

**ARIZONA COURT OF APPEALS  
DIVISION ONE**

ARIZONA DEPARTMENT OF  
WATER RESOURCES,

Petitioner,

v.

OPAL INVESTMENTS, LLC, a Utah  
limited liability company; STEFF  
INVESTMENTS, LLC, a Nevada  
limited liability company,

Respondents.

Court of Appeals  
Division One  
No. SA-26-0147

Maricopa County Superior Court  
No. CV-LC2023-000020-001  
Assigned to the Honorable Scott Blaney

**BRIEF OF AMICUS CURIAE MOHAVE COUNTY  
IN SUPPORT OF PETITIONER**

John Lemaster (SBN 011588)  
Axel Buchwalter (SBN 035106)  
Quinne Daoust (SBN 038724)  
**CLARK HILL PLC**  
3200 North Central Avenue, Suite 1600  
Phoenix, AZ 85012  
(602) 440-4800  
jlemaster@clarkhill.com  
abuchwalter@clarkhill.com  
qdaoust@clarkhill.com

*Attorneys for Amicus Curiae Mohave  
County*

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## **INTEREST OF AMICUS CURIAE**

Mohave County files this as-of-right amicus brief under Arizona Rules of Civil Appellate Procedure (“ARCAP”) 16(b)(1)(B) because this case presents issues of county and statewide importance concerning the regulation of Arizona’s rural groundwater basins. No person or entity other than Mohave County provided financial resources for the preparation or submission of this brief.

## **INTRODUCTION**

Mohave County requests that this Court accept special action jurisdiction. For Mohave County, this case is not an abstract dispute about administrative procedure; it concerns whether Mohave County, and the State of Arizona, have a workable and dependable means of protecting the aquifers on which Arizona’s rural communities increasingly rely. This issue is of utmost importance because Mohave County, like much of Arizona, faces a severe and escalating threat to its water supplies. Colorado River supplies face the prospect of substantial reduction, while the aquifers on which the County’s agricultural communities increasingly depend are already being overdrawn. Mohave County cannot wait until its aquifers are depleted before action is taken. The answer matters now.

Mohave County is one of Arizona’s largest and fastest-growing rural counties. Its communities are spread across arid desert landscapes where water security is not simply a regulatory concern, but a prerequisite to economic stability, land-use

planning, agriculture, and long-term public welfare. Outside the limited protections Arizona law affords in designated areas, rural groundwater remains vulnerable to continued depletion. For counties like Mohave, where groundwater is essential and alternative supplies are constrained or uncertain, the State's ability to act promptly and effectively through Arizona Department of Water Resources ("ADWR" or the "Department") is indispensable as well.

The Department's Petition for Special Action presents a pure question of law with consequences that extend well beyond the Hualapai Valley: whether the Department's authority to designate an Irrigation Non-Expansion Area ("INA") under the Groundwater Management Act (the "Act") is governed by the procedures the Legislature specifically prescribed in that Act, or by additional requirements grafted from the Administrative Procedure Act ("APA"). That question goes directly to ADWR's ability to perform one of the central duties the Legislature assigned it in safeguarding Arizona's groundwater resources. It also presents precisely the kind of issue for which special action jurisdiction exists.

The decision below directly undermines that ability. By clouding the validity of ADWR's established designation process, it impairs the Department's ability to respond to pending and future petitions and invites the very sort of procedural paralysis that special action review exists to prevent. Nor is that harm theoretical. In the wake of the ruling, landowners in the Hualapai Valley are already taking steps

to bring previously unirrigated acreage into production, threatening to accelerate the very groundwater stress the subsequent INA designation was intended to address.

This case therefore presents far more than a dispute over process in a single groundwater basin. It presents a question of first impression central to the administration of Arizona's landmark groundwater laws, the authority of the State's principal water regulator, and the ability of rural counties such as Mohave to protect the water resources on which their future depends. Because the issue is purely legal, because its effects are immediate and recurring, and because the ordinary appellate process offers no adequate remedy for the uncertainty now impairing ADWR's authority to administer its groundwater resources, this Court should accept special action jurisdiction and resolve the question now.

### **ARGUMENT**

#### **I. The Petition presents a pure legal question of first impression, statewide importance, and recurring significance.**

The issue presented is purely legal. The question is whether ADWR's authority to designate a subsequent INA under the Act is governed by the procedures the Legislature specifically prescribed in that Act, or instead by additional procedures imported from the APA. That is a question of statutory interpretation, not factfinding. And because it turns on the structure and meaning of Arizona's water statutes, it is appropriate for immediate appellate resolution. *See Arizona Water Co.*

*v. Arizona Dept. of Water Resources*, 208 Ariz. 147, 151 ¶ 16 (2004) (en banc) (statutory interpretation reviewed de novo).

The question is also one of first impression, statewide importance, and recurring significance. It extends well beyond the Hualapai Valley and beyond this single subsequent INA designation proceeding. If left unresolved, the ruling below will continue to cast doubt on the procedures governing future designations throughout Arizona and on ADWR's authority to carry out one of the Legislature's principal tools for managing rural groundwater.

That uncertainty is especially consequential because subsequent INA designations are not a peripheral administrative function. The Legislature created the subsequent INA designation process as a means of responding to groundwater stress in rural basins where additional regulation is warranted, but an Active Management Area ("AMA") is not necessary. *See* A.R.S. §§ 45-432 to -437. Whether ADWR may exercise that authority using the notice-and-hearing procedures the Legislature set forth in the Act itself, or instead must comply with additional procedures drawn from the APA, is therefore a question central to the administration of the Act.

The issue is also likely to recur. Because the statute expressly authorizes resident-initiated petitions, ADWR cannot control when local residents or communities begin the INA designation process. *See* A.R.S. § 45-433. And

recurrence is not merely theoretical: as the record reflects, another petition filed by local residents is already pending before the Department seeking designation of a different subsequent INA. Unless this Court resolves the question now, the same procedural dispute will predictably recur in other basins, generating duplicative litigation and prolonging uncertainty in the administration of Arizona water law.

**II. Immediate review is necessary because the ruling below materially impairs ADWR's ability to discharge its statutory duties under the Groundwater Management Act.**

The Legislature charged ADWR with administering the Act, including the authority to designate subsequent INAs when the statutory conditions are met. A.R.S. § 45-432(A). That authority is one of the State's principal means of addressing unsustainable irrigation expansion in rural groundwater basins to prevent dangerous aquifer drawdown, well failure, and land subsidence.

The ruling below therefore inflicts a concrete institutional harm. For decades, ADWR has administered subsequent INA designation proceedings under the procedures set forth in the Act itself. The ruling below unsettles that established understanding and leaves the Department uncertain whether following the Act's own framework will subject future designations to procedural attack.

Arizona law accords substantial weight to ADWR's longstanding and consistent interpretation of the Act's procedural requirements. In *Arizona Water Co. v. Arizona Dept. of Water Resources*, the Arizona Supreme Court held that the

Department's longstanding interpretation of the Act is entitled to "considerable deference" and "great weight" absent clear statutory direction to the contrary. 208 Ariz. at 154–55, ¶¶ 23–27 (2004). That principle matters here.

If ADWR proceeds under the framework it has historically applied, it risks repeated litigation over whether it followed the wrong procedures. If, instead, it hesitates while awaiting ordinary appellate review, it risks paralysis in the administration of the Act. Arizona's special action mechanism exists to resolve precisely this kind of recurring legal uncertainty affecting the functioning of government. *See King v. Superior Court*, 138 Ariz. 147, 149–50 (1983).

**III. Prompt review is required because uncertainty now surrounds the continuing force of the stay imposed by A.R.S. § 45-434, and farmers have already begun irrigating new lands in the Hualapai Valley.**

This Court should also accept jurisdiction because the consequences of the ruling below are no longer merely procedural. They are already unfolding on the ground in the Hualapai Valley.

A.R.S. § 45-434 provides that, once designation procedures are initiated for a subsequent INA, a farmer may irrigate only those acres irrigated at some point during the five years preceding the notice initiating those procedures, and that limitation remains in effect until the Director makes a final determination under A.R.S. § 45-436. The statute thus serves an immediate protective function: it prevents the expansion of irrigated acreage while the designation process is pending.

Mohave supported the effort to obtain a subsequent INA designation for the Hualapai Valley with the understanding that this statute would prevent a rush to expand irrigation while the administrative process unfolded.

That protective function is now in serious doubt. As a practical matter, there is now substantial uncertainty concerning the status and continuing force of the acreage restriction imposed by A.R.S. § 45-434. The consequences are immediate. Mohave understands that, in response to the uncertainty created by the ruling below and the perceived suspension or ineffectiveness of the INA-related restrictions, farmers in the Hualapai Valley have already begun irrigating new lands.

That development powerfully demonstrates why special action jurisdiction is appropriate. Once new acreage is put into irrigation, wells are constructed, crops are planted, pumping patterns change, and further drawdown of the aquifer results. A later appellate decision may restore legal clarity, but it cannot erase the interim expansion that uncertainty has already enabled. Where delay itself defeats part of the statute's protective design, immediate special action review is warranted.

#### **IV. The broader institutional and hydrologic stakes confirm that immediate intervention is prudent.**

This case also carries broader institutional consequences. It concerns not only the Hualapai Valley, but also the Department's ability to administer the State's landmark water-management statutes in a coherent, timely, and predictable manner. Rural counties, water users, local governments, and ADWR itself need to know now

whether Arizona's groundwater regulator may invoke the subsequent INA designation process under the framework the Legislature enacted.

That need is especially pressing in Mohave County. Mohave is a vast rural county with growing communities, substantial groundwater dependence, and limited alternative supplies in many areas. Water management in Mohave is inseparable from public welfare, infrastructure planning, economic stability, and long-term growth. In that setting, uncertainty over whether the subsequent INA designation process remains workable is not a procedural inconvenience, but a direct impediment to coherent water governance in a county that has already told the State, repeatedly and unequivocally for the past decade, that delay is dangerous.

### **CONCLUSION**

For Mohave County, the question presented is urgent, practical, and consequential. This case will determine whether Arizona's rural communities may rely on the statutory tools the Legislature created to protect vulnerable groundwater basins, and whether ADWR may carry out that responsibility under the framework the Legislature enacted. It implicates not merely a single designation decision, but the State's ability to administer Arizona's groundwater laws in a coherent, timely, and dependable manner.

This Court should therefore accept special action jurisdiction. The harm caused by the ruling below is occurring now. Uncertainty surrounding the

Department's designation authority, the continuing force of the restrictions imposed by A.R.S. § 45-434, and the legal effect of the Hualapai Valley INA designation is already affecting conduct on the ground and impairing the administration of the Act. Delay will not preserve the status quo; it will further erode it.

Nor is this issue confined to the Hualapai Valley or likely to arise only once. Because the Act authorizes resident-initiated petitions, the same question will predictably recur. Indeed, a petition has already been filed seeking designation of a subsequent INA in another basin, confirming that the uncertainty created by the ruling below will continue to unsettle future INA and AMA designation proceedings across Arizona unless this Court resolves the issue now.

Mohave County has repeatedly urged the State to act before continued irrigation expansion further burdens the Hualapai Valley aquifer. The uncertainty created by the ruling below now threatens to frustrate the very protection Mohave sought. In an arid State where water administration demands clarity, consistency, and prompt action, that uncertainty should not be allowed to persist through the ordinary course of appeal.

For those reasons, Amicus Curiae Mohave County respectfully requests that this Court accept jurisdiction over ADWR's Petition for Special Action and resolve the question presented without delay.

Dated: April 22, 2026.

**CLARK HILL PLC**

By: /s/ John Lemaster  
John Lemaster  
Axel Buchwalter  
Quinne Daoust

*Attorneys for Amicus Curiae  
Mohave County*