withdrawal, transportation, use, conservation and conveyance of rights to use" groundwater. *Id.* The GMA authorizes ADWR to administer and enforce it. A.R.S. §§ 45-105(B)(2), 45-103(B). And it established two primary tools through which ADWR can manage Arizona's groundwater resources: AMAs and INAs. A.R.S. §§ 45-411–440.

AMAs and INAs serve related but distinct purposes. AMAs are subject to detailed groundwater management, including conservation requirements over multiple water use sectors. *See* A.R.S. § 45-451(A). INAs, in contrast, prohibit the expansion of irrigated acreage beyond historically irrigated lands. *See* A.R.S. § 45-453(3); *Aikins v. Ariz. Dep't of Water Res.*, 154 Ariz. 437, 438 (App. 1987) ("In the INAs, the principal

control is an absolute ban on increased irrigation."). In short, AMAs regulate overall groundwater use through an intensive, multi-sector framework, whereas INAs target a specific driver of overdraft—agricultural irrigation—by freezing its expansion in designated areas.

The GMA declared two initial INAs: the Douglas Groundwater Basin and the Joseph City Groundwater Area.[2] A.R.S. § 45-431. It also authorized ADWR's Director to designate subsequent INAs and specified the requirements for such a designation. A.R.S. §§ 45-432–438.

Either ADWR's Director or a petition may initiate a subsequent INA designation. A.R.S. § 45-435(A). After the procedure is initiated, a temporary irrigation freeze is triggered: "an irrigation user may irrigate within the proposed irrigation non-expansion area only acres of land [that] were irrigated at any time during the five years preceding the date of the notice of the initiation of designation procedures." A.R.S. § 45-434(A).

ADWR's Director must then set a hearing to consider (1) whether insufficient groundwater exists to supply irrigation in the area at current

[2] The Douglas Basin is now an AMA. *Douglas AMA*, ARIZ. DEP'T OF WATER RESOURCES, https://www.azwater.gov/ama/douglas-ama (last visited Apr. 2, 2026).

withdrawal rates and (2) whether establishing an AMA is unnecessary. *See* A.R.S. § 45-432(A). The Director must provide notice of the hearing via publication, and the hearing must take place no less than thirty days—but no more than sixty days—after the first publication. A.R.S. § 45-435(C).

Within thirty days after the hearing, the Director must make and file "written findings with respect to matters considered during the hearing." A.R.S. § 45-436(A). To proceed with a designation, the Director "shall make and file an order designating the [INA]." *Id.*

II. ADWR's Designation of the Hualapai Valley Groundwater Basin as a Subsequent INA

Irrigated agriculture is the largest user of water in Arizona. In Mohave County, where the Hualapai Valley Basin is located, irrigated agriculture increased in acreage by 80% between 2010 and 2015, accounting for a ***178% increase*** in groundwater use.[3] This vast expansion of irrigated agriculture in Mohave County threatens the

[3] *Arizona Water Factsheet—Mohave County*, THE UNIV. OF ARIZ. COOPERATIVE EXTENSION WATER RESOURCES RESEARCH CENTER (Nov. 2025), https://wrrc.arizona.edu/sites/default/files/2025-11/Mohave_8-page_Factsheet_11_2025.pdf#:~:text=Both%20groundwater%20and%20surface%20water%20are%20used,178%25%2C%20mainly%20within%20the%20Hualapai%20Valley%20Basin.

ability of the Hualapai Valley Basin to sustain the agricultural water needs of the community.

In October 2022, ADWR's Director initiated the INA designation process for the Hualapai Valley Basin.[4] [APP043–044] Beginning on that date, irrigation users could not irrigate land within the Hualapai Valley Basin unless the land had been irrigated sometime in the preceding five years. *See* A.R.S. § 45-434(A).

The next month, ADWR's Director held a public hearing. [APP047] During the hearing, ADWR presented hydrologic data and other information about the Hualapai Valley Basin. [APP049] ADWR received comments and written evidence from the public and held the record open for six more days to allow for additional public participation. [*Id.*]

In December 2022, after reviewing all public comments and evidence, ADWR's Director issued a decision and Final Order. [APP048–054] He concluded that the Hualapai Valley Basin met the criteria for designation as a subsequent INA under A.R.S. § 45-432(A). [APP053]

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[4] Previous requests made to initiate proceedings to designate the Hualapai Valley Basin as an INA failed because the irrigated agriculture water use had not yet risen to a level where there was insufficient groundwater to provide a reasonably safe supply for irrigation of the cultivated lands in the area. [APP006–008; 018–020; 035]

III. The Challenge to ADWR's INA Designation

Opal Investments, LLC, and Steff Investments, LLC, sought judicial review of the Director's decision to designate the Hualapai Valley Basin as an INA. [APP057–061] They argued that the Final Order was invalid because, as relevant here, it was a "rule" within the meaning of the APA and was adopted without following the APA's required rulemaking procedures. [APP095–101] ADWR opposed those arguments, contending, among other things, that the Final Order was not a rule subject to the APA and the GMA spelled out separate, conflicting procedures for an INA designation. [APP149–153]

IV. The Superior Court's Decision

On January 9, 2026, the superior court issued its ruling. [APP201–206] It held that ADWR's Final Order designating the Hualapai Valley Basin as an INA is a "rule" and that the INA designation process is "rulemaking" subject to the APA. [APP204–205] According to the superior court, the Final Order is "an agency statement that has general applicability to all land—and by extension, landowners—within the INA." [*Id.*] It also "implements law and policy—including, [among other things], A.R.S. § 45-432(A)—for the area within the INA." [APP205]

Rejecting ADWR's arguments that there's a separate "statutory scheme in place that [ADWR's Director] must follow when designating an INA," the superior court found it "determinative" that ADWR could not "identify any controlling authority that exempts it from the APA." [*Id.*] "Moreover," said the court, "the APA does not conflict with the procedures in the INA statute; it supplements them with additional procedural safeguards." [*Id.*] The court thus vacated the Final Order and "instructed" ADWR to comply with the APA before again designating the Hualapai Valley Basin as an INA. [APP206][5]

V. The Motion for Reconsideration

The parties briefed and presented oral argument on the relevant APA issues in December 2024. [APP201–202] The superior court issued its decision over one year later in January 2026. [*Id.*]

After the briefing closed but before the superior court entered its ruling, the Arizona Supreme Court addressed a closely analogous

[5] ADWR had also challenged Appellants' standing to seek judicial review of the Final Order. [APP129–133] The superior court rejected those arguments. [APP203–204] ADWR does not seek special-action review of the superior court's decision on standing but reserves its right to challenge this decision in the ordinary course of an appeal from a final judgment.

question in *Republican National Committee v. Fontes* ("*RNC*"). [APP238–239] In that case, the plaintiffs sued to invalidate the 2023 Elections Procedures Manual ("EPM"). [APP242–248] Under A.R.S. § 16-452(A), the Secretary of State must follow specific statutory procedures to adopt the EPM, which "prescribe rules" to, among other things, "achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting[.]" The Secretary followed those procedures (rather than APA rulemaking procedures) to adopt the 2023 EPM. [APP242–244] The plaintiffs argued that the 2023 EPM was invalid because the Secretary violated the APA's rulemaking requirements. [*Id.*]

The superior court in *RNC* disagreed. The APA provides that a "rule is invalid unless it is consistent with the statute, reasonably necessary to carry out the purpose of the statute and is made and approved in substantial compliance with §§ 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, *unless otherwise provided by law*." A.R.S. § 41-1030(A) (emphasis added). The superior court held that "the Legislature has 'otherwise provided by law' for the procedure to promulgate a valid EPM—A.R.S. § 16-452." [APP243] This is so because there are "conflict[s]

between § 16-452 and the APA," including "deadline related conflicts" and conflicts involving gubernatorial approval. [APP244] The court explained that "[§ 16-452 does not diminish any rights or duties under the APA. Rather, it is simply the 'otherwise provided by law' expressly contemplated by the APA." [*Id.*]

On appeal, this Court reversed the superior court's decision, holding that "the 2023 EPM was subject to the rulemaking procedure[s] under the APA." *Republican Nat'l Comm. v. Fontes*, 259 Ariz. 393 ¶ 28 (App. 2025), *review granted in part* (Aug. 19, 2025). The Secretary petitioned the Arizona Supreme Court for review, and the Supreme Court granted the petition. [APP251] The Court held that the APA's rulemaking provisions are "inapplicable" to the EPM, vacated this Court's opinion to the contrary, and "reinstat[ed]" the relevant portions of the superior court's decision. [APP238–239] Though the Court has not yet issued an opinion, its order and the reinstated superior court analysis are directly relevant to the APA issues here.

ADWR moved the superior court to reconsider its decision that the INA designation process is "rulemaking" subject to the APA based on the

Supreme Court's order in *RNC*. [APP229–235] The superior court denied the motion without explanation. [APP249]

VI. The Current Status of the Superior Court Proceedings

The superior court has not yet entered a final judgment. ADWR asked the superior court to clarify that its ruling does not lift the temporary limitation on irrigation in the Hualapai Valley Basin under A.R.S. § 45-434(A). [APP208–213] If it does, ADWR alternatively moved to stay the final judgment pending the resolution of an appeal to keep the temporary prohibition on irrigation in place. [APP220–228] The superior court has not yet ruled on ADWR's requests.

ARGUMENT

I. The designation of an INA is not a rule under the APA.

The superior court erred in concluding that the Final Order designating the Hualapai Valley Groundwater Basin an INA is a "rule" under the APA. [APP205]

A "rule" is an "agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency." A.R.S. § 41-1001(21). "Thus, barring any exemptions, an agency statement is a rule, subject to

the APA's rulemaking procedure, if it, first, is generally applicable, and, second, implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency." *Ariz. State Univ. ex rel. Ariz. Bd. of Regents v. Ariz. State Ret. Sys.*, 237 Ariz. 246, 250 ¶ 16 (App. 2015). This definition is conjunctive: an agency action must satisfy both prongs to be a "rule."

The designation of an INA—a quasi-adjudicative process through which ADWR's Director applies fixed statutory criteria to a specific basin's factual record and issues a decision and order that applies only to that geographic area—satisfies neither requirement.

A. The designation of an INA is not generally applicable.

An agency statement is generally applicable when it applies consistently to all members of a class. "Stated another way, a 'rule' is a policy which applies to a class, which is 'open' in the sense that the class is described in general terms and new members which fit that description can be added." *Havasu Heights Ranch and Dev. Corp. v. State Land Dep't of State of Ariz.*, 158 Ariz. 552, 560 (App. 1988). "'General applicability' does not require uniform application." *Id.* "It does require, however, applicability to more than one particular known circumstance." *Id.*

An INA designation is the precise opposite. The Final Order applies to only "one particular known circumstance"—the Hualapai Valley Basin. The Director's determination in the Final Order is only that this this specific basin meets the statutory criteria to be designated an INA—*i.e.*, that (1) there's insufficient groundwater to provide a reasonably safe supply for irrigation of cultivated lands at the current rates of withdrawal; and (2) that the establishment of an AMA is not necessary. A.R.S. § 45-432(A). The determination rests on specific factual findings about specific conditions in a single, geographically bounded groundwater basin.

The critical distinction—which the superior court's analysis overlooked—is between: (1) the Director's *determination* that a specific groundwater basin meets the criteria for INA designation; and (2) the *statutory restrictions* that the Legislature enacted to take effect when a groundwater basin is designated as an INA. The Director did not develop or promulgate the irrigation restrictions through the Final Order. Instead, the Legislature enacted those restrictions in statute, and the same statutory restrictions apply to every geographic area designated as an INA by operation of the statutory provisions in Title 45, Article 2,

Chapter 3. All the Director decided in the Final Order was that the Hualapai Valley Basin—and only that one basin—meets the criteria to be designated an INA.

If the Director had developed and promulgated substantive restrictions through the Final Order, those restrictions might properly be characterized as generally applicable rules. But the Director did no such thing in the Final Order. The restrictions that apply in the Hualapai Valley Basin INA are the same restrictions that the Legislature imposed through statute on every INA, regardless of which basin is at issue.

The designation of the Hualapai Valley Basin as an INA has no applicability outside of that basin. It doesn't impact or govern any future INA determinations. Nor does it generate a standard that the Director or any future actor must consult to determine whether any other groundwater basin may be designated an INA. No new "member" basins or sub-basins can be added to the designation. Each subsequent INA designation is a separate, independent proceeding with separate findings

and a separate order, not a uniform application of any policy created by ADWR and declared in the Final Order.[6]

Despite its singular application, the superior court found that the Final Order is "an agency statement that has general applicability to all land—and by extension, landowners—within the INA." [APP204–205] The court explained:

> Pursuant to the *Final Order*, irrigation of land within the INA is prohibited unless: (1) the land was irrigated within the last five years; (2) substantial capital investment was made to bring the land into irrigation within the last five years; or (3) the field to be irrigated is less than two acres in size.

[APP205] But this erroneously conflates the Director's particularized determination that a specific groundwater basin meets the criteria for an INA designation with the pre-existing statutory restrictions that flow from that designation. The requirement that the land be irrigated in the

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[6] *Cf. Ariz. State Univ. ex rel. Ariz. Bd. of Regents*, 237 Ariz. at 250 ¶ 16 ("[T]he System acknowledged it had applied the Policy consistently to all System employers since its adoption, and, thus, the Policy satisfies the general applicability requirement."); *Carondelet Health Servs., Inc. v. Ariz. Health Care Cost Containment Sys. Admin.*, 182 Ariz. 221, 227 (App. 1994) ("The first element is met [because] . . . [AHCCCS's] methodology is generally applied to all hospitals.").

last five years or that substantial capital investment must have been made in that time is a restatement of the prohibition of A.R.S. § 45-437(B). The requirement that the field otherwise be under two acres captures the statutory definition of "irrigation" in the GMA at A.R.S. § 45-402(18), which defines the term as applying water to two or more acres of land for specific purposes.

That an INA designation triggers certain pre-determined statutory restrictions on landowners within the defined area doesn't transform the particularized determination—applicable to only one geographically fixed, historically specific groundwater basin—into a generally applicable rule. Because an INA designation is not generally applicable, the Final Order is not a "rule" subject to the APA.

B. An INA designation does not implement, interpret, or prescribe law or policy.

Even if the Final Order were of general applicability (it is not), it would still fall outside the APA's definition of a "rule" because it does not "implement[], interpret[] or prescribe[] law or policy" or "describe[] the procedure or practice requirements of an agency." A.R.S. § 41-1001(21). An agency statement "implements, interprets or prescribes law or policy" when it translates a statutory directive into more concrete standards or

requirements.[7] In contrast, the Final Order has the characteristics of an adjudicatory or quasi-adjudicatory order—not a rulemaking—and this Court should recognize it as such.

An INA designation under § 45-432 bears the hallmarks of a quasi-adjudication rather than a rulemaking. The statute sets the criteria for the Director to apply to specific facts. A.R.S. § 45-432(A). The statute requires the Director to make written factual findings on whether a specific groundwater basin's hydrologic conditions and factual record satisfy the statutory criteria for an INA. A.R.S. § 45-436(A). And if the Director decides to declare an area an INA based on those findings, the Director must make and file an order designating the INA. *Id.* The findings and order are "subject to rehearing or review and to judicial review as provided in section 45-114, subsection C." A.R.S. § 45-436(B); *cf. Arizona Corp. Comm'n v. Palm Springs Util. Co.*, 24 Ariz. App. 124, 129 (1975) (recognizing distinction between rulemaking and adjudicatory

[7] *See, e.g.*, *Ariz. State Univ. ex rel. Ariz. Bd. of Regents*, 237 Ariz. at 250–52 ¶¶ 16–21 (policy under which Arizona State Retirement System determined how much to charge member employers for actuarial unfunded liability was a rule); *Carondelet*, 182 Ariz. at 227 (agency methodology for hospital reimbursement rates was a rule because, among other reasons, it implemented a session law).

orders and that agencies must retain power to address "specialized" matters on a "case-by-case basis").[8]

And an INA designation "looks to . . . past or present facts" rather than to the future. *Havasu Heights,* 158 Ariz. at 560 (noting that "a rule looks to the future rather than past or present facts"). The Director's determination is based on current hydrological conditions in a specific location, and the factual findings are tied to current rates of groundwater withdrawal, current irrigated acreage, and existing land conditions. *See* A.R.S. § 45-432(A)(1). In contrast, rules under the APA articulate prospective standards that apply uniformly to any future situation fitting the rule's general description. An INA designation, once made, is binding

[8] Indeed, even for non-adjudicatory statements, not every agency pronouncement is a rule. *Canyon Ambulatory Surgery Ctr. v. SCF Ariz.*, 225 Ariz. 414, 420 ¶ 23 (App. 2010) ("[T]he fee methodology at issue here is not a rule subject to the APA; it is merely a way to collect data to be considered in setting reimbursement amounts, in the exercise of SCF's discretion."); *Duke Energy Arlington Valley, LLC v. Ariz. Dep't of Revenue*, 219 Ariz. 76, 79 ¶¶ 14–15 (App. 2008) (agency's depreciation tables are not rules when they serve as "only one element in determining the statutorily mandated value"); *Shelby Sch. v. Ariz. State Bd. of Educ.*, 192 Ariz. 156, 167 ¶ 48 (App. 1998) (agency's creditworthiness requirements are not rules when they're "merely an element to be considered by [the agency] to aid it in exercising its discretion").

only on the specific groundwater basin at issue and the directive is exhausted by that one application.

The Director does not, through the designation, prescribe new policy or create new substantive obligations beyond what the statutes themselves provide. Instead, the Director applies the statutory standard—already set forth by the Legislature—to facts particular to the groundwater basin at issue. And, as explained in Section I.A above, the substantive restrictions on irrigation expansion in INAs are legislatively prescribed, not promulgated by any designation order.

The statutory framework and the Legislature's word choice reinforce that an INA designation is not a "rule." Section 45-432 authorizes the Director to "designate" INAs—a directive to make a particularized determination as to specific groundwater basins and subbasins. Section 45-432 does not tell the Director to adopt rules establishing INAs or to prescribe by rule further criteria for designation. *Compare with* A.R.S. § 45-576(H) (requiring "[t]he director [to] adopt rules to carry out the purposes of [the assured water supply statute]") and A.R.S. § 45-594(A) (requiring director to "adopt rules establishing [well] construction standards"). Where the Legislature knows how to

authorize or direct rulemaking and chooses different language, courts presume the choice is deliberate. *See State v. Ault*, 157 Ariz. 516, 520 (1988).

For all these reasons, an INA designation does not implement, interpret, or prescribe law or policy. It is not a rule subject to the APA.

C. Because INA designations are not rules, no express exemption from the APA is required.

The superior court treated the Legislature's silence on whether INA designations are exempt from APA rulemaking as dispositive. [APP205 (describing it as "determinative" that ADWR could not "identify any controlling authority that exempts it from the APA")] That analysis is flawed.

The APA applies to all *rules* unless expressly exempted. A.R.S. § 41-1002(A); *see also Carondelet*, 182 Ariz. at 228. But as the previous sections explain, an INA designation is *not* a rule. Therefore, the APA rulemaking procedures do not apply—and no express exemption is required. *See Carondelet*, 182 Ariz. at 228. Though the Legislature has exempted other ADWR actions, *see, e.g.*, A.R.S. § 41-1005(A)(11), INA designations required no exemption because they aren't rules in the first place.

The Legislature's treatment of AMA management plans doesn't undermine this conclusion; it confirms it. Section 41-1005(A)(11) exempts the Director's orders "adopting or modifying" AMA management plans from rulemaking requirements—precisely because they *are* rules. Unlike INA designation orders, AMA management plan orders are "statement[s] of general applicability that implement[], interpret[] or prescribe[] law or policy." A.R.S. § 41-1001(21).

Orders adopting or modifying AMA management plans include numerous regulations to achieve certain conservation objectives. *See* A.R.S. §§ 45-563, 45-564–68, 45-470. Each management plan must include "a continuing mandatory conservation program for all persons withdrawing, distributing or receiving groundwater designed to achieve reductions in withdrawals of groundwater." A.R.S. § 45-563. ADWR has broad discretion to develop these conservation programs, and the management plans vary widely across AMAs. *See* A.R.S. §§ 45-105, 45-564 (noting that conservation programs under AMA management plans shall require "reasonable reductions"). Water management plans thus implement water management policies of general applicability to all water users within an AMA.

As detailed above, INA designations are categorically different. They contain no such regulations governing water use in an INA—those regulations are instead expressly spelled out in the INA statutes themselves. The Legislature chose to exempt agency actions that are rules (AMA management plans) and chose not to exempt INA designations because it understood them to be something different: determinations that apply statutory criteria to a specific basin's factual record. These legislative choices make sense and reinforce that INA designations are not rules subject to the APA's rulemaking procedures.

II. Even if an INA designation were a rule, it would not be subject to APA rulemaking because INA procedures are "otherwise provided by law" in the GMA.

Even if an INA designation qualified as a rule, the APA's rulemaking procedures still would not apply. The APA provides that "[a] rule is invalid unless it . . . is made and approved in substantial compliance with §§ 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, *unless otherwise provided by law*." A.R.S. § 41-1030(A) (emphasis added). This exception means that when the Legislature has prescribed a specific procedure for a particular agency action, that procedure displaces APA rulemaking. That is precisely what the GMA

does for INA designations—and the Arizona Supreme Court recently endorsed this analysis in an analogous context.

In *RNC*, the Court held that the APA's rulemaking provisions don't apply to the Secretary of State's promulgation of the Elections Procedures Manual under A.R.S. § 16-452—even though the EPM prescribes binding policy, carries the force of law, and has no express APA exemption. [APP238, 244] Though the Court hasn't yet issued a written opinion, it reinstated the first three pages of the superior court's decision explaining why the APA does not apply to the EPM. [APP238]

The superior court's reinstated decision in *RNC* applied the "unless otherwise provided by law" exception to the EPM statute, holding that A.R.S. § 16-452 irreconcilably conflicts with the APA. [APP243–244] The court identified two conflicts: "deadline related conflicts" and "conflict[s] in obtaining governor approval." [APP244]

The same analysis applies here. The GMA's INA designation process conflicts with APA rulemaking in four fundamental ways: it imposes irreconcilable deadlines, imposes conflicting substantive requirements, prescribes an incompatible approval process, and channels

judicial review through a framework that is structurally incompatible with review of rules under the APA.

A. The deadlines in the INA designation statutes are irreconcilable with the APA.

The GMA's INA designation process is deliberately compressed. The Legislature designed the entire process to conclude in under four months: ADWR must hold a public hearing within 30 to 60 days of the first published notice, A.R.S. § 45-435(C), and issue a final determination within 30 days of the hearing, A.R.S. § 45-436(A).[9] And the moment ADWR's Director or a petitioner initiates INA designation procedures, A.R.S. § 45-434(A) immediately freezes irrigation of any land not irrigated in the preceding five years—preventing a rush to irrigate new acreage before a final designation issues. The Legislature chose a compressed timeline for a reason: to protect landowners from an extended irrigation freeze pending a final determination. The freeze is a

[9] In certain circumstances when the Director has required additional evidence, he has continued the public hearing or held the record open for a limited period of time. For example, for the public hearing on the Hualapai Valley Basin, the Director held the record open for six more days to allow for additional public participation. [APP049] But even there, the process was completed and the designation order was issued 110 days after the Director initiated the INA designation process.

significant restriction, and the Legislature paired it with a prompt resolution—not an open-ended process.

APA rulemaking operates on an entirely different and far slower timeline. An agency must file a notice of proposed rulemaking with the Secretary of State and allow at least 30 days for public comment and a public hearing. A.R.S. § 41-1022. The agency then has up to 120 days to prepare the notice of final rulemaking and submit the package to GRRC. A.R.S. § 41-1024(B), (E). GRRC then has another 120 days to approve or return the rulemaking. A.R.S. § 41-1052(A), (C). If GRRC approves, the agency must file the notice of final rulemaking with the Secretary. *See* A.R.S. § 41-1031. At several stages, the agency must also seek approval from the Governor, which adds further delay. *See* A.R.S. § 41-1039.

APA rulemaking could thus transform the GMA's compressed INA designation process into a yearlong effort—stretching the irrigation freeze well beyond what the Legislature intended and burdening landowners even if no INA is ever designated. And the harm extends beyond existing landowners: investors may be unwilling to commit capital to new agricultural development while INA designation proceedings drag on indefinitely. The Legislature designed the § 45-

434(A) irrigation freeze to accompany a swift resolution. APA rulemaking would sever that freeze from the prompt determination the Legislature intended to accompany it, undermining a core protection in the GMA's INA designation framework.[10]

B. The APA's substantive rulemaking requirements are incompatible with the INA designation process.

Beyond irreconcilable deadlines, the APA imposes substantive requirements on rulemaking that are fundamentally incompatible with the nature of an INA designation. These requirements confirm that the Legislature did not intend APA rulemaking to govern INA designations.

First, the APA requires that before adopting a rule, an agency must demonstrate it has evaluated other alternatives and has "selected the alternative that imposes the least burden and costs" to regulated persons. A.R.S. § 41-1052(D)(3). This requirement presupposes that the agency is exercising policy discretion—choosing among a range of regulatory

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[10] Emergency rulemaking also can't resolve the conflict between the GMA and the APA. An emergency rule is only valid for 180 days; the agency must still pursue formal rulemaking to make a rule permanent. A.R.S. § 41-1026(D). And if emergency rulemaking precedes the irrigation freeze, it could create a 60-day window during which landowners could rush to irrigate new acreage—defeating the purpose of the freeze. *See* § 41-1026(B) (mandating that the attorney general review the demonstration of emergency and rule within sixty days of receipt).

approaches to accomplish a statutory objective. But an INA designation involves no such discretion. The Director's task under § 45-432(A) is binary. If the statutory criteria are met, the Director may designate the area as an INA. If either criterion is not met, the Director may not. There is no in-between, no menu of regulatory alternatives to evaluate, no range of more or less burdensome options to weigh. The Director does not choose among competing policy approaches—the Director applies statutory criteria to a basin's hydrologic record and makes a factual determination.

Requiring ADWR to analyze "less burdensome alternatives" to an INA designation makes no sense. The substantive restrictions that follow from an INA designation—the prohibition on expanding irrigated acreage—are legislatively prescribed and invariable. *See* A.R.S. §§ 45-437, 45-452. The Director has no authority to impose a lighter version of those restrictions or to craft alternative regulatory measures in lieu of designation. The only alternatives are to designate or not to designate. The APA's requirement that an agency demonstrate it has selected the least burdensome regulatory approach thus has no meaningful application to the INA designation process.

This incompatibility extends to other substantive rulemaking requirements as well. The APA requires that a rule be "reasonably necessary to carry out the purpose of the statute." A.R.S. § 41-1030(A). But an INA designation does not "carry out" a statutory purpose in the way a rule does. Instead, it resolves a factual question about whether a specific basin meets statutory criteria. Similarly, the APA requires an economic impact statement assessing the probable costs and benefits of a proposed rule. A.R.S. §§ 41-1052(A), 41-1055. This requirement presupposes an agency making a prospective policy choice with quantifiable trade-offs, not a Director making a retrospective factual finding about current groundwater conditions in a single basin.

The mismatch between the APA's substantive rulemaking requirements and the nature of an INA designation is further evidence that the Legislature did not design these two frameworks to operate together.

C. The approval process in the INA statutes and the APA are irreconcilable.

Moreover, the two statutory schemes prescribe fundamentally incompatible approval processes. The GMA mandates a specific sequence: initiation by the Director or a petitioner, published notice, a

public hearing, and a final determination by the Director that is subject to judicial review. A.R.S. §§ 45-434–436. APA rulemaking requires a different sequence entirely: notice of proposed rulemaking, public comment, agency response, submission to GRRC for approval (which could include multiple hearings before GRRC), submission to the Governor for approval, and filing of the final rule with the Secretary of State. A.R.S. §§ 41-1022–1024.

These two processes cannot be reconciled. Most fundamentally, APA rulemaking gives GRRC authority to "return" a rule to the agency. A.R.S. § 41-1052(C). A.R.S § 41-1033 separately allows a person to petition GRRC to review a rule, and if GRRC determines the rule exceeds statutory authority, is not authorized by statute, didn't substantially comply with APA procedures, or doesn't meet § 41-1030 requirements, the challenged action is void. *Id.* § 41-1033(F)–(K). GRRC may also modify, revise, or void an existing rule if it finds the rule unduly burdensome or unnecessary to fulfill a public health, safety, or welfare concern. *Id.* § 41-1033(K).

But the GMA vests the final determination of an INA designation in ADWR's Director—a deliberate delegation reflecting the Legislature's

judgment that this highly technical, fact-intensive determination should be made by the official with specialized expertise in groundwater hydrology and water policy, not by a body whose mission is general regulatory review. The GMA doesn't contemplate any role for GRRC in reviewing, modifying, or revising an INA designation—whether on grounds of undue burden or otherwise.

Instead, the GMA provides its own modification mechanism: under A.R.S. § 45-438, the Director may review and modify INA boundaries based on changed conditions and factual data, and the Director *shall* review boundaries upon receipt of a petition signed by the requisite persons within the INA. That process channels modification decisions through the same notice, hearing, and written-findings procedures used for the original designation, ensuring that any changes reflect the Director's informed assessment of hydrologic conditions—not GRRC's judgment about regulatory burden.

Treating an INA designation as a rule subject to APA rulemaking would graft GRRC approval authority onto a process the Legislature designed without it. And it would authorize GRRC to void or revise a designation on grounds—such as undue burden—that have no bearing

on the groundwater-supply determination the GMA requires. The result would be to reassign the technical judgment the Legislature specifically vested in the Director to a body the Legislature did not select for this purpose—a result the GMA does not contemplate and cannot accommodate.[11]

[11] "When there is conflict between two statutes, the more recent, specific statute governs over the older, more general statute." *State v. Ariz. Bd. of Regents*, 253 Ariz. 6, 13 ¶ 29 (2022) (cleaned up). The GMA, enacted in 1980, governs only ADWR. *Aikins*, 154 Ariz. at 438. The APA, first enacted in 1952, governs all state agencies. *Valdez v. Ariz. Dep't of Econ. Sec.*, 118 Ariz. 444, 445 (App. 1978). Both the GMA's specificity and its chronology favor ADWR's arguments. The APA was substantially revised in 1986 to codify GRRC and establish the modern rulemaking framework. *See* A.R.S. § 41-1052 (added by Laws 1986, Ch. 232, § 5). Yet when the Legislature amended A.R.S. § 45-436 in 1998, it retained the directive that the Director "make and file" an "order" designating an INA—language that predates and operates independently of the APA's rulemaking procedures. *See* 1998 Ariz. Legis. Serv. Ch. 57 (S.B. 1034) (WEST). The Legislature's decision to preserve this distinct designation mechanism well after GRRC oversight was in place strongly suggests it understood and intended that INA designations would proceed through the Director's order authority under Title 45, rather than through the APA's rulemaking process. And the GMA does not just address INA designation more specifically—it prescribes the precise procedures, sequence, deadlines, and avenue for judicial review of INA designations, leaving no gap for the APA to fill.

D. The judicial review process and standard for an INA designation is incompatible with what applies to a "rule" under the APA.

The process and standard for judicial review applicable to an INA designation further confirms its quasi-adjudicative character and is incompatible with judicial review of a rule under the APA.

Under A.R.S. § 45-436(B), "the findings and order of the director [designating an INA] are subject to . . . judicial review as provided in [A.R.S. § 45-114(C)]." That provision states that a party "may seek judicial review of the director's final decision under title 12, chapter 7, article 6"—entitled "Judicial Review of Administrative Decisions." Those provisions include A.R.S. § 12-910, which directs the reviewing court to the administrative record and any supplementing evidence, and requires the court to "affirm the agency action unless the court concludes [it] is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion." A.R.S. § 12-910(F). This is paradigmatic adjudicative review: the court evaluates whether the agency correctly found the facts and properly applied the law to a specific set of circumstances.

The APA's provisions for challenging rules in court operate on an entirely different plane. Under A.R.S. § 41-1034(A), "[a]ny person who is or may be affected by a rule may obtain a judicial declaration of the validity of the rule . . . in accordance with title 12, chapter 10, article 2"—the Uniform Declaratory Judgment Act. And § 41-1030(A) provides that a "rule is invalid unless it is consistent with the statute, reasonably necessary to carry out the purpose of the statute and is made and approved in substantial compliance with [APA rulemaking procedures], unless otherwise provided by law." This pathway does not involve substantial-evidence review of a factual record, because it isn't designed for case-specific determinations like an INA designation. Instead, it's tailored to police the process and legal authority by which an agency promulgates binding statements of general application.

The Legislature's decision to channel review of INA designations through the provisions on judicial review of administrative decisions in Title 12, Chapter 7, Article 6—rather than through the APA's rule-challenge provisions—is not incidental. It reflects a legislative judgment about the nature of the action under review. A designation is a fact-intensive determination that a specific area's groundwater conditions

warrant restrictions on the expansion of irrigated acreage. The substantial-evidence, record-based review prescribed by § 12-910 is tailored to exactly that kind of decision. It would be incongruous to subject such a determination to the facial-validity review applicable to rules—just as it would be incongruous to apply substantial-evidence review to a rule of general applicability. These incompatible review architectures only further confirm APA rulemaking procedures cannot apply to INA designations.

* * *

Requiring ADWR to comply with the unique sets of procedures in both the GMA and APA would force it to conduct duplicative and conflicting proceedings, seek approvals the GMA never contemplated, navigate a process the Legislature never designed for INA designations, and subject the Director's determination to a judicial review process incompatible with the one the Legislature expressly prescribed. Because the procedures the GMA mandates are irreconcilable with APA rulemaking, the GMA is the law that "otherwise provide[s]" the procedures for INA designations under § 41-1030(A). Thus, even if an

INA designation is a "rule," the APA's rulemaking procedures don't apply.

CONCLUSION

This Court should accept special action jurisdiction and grant ADWR relief. The Court should reverse the superior court's holding that ADWR's Final Order designating the Hualapai Valley Basin an INA is a rule subject to APA rulemaking procedures, and remand for further proceedings consistent with this Court's opinion.

RESPECTFULLY SUBMITTED this 22nd day of April, 2026.

COPPERSMITH BROCKELMAN PLC

By: /s/ Sambo (Bo) Dul
Sambo (Bo) Dul
Austin C. Yost
Kelleen Mull
Caitlin Doak

ARIZONA DEPARTMENT OF WATER RESOURCES

By: /s/ Emily Petrick
Nicole D. Klobas
Emily Petrick

Attorneys for Petitioner
Arizona Department of Water Resources