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For Immediate Release

Contact: Howard M. Shanker, The Shanker Law Firm, PLC, 480-838-9448; email: howard@shankerlaw.net
Robin Silver, M.D., Center for Biological Diversity, 602.246.4170; 602.799.3275 mobile;
Stephanie Burchfield, BWPR, Inc. (media relations), 480-460-4111; 602- 418-2501 mobile; bwpr@att.net

Arizona Defends Its Right to Destroy the Last Free Flowing River in the Desert Southwest for Developers' Benefit; Center for Biological Diversity Counters With Lawsuit

Phoenix, AZ— June 8, 2004 – A number of citizens and environmental groups, led by the Center for Biological Diversity, are waging an uphill legal battle to try to protect the San Pedro River Basin, a wildlife area located in Southern Arizona near Ft. Huachuca. In the latest effort, the Center filed a Notice of Appeal against the Arizona Department of Water Resources (ADWR) and the State of Arizona to try to stop the state from destroying this ecologically unique and valuable area for the benefit of a handful of developers.

The state is required to evaluate a developer's water supply plans. If the state determines that water supplies are inadequate, then that determination must be disclosed in all promotional material and contracts related to the sale of the lots. Prior to September 29, 1993, the state issued most developers in the Sierra Vista Sub-basin of the San Pedro River, statements indicating that there was not an adequate supply of water. Since 1993, the availability of water in the sub-basin has been diminishing at an alarming rate. Nevertheless, since September 29, 1993, the state has maintained a practice of issuing statements to developers indicating that there is an adequate water supply.

The San Pedro River is internationally renowned for its biological diversity. In 1993, Life Magazine recognized the San Pedro River as one of "America's Last Great Places." In 1995, the American Bird Conservancy recognized the San Pedro River as its first "Globally Important Bird Area" in the United States. The U.S. Congress recognized its uniqueness and value in 1988 with creation of the San Pedro Riparian National Conservation Area. ADWR supported this designation with the granting of water rights for the federal Conservation Area of 11,208 acre/feet per year on April 3, 1992.

According to Robin Silver, M.D., the Conservation Chair for the Center for Biological Diversity and a San Pedro property owner,

“ADWR adequacy determinations are a sham. An adequate supply of water does not exist without loss of the San Pedro and the taking of federal water rights. ADWR has issued approximately 1,345 new well permits and adequacy statements for more than 13,000 homes in the area since its 1993 policy reversal. As a result, an estimated 7,400 acre-feet per year of deficit groundwater pumping was projected in the sub-watershed for the year 2000, and the deficit is on target to increase to almost 13,000 acre-feet per year by 2020.”

Howard Shanker of the Shanker Law Firm, PLC, who is representing the plaintiffs, says, “The state appears to be doing everything in its power to destroy an ecologically unique and valuable area – all to benefit a handful of developers. There is no supportable scientific or technical basis to justify the state’s reversal in practice, yet our state government is continuing to mislead people who want to purchase homes in the area. They think they have a sufficient supply of water to last 100 years, but they do not.”

Shanker continues, “There is a clear connection between the draining of the groundwater for subdivisions and the viability of the base flow of the San Pedro River. The state argued in court that ADWR does not have to consider impacts on the river or surface water when it makes an adequacy evaluation – but that is tantamount to legally closing its eyes. In reality, the only way a 100-year supply of water in the Upper San Pedro Basin could possibly exist, is through the illegal denial of federal water rights and the resulting loss of the San Pedro River.”

In March 2004, the State Superior Court ruled, in part, that the plaintiffs did not have standing to challenge the state’s adequacy determinations. Shanker says, “According to the court, only the developers who benefit from this nonsense have standing to challenge the practice.” Plaintiffs have just filed their Notice of Appeal.

The Shanker Law Firm, PLC, is located at 600 E. Baseline Rd., Suite C-8, Tempe, Arizona 85283-1210; phone 480-838-9448; fax 480-838-9433.

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