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

16 GREGORY C. and CAROL A. SHINSKY,
NAN STOCKHOLM WALDEN and
17 RICHARD S. WALDEN, SAVE THE
SCENIC SANTA RITAS, SKY ISLAND
18 ALLIANCE, JOHN KOZMA; ELIZABETH
B. MURFEE-DECONCINI, THOMAS F.
19 PURDON, DAVID S. STEELE, ARNOLD
B. URKEN, COALITION FOR SONORAN
20 DESERT PROTECTION, STANLEY R.
HART, and CENTER FOR BIOLOGICAL
21 DIVERSITY

No. LC 2013-000442 - 00107

**NOTICE OF APPEAL AND
COMPLAINT FOR JUDICIAL
REVIEW OF ADMINISTRATIVE
DECISION**

22 Appellants,

23 v.

24 ARIZONA WATER QUALITY APPEALS
BOARD,

25 Respondent.

26 RE: Aquifer Protection Permit No. P-106100
27
28

1 The Shinsky Appellants¹ and the Center for Biological Diversity (“CBD”) jointly
2 file this Notice of Appeal pursuant to A.R.S. §§ 49-323(B) and 12-904(A). As used
3 herein, the term “Appellants” refers collectively to the Shinsky Appellants and CBD.

4 **PARTIES, JURISDICTION, AND VENUE**

5 1. Gregory C. and Carol A. Shinsky are residents of Vail, Arizona.

6 2. Nan Stockholm Walden and Richard S. Walden are residents of Sahuarita,
7 Arizona.

8 3. Save the Scenic Santa Ritas is a non-profit 501c(3) organization incorporated under
9 the laws of Arizona and doing business in Pima County, Arizona.

10 4. Sky Island Alliance is a non-profit 501c(3) organization incorporated under the
11 laws of Arizona and doing business in Tucson, Arizona.

12 5. John Kozma is a resident of Green Valley, Arizona.

13 6. Elizabeth B. Murfee-DeConcini is a resident of Tucson, Arizona.

14 7. Thomas F. Purdon is a resident of Green Valley, Arizona.

15 8. David S. Steele is a resident of Tucson, Arizona.

16 9. Arnold B. Urken is a resident of Green Valley, Arizona.

17 10. The Coalition for Sonoran Desert Protection is an alliance of multiple groups that
18 is not incorporated as a legal entity but is a fiscally-sponsored project of Sky Island
19 Alliance, a 501c(3) organization incorporated under the laws of Arizona. Sky Island
20 does business in Tucson, Arizona.

21 11. Stanley R. Hart is a resident of Green Valley, Arizona.

22 12. The Center for Biological Diversity is a non-profit organization with its principal
23 place of business in Tucson, Arizona.

24 13. Jurisdiction in the Superior Court is vested pursuant to A.R.S. § 12-905(A).

25
26
27 ¹ Gregory C. and Carol A. Shinsky; Nan Stockholm Walden and Richard S. Walden; Save the Scenic
28 Santa Ritas; Sky Island Alliance; John Kozma; Elizabeth B. Murfee-DeConcini; Thomas F. Purdon; David
S. Steele; Arnold B. Urken; Coalition for Sonoran Desert Protection; and Stanley R. Hart.

1 14. This action seeks judicial review of an administrative decision made by the Water
2 Quality Appeals Board ("WQAB"). The hearing in this final decision was held in
3 Maricopa County, Arizona.

4 15. The principal offices of WQAB are located in Maricopa County, and it was in
5 those principal offices where the decision by WQAB giving rise to the administrative
6 proceedings and this action took place.

7 16. Venue in Maricopa County is proper pursuant to A.R.S. §§ 12-401 and 12-905(B).

8 BACKGROUND

9 17. The Arizona Department of Environmental Quality ("ADEQ") issued Rosemont's
10 draft Aquifer Protection Permit ("APP") No. P-106100 dated April 3, 2012, and
11 requested public comment.

12 18. On October 31, 2012, Appellants submitted comments on Rosemont's draft APP.

13 19. ADEQ issued Rosemont's permit on January 31, 2013.

14 20. On May 9, 2012, the Shinsky Appellants appealed Rosemont's draft APP.

15 21. On August 20, 2012, the Administrative Law Judge ("ALJ") granted Rosemont's
16 Motion to Dismiss the Shinsky Appellants' Issue 14.

17 22. The Shinsky Appellants withdrew Issues 5 and 13 and deferred prosecution of
18 Issues 3, 7, and 18 to Pima County. Because Pima County settled with ADEQ on August
19 13, 2012, these issues were not heard.

20 23. The Shinsky Appellants consolidated Issues 1 and 15; Issue 6 (first sentence) and
21 Issue 17; and Issues 8, 9, and 10.

22 24. The hearing on the appeal was conducted by the ALJ on August 27-31 and
23 September 17-20, 2012. The ALJ issued his recommended decision on June 12, 2013.

24 25. On July 8, 2013, the WQAB met to consider the ALJ's Decision dated June 12,
25 2013.

26 26. On July 16, 2013, the WQAB's Final Administrative Decision adopted the ALJ's
27 Findings of Fact 1 through 506 and Conclusions of Law 1 through 33 in their entirety and
28

1 affirmed the ALJ's recommended decision to affirm the APP. See ALJ's Decision dated
2 June 12, 2013, for the list of Findings of Fact and Conclusions of Law.

3
4 **COUNT ONE**

5 **Judicial Review of Administrative Decision**

6 27. Appellants incorporate by reference all of the preceding paragraphs and allegations
7 of this Notice of Appeal and Complaint, as if set forth in full herein.

8 28. The WQAB Decision was arbitrary, capricious, contrary to law, an abuse of
9 discretion, and not supported by substantial evidence, A.R.S. § 12-901.7, in the following
10 respects:

11 a. The WQAB's failure to consider that the ALJ's dismissal of Issue 14
12 (ADEQ must consider surface water impacts when deciding whether to issue the APP),
13 see Case Management Order No. 12, was contrary to law.

14 b. The WQAB's failure to consider that the arbitrary, capricious, and illegal
15 nature of ADEQ's decision-making process was arbitrary and capricious.

16 c. The WQAB's failure to require ADEQ to take into consideration clear
17 evidence that the Rosemont facility will be built differently from the facility described in
18 the APP application was arbitrary and capricious, as was ADEQ's failure to consider such
19 impacts prior to final approval of the APP.

20 d. The WQAB's failure to require ADEQ to consider biological factors, as
21 required by ADEQ's own rules, A.A.C. R18-9-A202(A)(4), was arbitrary, capricious, and
22 contrary to law, as was ADEQ's failure to consider such information.

23 e. The WQAB's decision-making process at its July 8, 2013, meeting was
24 arbitrary, capricious, and inconsistent with the legal requirements of the WQAB, A.R.S. §
25 49-324(C). The WQAB's Decision stated that the WQAB reviewed the ALJ Decision,
26 transcripts and arguments of the parties, and the WQAB completed a full and careful
27 deliberation of the same. Transcripts of the proceedings indicate that the WQAB did not,
28 in fact, review the materials they claimed, however. Although one of WQAB's members

1 was not in agreement to affirm the ALJ's Decision and believed that the WQAB needed
2 more time to review the documents involved, the WQAB made its final decision at the
3 conclusion of the hearing.

4 **RELIEF**

5 Appellants seek the following relief:

6 a. Reverse the decision of the WQAB and remand the matter for the
7 WQAB to reconsider the foregoing issues.

8 b. Remand the permit approval to ADEQ to consider (1) the surface
9 water impacts of the Rosemont APP, (2) the impact to the groundwater that will arise
10 from the likely construction of the project, which is substantively different from the
11 project plan set forth in the permit application, and (3) biological factors, as required by
12 A.A.C. R18-9-A202(A)(4).

13 c. Award attorneys' fees pursuant to A.R.S. §12-348(A)(2) and costs
14 pursuant to A.R.S. §12-341.

15 DATED this 16th day of August, 2013.

16
17 SALMON, LEWIS & WELDON, PLC

18
19 By: 

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CERTIFICATE OF SERVICE

IN THE MARICOPA COUNTY SUPERIOR COURT

GREGORY C. and CAROL A. SHINSKY, NAN STOCKHOLM WALDEN and RICHARD S. WALDEN, SAVE THE SCENIC SANTA RITAS, SKY ISLAND ALLIANCE, JOHN KOZMA; ELIZABETH B. MURFEE-DECONCINI, THOMAS F. PURDON, DAVID S. STEELE, ARNOLD B. URKEN, COALITION FOR SONORAN DESERT PROTECTION, STANLEY R. HART, and CENTER FOR BIOLOGICAL DIVERSITY v. ARIZONA WATER QUALITY APPEALS BOARD, Respondent.

ORIGINAL filed via hand delivery
this 16th day of August, 2013, with:

Clerk, Superior Court
201 West Jefferson Street, #4
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25 /s/ Denice C. Perrault

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27

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