

**ARIZONA COURT OF APPEALS
DIVISION ONE**

ARIZONA DEPARTMENT OF)	Court of Appeals
WATER RESOURCES,)	Division One
)	No. SA-26-0147
Petitioner,)	
v.)	Maricopa County Superior Court
)	Case No. LC2023-000020-001
OPAL INVESTMENTS, LLC, a Utah)	
limited liability company; STEFF)	
INVESTMENTS, LLC, a Nevada)	
limited liability company,)	
)	
Respondents.)	
)	
)	
)	

**AMICI CURIAE BRIEF IN SUPPORT OF PETITIONER’S PETITION
FOR SPECIAL ACTION**

Matthew L. Rojas (025030)
mrojas@culpkelly.law
CULP & KELLY LLP
909 W. Fillmore St.
Phoenix, AZ 85007

*Attorneys for Amici Curiae
Cal Allred, Mark Cook, Environmental
Defense Fund*

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
INTERESTS OF AMICI CURIAE.....	1
QUESTIONS PRESENTED.....	2
STATEMENT OF THE CASE.....	3
BACKGROUND.....	7
STANDARD OF REVIEW.....	10
SUMMARY OF ARGUMENT.....	11
ARGUMENT.....	13
I. The Court Should Accept Special Action Jurisdiction.....	13
II. The Superior Court Erred in Holding That an INA Designation Constitutes a Rule Under the Arizona Administrative Procedure Act.....	17
III. The GMA Provides an Otherwise Provided by Law Alternative Procedure That Displaces APA Rulemaking for INA Designations.....	22
CONCLUSION.....	29

TABLE OF AUTHORITIES

CASES

<i>Aikins v. Ariz. Dep't of Water Res.</i> , 154 Ariz. 437, 743 P.2d 946 (Ct. App. 1987).....	19
<i>Ariz. Soc'y of Pathologists v. Ariz. Health Care Cost Containment Sys. Admin.</i> , 201 Ariz. 553, 38 P.3d 1218 (Ct. App. 2002).....	26
<i>City of Surprise v. Ariz. Corp. Comm'n</i> , 246 Ariz. 206, 437 P.3d 865 (2019).....	10, 13
<i>Davis v. Agua Sierra Res., Ltd. Liab. Co.</i> , 220 Ariz. 108, 203 P.3d 506 (2009).....	28
<i>Dep't of Child. Safety v. Carel G.</i> , 573 P.3d 1120 (Ariz. Ct. App. 2025).....	10, 13
<i>Republican Nat'l Comm. v. Fontes</i> , 259 Ariz. 393, 566 P.3d 984 (Ct. App. 2025), <i>overturned in part</i> (Oct. 16, 2025).....	5, 6, 23
<i>Yavapai-Apache Nation v. Fabritz-Whitney</i> , 227 Ariz. 499, 260 P.3d 299 (Ct. App. 2011).....	26, 29

STATUTES

A.R.S. § 12-902.....	21, 27
A.R.S. § 41-1001.....	17
A.R.S. § 41-1021.....	24
A.R.S. § 41-1030.....	22

A.R.S. § 41-1052.....24, 26

A.R.S. § 45-407.....17

A.R.S. § 45-432.....4, 7, 20, 25, 26

A.R.S. § 45-434.....4, 7, 16

A.R.S. § 45-435.....7, 20, 23

A.R.S. § 45-436.....7, 8, 21, 23, 27

A.R.S. § 45-438.....26

Ariz. R. P. Spec. Act 4(c).....10

INTEREST OF AMICUS CURIAE

Amici curiae Cal Allred, Mark Cook, and Environmental Defense Fund file this brief in support of the Arizona Department of Water Resources' Petition for Special Action. Amici curiae are (1) groundwater-dependent agricultural operators located in the San Simon Valley Subbasin who grow tree nuts for human consumption who have petitioned the Arizona Department of Water Resources (ADWR) for the creation of an irrigation non-expansion area (INA), and (2) the Environmental Defense Fund, a non-governmental organization dedicated to solving environmental problems anchored in science, economics and law, who is a supporter of the petition to create an INA in the San Simone Valley. EDF has 6,489 members in Arizona.

Amici curiae Allred and Cook are experiencing rapidly decreasing groundwater levels, increasing pumping costs, other increased operating costs, and subsidence caused by unregulated groundwater pumping in the San Simon Valley Subbasin. These harms threaten the viability of their long-term agricultural operations. Tree nut agriculture requires substantial capital expenditure and years to reach productive maturity, making stable groundwater supplies essential.

On September 15, 2025, amici curiae Allred and Cook petitioned ADWR to designate an INA in the San Simon Valley Subbasin to protect and manage valuable groundwater resources. The Maricopa County Superior Court's decision

holding that INA designations constitute rules subject to Arizona Administrative Procedure Act (APA) rulemaking procedures directly undermines ADWR's authority to act on this petition and threatens to delay critical groundwater protection that amici curiae urgently need.

The legal questions presented in this case are of immediate and vital importance to amici curiae. Each day of delay allows additional unregulated groundwater pumping, further declining water tables, increased pumping costs, and continued subsidence. These harms are irreversible. There is no managed groundwater recharge in the San Simon Valley Subbasin and there are no alternative resources. Once groundwater is extracted and subsidence occurs, the damage cannot be undone.

Amici curiae respectfully submits this brief to provide the Court with the perspective of groundwater-dependent agricultural water users who will suffer concrete, ongoing harm if the Superior Court's decision is not promptly reversed and the perspective of a non-profit organization dedicated to common sense actions to protect the environment and the economy dependent on implementation of the Groundwater Management Act based in law and science.

QUESTIONS PRESENTED

1. Should this Court accept special action jurisdiction over the Petition for Special Action filed by ADWR, given that the petition presents a purely

legal question of first impression and statewide importance that is likely to recur, and that an appeal from a final judgment would not provide an equally plain, speedy, and adequate remedy?

2. Did the Maricopa County Superior Court err in holding that ADWR's designation of the Hualapai Valley Basin as an INA constitutes a rule subject to the rulemaking procedures of the APA, when such designation is not generally applicable and does not implement, interpret, or prescribe law or policy?
3. Even if an INA designation were a rule under the APA, are the APA's rulemaking procedures inapplicable because the Groundwater Management Act prescribes procedures that are otherwise provided by law and are irreconcilable with APA rulemaking procedures?
4. Is the uncertainty created by the Superior Court's decision causing concrete, ongoing harm to groundwater-dependent agricultural water users and groundwater resources, thereby justifying immediate appellate intervention through special action jurisdiction?

STATEMENT OF THE CASE

This special action petition arises from a decision by the Maricopa County Superior Court that fundamentally challenges ADWR's authority to designate INAs under the Groundwater Management Act.

Procedural History

In October 2022, ADWR's Director initiated the INA designation process for the Hualapai Valley Basin in Mohave County. This initiation triggered an immediate temporary freeze on irrigation of new lands. A.R.S. § 45-434.

In November 2022, the Director held a public hearing on the proposed designation. The Department presented hydrologic data and other information regarding the Hualapai Valley Basin, received public comments and written evidence, and held the record open for an additional period to allow for further public participation.

In December 2022, after reviewing all public comments and evidence, the Director issued a Final Order designating the Hualapai Valley Basin as a subsequent INA. The Director concluded that the basin met the statutory criteria for designation. A.R.S. § 45-432.

Opal Investments, LLC, a Utah limited liability company, and Steff Investments, LLC, a Nevada limited liability company, sought judicial review of the Director's Final Order. The respondents argued that the Final Order was invalid because it constituted a rule within the meaning of the APA and was adopted without following the APA's required rulemaking procedures.

On January 9, 2026, the Maricopa County Superior Court issued its ruling. The Superior Court held that ADWR's Final Order designating the Hualapai

Valley Basin as an INA is a rule subject to the APA's rulemaking procedures. The court concluded that the Final Order has general applicability to all land and landowners within the designated area and that it implements law and policy for the area within the INA. The Superior Court rejected ADWR's argument that a separate statutory scheme exists for INA designations and found it determinative that the Department could not identify controlling authority exempting it from the APA. The court further stated that the APA does not conflict with the procedures in the INA statute but supplements them with additional procedural safeguards.

The Superior Court vacated the Final Order and directed ADWR to comply with the APA before again designating the Hualapai Valley Basin as an INA.

Following the Superior Court's decision, the Arizona Supreme Court addressed a closely analogous question in *Republican National Committee v. Fontes*. In that case, the Supreme Court held that the APA's rulemaking provisions do not apply to the Secretary of State's promulgation of the Elections Procedures Manual and reinstated portions of the Superior Court's opinion in that case. *Republican Nat'l Comm. v. Fontes*, 259 Ariz. 393, 566 P.3d 984 (App. 2025), *overturned in part* (Oct. 16, 2025). The reinstated portions of the Superior Court's opinion relied on the otherwise provided by law exception to the APA, finding that the Elections Procedures Manual statute conflicts with the APA.

ADWR moved the Superior Court to reconsider its decision based on the Supreme Court's order in *Republican National Committee v. Fontes*. The Superior Court denied the motion without explanation.

The Superior Court has not yet entered a final judgment. ADWR has requested clarification regarding whether the temporary limitation on irrigation in the Hualapai Valley Basin remains in effect and has alternatively moved to stay any final judgment pending appeal.

On April 22, 2026, ADWR petitioned this Court for special action relief, seeking reversal of the Superior Court's decision and a determination that INA designations are not subject to APA rulemaking procedures.

The San Simon Valley Subbasin Petition

ADWR has received a petition from irrigation users to designate the San Simon Valley Subbasin as an INA. Amici curiae Allred and Cook are located in the San Simon Valley Subbasin and have petitioned the Department to designate an INA in their region to protect and manage valuable groundwater resources.

The Superior Court's decision creates uncertainty about whether the Department can proceed with the San Simon Valley Subbasin petition using the Groundwater Management Act procedures or whether it must instead navigate the APA's rulemaking process. This uncertainty delays the protection that amici curiae desperately need.

BACKGROUND

The Statutory Process for INA Designation

The Arizona legislature explicitly created a statutory framework for the creation of INAs, one that has been in place for over 45 years. Either ADWR's Director or a public petition may initiate a subsequent INA designation. A.R.S. § 45-435. After the procedure is initiated, an immediate temporary irrigation freeze is triggered: an irrigation user may irrigate within the proposed INA 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. This temporary freeze remains in effect until the Director makes a final determination.

The Director must then set a hearing to consider two statutory criteria: first, whether insufficient groundwater exists to supply irrigation in the area at current withdrawal rates, and second, whether establishing an Active Management Area is not necessary. A.R.S. § 45-432. The Director must provide notice of the hearing via publication, and the hearing must take place within a specified timeframe after the first publication. A.R.S. § 45-435.

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 To proceed with a designation, the Director shall make and file an order designating

the INA. A.R.S. § 45-436. The findings and order are subject to rehearing or review and to judicial review.

The entire statutory process is deliberately compressed, requiring completion in approximately four months from initiation to final determination. This compressed timeline reflects the Legislature’s intent to protect landowners from an extended irrigation freeze pending a final determination while also preventing a rush to irrigate new lands during the designation process.

The San Simon Valley Subbasin and Amici Curiae’s Concerns

In January 2026, ADWR received a petition from irrigation users—including amici curiae Allred and Cook—to designate the San Simon Valley Subbasin as an INA. Amici curiae Allred and Cook are located in the San Simon Valley Subbasin and have petitioned the Department to designate an INA in their region to protect and manage valuable groundwater resources.

Amici curiae Allred and Cook grow tree nuts—primarily pistachios and pecans. Their sole source of water for irrigation is groundwater. Amici curiae are experiencing rapidly decreasing groundwater levels in the San Simon Valley Subbasin. These decreasing groundwater levels have resulted in increasing pumping costs, other increased operating costs, and subsidence caused by unregulated groundwater pumping. Subsidence in the San Simon basin is so

extreme that it has collapsed wells, greatly increasing the costs of maintaining or replacing wells.

Tree nut agriculture is a long-term agricultural investment requiring substantial capital expenditure and years to reach productive maturity. Groundwater depletion threatens the viability of these operations. Subsidence caused by excessive groundwater pumping damages infrastructure and reduces land values. Each season of delay in obtaining INA protection allows further groundwater depletion, further cost escalation, and further subsidence damage.

The Superior Court's Decision and Its Consequences

On January 9, 2026, the Maricopa County Superior Court held that ADWR's Final Order designating the Hualapai Valley Basin as an INA is a rule subject to the APA's rulemaking procedures. The Superior Court vacated the Final Order and directed the Department to comply with the APA before again designating the Hualapai Valley Basin as an INA.

The Superior Court's decision has created substantial uncertainty concerning the status and continuing force of the acreage restriction imposed by the temporary irrigation freeze statute. In response to this uncertainty, farmers in the Hualapai Valley have begun irrigating new lands. This rush to irrigate new acreage wastefully depletes the aquifer and undermines the Legislature's intent for establishing INAs.

The uncertainty created by the Superior Court's ruling threatens to cause similar harm in the San Simon Valley Subbasin. If the Superior Court's decision stands and the Department cannot designate an INA without navigating the APA's rulemaking process, landowners in the San Simon Valley Subbasin will have incentives to rush to irrigate new acreage before an INA designation is eventually issued. This rush on irrigation would wastefully deplete groundwater in a basin that amici curiae have identified as needing protection.

STANDARD OF REVIEW

Standard for Accepting Special Action Jurisdiction

This Court exercises discretionary jurisdiction over special action petitions. Special action jurisdiction is appropriate when the issue is a purely legal question of first impression and statewide importance that is likely to recur, and an appeal from a final judgment would not provide an equally plain, speedy, and adequate remedy. *Dep't of Child. Safety v. Carel G.*, 573 P.3d 1120, 1124 (Ariz. Ct. App. 2025), *City of Surprise v. Ariz. Corp. Comm'n*, 246 Ariz. 206, 209, 437 P.3d 865, 868 (2019). 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. Ariz. R. P. Spec. Act 4(c).

Standard for Evaluating Institutional Harm and Concrete Consequences

In determining whether to accept special action jurisdiction, the Court considers whether the lower court's decision causes concrete, ongoing harm to the functioning of government and to affected parties. The Court evaluates whether delay in resolving the legal question will cause irreversible harm to groundwater resources and to groundwater-dependent water users.

SUMMARY OF ARGUMENT

This brief by amici curiae respectfully urges the Arizona Court of Appeals to accept special action jurisdiction over ADWR's Petition for Special Action and to reverse the Maricopa County Superior Court's erroneous decision that INA designations constitute rules subject to the APA.

Special action jurisdiction is warranted because this case presents a pure legal question of first impression regarding whether the Groundwater Management Act or the APA governs INA designations. The question is of statewide importance and will recur as the Department receives additional INA petitions. An appeal from a final judgment would be an inadequate remedy because the Superior Court has not yet entered final judgment, delay causes irreversible hydrologic and economic harm, and the Legislature has mandated that groundwater management actions receive priority in all courts.

The Superior Court erred in holding that an INA designation is a rule under the APA. An INA designation does not satisfy the APA's definition of a rule because it is not generally applicable and does not implement, interpret, or prescribe law or policy. An INA designation is basin-specific, applies only to a single groundwater basin, and is based on that basin's unique hydrology. The Director's determination that a specific basin meets the statutory criteria for INA status is a factual and legal conclusion, not a pronouncement of generally applicable policy. The substantive irrigation restrictions that follow from an INA designation are established by statute; the Director does not create or prescribe them.

Even if an INA designation were a rule, the Groundwater Management Act INA designation procedures conflict with APA rulemaking in fundamental ways: the Groundwater Management Act's compressed four-month timeline is irreconcilable with the APA's extended notice-and-comment process; the APA's substantive requirements are incompatible with the binary, fact-based nature of INA designation under fixed statutory criteria; the APA's Governor's Regulatory Review Council and Governor approval mechanisms conflict with the Legislature's vesting of INA technical determinations in ADWR's Director; and the Groundwater Management Act's administrative-decision review framework

differs from APA rule-challenge procedures in a manner that signals the Legislature did not intend INA designation to be treated as APA rulemaking.

The Superior Court's decision causes concrete, ongoing harm to groundwater-dependent agricultural operators and groundwater resources. Amici curiae are experiencing rapidly declining groundwater levels, rising pumping and operating costs, and subsidence caused by unregulated groundwater pumping. Each day of delay allows further groundwater depletion, cost escalation, and subsidence damage. The harm is not speculative; it is occurring now and will worsen with each passing season.

ARGUMENT

I. THE COURT SHOULD ACCEPT SPECIAL ACTION JURISDICTION

A. Special Action Jurisdiction Is Appropriate Under the Rules of Procedure for Special Actions

The Arizona Court of Appeals possesses discretionary jurisdiction to accept special actions when the circumstances warrant extraordinary relief. Special action jurisdiction is appropriate when a case presents a pure question of law of first impression with statewide significance, when the issue is recurring, and when appeal would provide an inadequate remedy. *Dep't of Child. Safety v. Carel G.*, 573 P.3d at 1124, *City of Surprise v. Ariz. Corp. Comm'n*, 246 Ariz. At 209, 437 P.3d at 868. All of these conditions are satisfied here.

B. This Case Presents a Pure Legal Question of First Impression with Statewide and Recurring Significance

The central issue before the Superior Court is whether INA designation under the Groundwater Management Act is governed by Groundwater Management Act procedures or constitutes rulemaking under the APA. This is a pure question of statutory interpretation. This question does not require factual development or evidentiary hearing; rather, it requires only the proper construction of Arizona's groundwater statutes and administrative law. These purely legal questions are precisely the type for which special action jurisdiction is appropriate.

This issue is one of first impression. No Arizona appellate court has definitively resolved whether ADWR's authority to designate INAs falls within the Groundwater Management Act's administrative procedures or triggers the APA's rulemaking requirements. The Superior Court's decision creates uncertainty about the scope of ADWR's statutory authority, a question that has never been authoritatively answered by the appellate courts.

The issue is also statewide in significance and recurring in nature. The Groundwater Management Act applies throughout Arizona's groundwater basins. The Department has already received a pending petition to designate an INA in the San Simon Valley Subbasin, and resident-initiated petitions for INA designation are expected to recur as groundwater conditions deteriorate across the state. The legal question resolved here will govern ADWR's response to all INA petitions; a

definitive ruling on ADWR's authority is essential to establish consistent statewide policy and procedure.

C. Appeal Provides an Inadequate Remedy

Special action jurisdiction is warranted when appeal would be an inadequate remedy. This case presents multiple reasons why appeal is inadequate.

First, no final judgment has been entered in the Superior Court proceedings. The case remains in a state of uncertainty regarding ADWR's authority to proceed with INA designation. This uncertainty is not merely procedural; it has immediate, concrete consequences for groundwater management and agricultural operations throughout the state.

Second, the delay inherent in the appellate process will cause irreversible harm. Groundwater depletion is a continuous, cumulative process. Each day of delay during which the legal question remains unresolved allows additional groundwater extraction to occur without the protections that an INA designation would provide. The hydrologic harm caused by this delay cannot be undone; once groundwater is extracted and depleted, it is lost. Similarly, the economic harm to groundwater-dependent agricultural operators compounds with each passing season as water tables decline, pumping costs rise, and subsidence accelerates.

D. The Protective Function of Temporary Irrigation Limitations Depends on Prompt Resolution

The Groundwater Management Act provides that upon initiation of INA procedures, temporary irrigation limitations take effect to prevent a race to irrigate and to protect groundwater resources during the designation process. A.R.S. § 45-434. However, the Superior Court's decision creates uncertainty about whether these protective limitations remain in force or whether they are suspended pending resolution of the APA rulemaking question.

This uncertainty is itself harmful. If agricultural operators and water users believe that the temporary limitations may not be enforceable, they have an incentive to accelerate irrigation and extraction to avoid potential future restrictions. A race to irrigate directly undermines the protective purpose of the temporary limitations and accelerates groundwater depletion. Prompt resolution of the legal question is therefore essential to preserve the integrity of the temporary limitation mechanism and to prevent the very harm that the Groundwater Management Act was designed to prevent.

E. Urgent Harm to Groundwater-Dependent Agricultural Operators

Amici curiae include groundwater-dependent agricultural operators in the San Simon Valley Subbasin that face immediate and escalating harm from the delay caused by the Superior Court's decision. These operators grow tree nuts for human consumption and depend entirely on groundwater for irrigation. They are experiencing rapidly declining groundwater levels, rising pumping and operating

costs, and subsidence caused by unregulated pumping in the absence of an INA designation.

These operators have petitioned the Department to designate an INA to protect their groundwater resources and to stabilize their long-term agricultural investments. The Superior Court's decision, by casting doubt on ADWR's authority to designate INAs, directly undermines the relief these operators seek. Each day of delay allows further groundwater depletion, further cost escalation, and further subsidence damage. The harm is not speculative or remote; it is occurring now and will worsen with each passing season.

The Legislature has indicated that groundwater management matters should be prioritized. A.R.S. § 45-407. This legislative directive reinforces the urgency of prompt judicial resolution and supports acceptance of special action jurisdiction to prevent further delay.

II. THE SUPERIOR COURT ERRED IN HOLDING THAT AN INA DESIGNATION CONSTITUTES A RULE UNDER THE APA

A. An INA Designation Does Not Meet the APA Definition of a Rule

The Superior Court's determination that an INA designation order constitutes a rule under the APA is legally erroneous. Under the APA, a rule is defined as an agency statement of general applicability that implements, interprets,

or prescribes law or policy. A.R.S. § 41-1001. An INA designation satisfies neither element of this definition.

1. An INA Designation Is Not Generally Applicable

An INA designation is fundamentally basin-specific and therefore lacks the general applicability required for APA rulemaking. The designation applies exclusively to a single, defined basin or subbasin based on that basin's unique hydrologic record and circumstances. This targeted application to a particular geographic area with distinct hydrogeologic characteristics distinguishes an INA designation from a rule of general applicability.

The distinction between basin-specific designations and generally applicable policies is critical. A rule of general applicability establishes a policy that applies to an open class of persons or situations across multiple contexts. An INA designation, by contrast, addresses the specific conditions and water availability of one basin. The Director's determination that a particular basin meets the statutory criteria for INA status is a basin-specific factual and legal conclusion, not a pronouncement of policy applicable to all basins or all groundwater users generally.

The fact that an INA designation affects all landowners within the designated basin does not render it generally applicable in the APA sense. The distinction lies between the Director's basin-specific designation determination and

the statutory restrictions that operate automatically once designation occurs. The Director's order designates a particular basin; the Legislature's statutory provisions then apply to all persons within that basin. The order itself is not a generally applicable policy statement but rather a determination that specific statutory conditions have been met for a specific geographic area.

The designation of the San Simon Valley Subbasin as an INA would have no applicability outside of that basin. It would not impact or govern any future INA determinations. Nor would 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 the Department and declared in a designation order.

2. An INA Designation Does Not Implement, Interpret, or Prescribe Law or Policy

An INA designation does not implement, interpret, or prescribe law or policy in the manner contemplated by the APA. Rather, the Director applies pre-existing statutory criteria to specific factual circumstances. The substantive irrigation limits that restrict groundwater use within an INA are established by the Legislature and attach by statute once an INA is designated. *Aikins v. Ariz. Dep't of*

Water Res., 154 Ariz. 437, 440, 743 P.2d 946, 949 (Ct. App. 1987). The Director does not create, interpret, or prescribe these limitations; the Director determines whether the statutory conditions for INA designation have been satisfied.

The Director's role in the INA designation process is to apply the statutory framework to the particular hydrologic and factual record of a basin. This is a determination of whether statutory prerequisites have been met, not an exercise of policy discretion or interpretive authority. The Legislature has already prescribed the law and policy governing INAs; the Director's function is to apply that law to specific facts. A.R.S. § 45-432.

B. The INA Designation Process Contains Quasi-Adjudicatory Features Distinguishing It from Rulemaking

The procedural structure of the INA designation process demonstrates that it is fundamentally quasi-adjudicatory in nature, not rulemaking. This procedural framework further supports the conclusion that INA designations fall outside the APA's definition of rules. There are four key components of that framework.

First, the process is initiated by petition, and initiation itself triggers interim acreage limits. This event-driven triggering mechanism is characteristic of adjudication, where a specific application or petition initiates a proceeding affecting particular parties. A.R.S. § 45-435. *Second*, the process includes notice and public hearing requirements, allowing affected parties to present evidence and

arguments regarding the specific basin at issue. A.R.S. § 45-435. *Third*, the Director issues written findings and an order, which are characteristic of adjudicatory decisions that address specific facts and apply law to those facts. A.R.S. § 45-436. *Fourth*, the INA designation is subject to review through the Groundwater Management Act's rehearing and judicial review pathway, which provides for record-based review. A.R.S. § 45-436, A.R.S. § 12-902. This record-based review mechanism is typical of adjudicatory proceedings, where the reviewing court examines the administrative record to determine whether the agency's decision is supported by substantial evidence and is not arbitrary and capricious.

These procedural features collectively indicate that the INA designation process is designed to address the specific circumstances of a particular basin and the interests of parties affected by that basin's designation, rather than to establish generally applicable policy for an open class of regulated entities.

C. Implications for Future INA Petitions, Including San Simon

If basin-specific INA designations are incorrectly characterized as rules subject to APA rulemaking procedures, the consequences for future INA petitions would be severe. Every INA designation would become vulnerable to procedural attack based on alleged APA violations, regardless of the substantive merits of the designation. This procedural uncertainty would delay the protection of

groundwater resources and exacerbate the drawdown and subsidence problems that INA designations are designed to address.

Amici curiae include San Simon Valley Subbasin groundwater-dependent tree-nut growers that depend on clarity regarding ADWR's authority to proceed with INA designations under the Groundwater Management Act without undertaking full APA rulemaking procedures. If the Superior Court's holding stands, the San Simon INA petition and all future INA petitions face procedural jeopardy unrelated to the substantive question of whether the basin meets the statutory criteria for INA designation.

III. THE GMA PROVIDES AN OTHERWISE PROVIDED BY LAW ALTERNATIVE PROCEDURE THAT DISPLACES APA RULEMAKING FOR INA DESIGNATIONS

A. The Otherwise Provided by Law Clause Permits Displacement of APA Rulemaking When Statutory Procedures Conflict

The APA provides that a rule is invalid unless it is made and approved in substantial compliance with the APA, unless otherwise provided by law. A.R.S. § 41-1030. This language creates an exception to APA applicability when another statute establishes a complete and specific procedure that is irreconcilable with APA requirements. The Legislature's use of the otherwise provided by law language signals an intent to permit alternative regulatory schemes where statutory procedures conflict with the APA's framework.

The Groundwater Management Act establishes such an alternative scheme. The Groundwater Management Act's INA designation statutes provide a detailed, self-contained procedure that addresses the same regulatory function through mechanisms fundamentally incompatible with APA rulemaking. Because the two schemes cannot coexist, the Groundwater Management Act's specific procedure displaces the APA's general requirements.

The Arizona Supreme Court recently applied this otherwise provided by law exception in a closely analogous context. In *Republican National Committee v. Fontes*, the Court held that the APA's rulemaking provisions do not apply to the Secretary of State's promulgation of the Elections Procedures Manual. *Republican Nat'l Comm. v. Fontes*, 259 Ariz. 393, 566 P.3d 984 (App. 2025), *overturned in part* (Oct. 16, 2025). The Arizona Supreme Court reinstated portions of the Superior Court's opinion relying on the otherwise provided by law exception to the APA. *Id.* The same analysis applies here.

B. Deadlines and Timing Conflict: The GMA's Compressed Timeline Versus the APA's Extended Process

The Groundwater Management Act establishes a compressed timeline for INA designation. The Department must hold a hearing, make findings of fact, and issue an order within a defined period. A.R.S. § 45-435, A.R.S. § 45-436. This

timeline reflects the Legislature's judgment that interim acreage limitations require prompt implementation to address immediate groundwater depletion concerns.

By contrast, the APA requires an extended process: notice of proposed rulemaking, a public comment period, consideration of comments, potential Governor's Regulatory Review Council review, and Governor approval before a rule becomes effective. A.R.S. § 41-1021, A.R.S. § 41-1052. This multi-stage process typically extends over months or longer.

These timelines are irreconcilable. If the Department must comply with both the Groundwater Management Act's expedited procedure and the APA's extended process, the result is either violation of the Groundwater Management Act's timeline, or violation of the APA's procedural requirements. The Legislature could not have intended such a conflict.

Moreover, requiring APA rulemaking creates perverse incentives that undermine the interim acreage limitation's design. Delay in INA designation postpones the imposition of acreage limits, allowing continued unrestricted pumping during the extended rulemaking period. For groundwater-dependent agriculture in areas like the San Simon Valley Subbasin, this delay worsens drawdown, increases pumping costs, and accelerates subsidence, precisely the harms the interim acreage limitation was designed to prevent. The Legislature's

choice of an expedited Groundwater Management Act procedure signals that delay is incompatible with the statutory scheme's purpose.

C. Substantive Incompatibility: APA Requirements Versus Binary Factual Determination

The APA presupposes that rulemaking involves discretionary policy choices. Agencies must consider the least burdensome alternative to achieve the rule's purpose and must assess economic impacts. These requirements assume that the agency has policy discretion, that multiple regulatory approaches are permissible, and the agency must justify its choice among them.

INA designation, by contrast, is a binary factual determination applying fixed statutory criteria. A.R.S. § 45-432. The Department does not choose whether to designate an INA; rather, the Department determines whether the statutory conditions for designation are met. The criteria are established by the Legislature, not by ADWR's discretionary judgment.

Requiring the Department to apply APA least-burdensome-alternative and economic-impact analysis to a binary factual determination is substantively incompatible with the nature of the determination itself. The APA's framework presupposes policy discretion that the Groundwater Management Act does not grant. Forcing the Department to conduct APA-style analysis would require the

agency to treat a factual determination as if it were a discretionary policy choice, a fundamental mismatch that the Legislature could not have intended.

D. Approval and Oversight Conflict: GRRC and Governor Authority Versus Legislative Vesting in ADWR Director

Under the APA, rules are subject to Governor's Regulatory Review Council review and potential Governor approval or veto. A.R.S. § 41-1052. This mechanism vests final authority over rules in the Governor and Governor's Regulatory Review Council, not in the agency. The Governor's Regulatory Review Council may return a rule to the agency, and the Governor may refuse to approve it. *See generally, Ariz. Soc'y of Pathologists v. Ariz. Health Care Cost Containment Sys. Admin.*, 201 Ariz. 553, 555 38 P.3d 1218, 1220 (Ct. App. 2002).

The Groundwater Management Act mandates that ADWR's Director "be an expert in the field" and gives ADWR's Director broad authority and discretion. A.R.S. § 45-432, *Yavapai-Apache Nation v. Fabritz-Whitney*, 227 Ariz. 499, 505, 260 P.3d 299, 305 (Ct. App. 2011). The Legislature did not provide for Governor's Regulatory Review Council or Governor approval of INA designations. Instead, the Groundwater Management Act provides a separate statutory mechanism for boundary review and modification, channeling challenges through administrative-decision review. A.R.S. § 45-438.

These approval structures are irreconcilable. If INA designation is subject to APA rulemaking, then Governor's Regulatory Review Council and the Governor would have authority to reject or modify ADWR's determination. But the Legislature vested that determination in ADWR's Director and did not authorize Governor's Regulatory Review Council or Governor intervention. The Legislature's choice to vest authority in ADWR's Director, combined with the absence of any Governor's Regulatory Review Council or Governor approval requirement in the Groundwater Management Act, signals that INA designation is not meant to be treated as APA rulemaking.

E. Judicial Review Mismatch: Administrative-Decision Review Versus APA Rule Challenges

The Groundwater Management Act channels review of INA designations through administrative-decision review provisions. A.R.S. § 45-436, A.R.S. § 12-902. This framework applies a record and substantial-evidence standard. The reviewing court examines whether ADWR's decision is supported by substantial evidence in the administrative record.

APA rule challenges proceed differently. Challenges to rules typically proceed through declaratory-judgment actions or other mechanisms that do not necessarily apply the substantial-evidence standard. The framework for

challenging rules differs from the framework for challenging administrative decisions.

The Legislature's choice to channel INA designation review through administrative-decision review, rather than through the procedures applicable to APA rules, signals that the Legislature did not intend INA designation to be treated as APA rulemaking. If the Legislature had intended INA designation to be subject to APA rulemaking, it would have been natural to provide for APA-style rule challenges. The Legislature's selection of a different review framework indicates a different regulatory scheme.

F. Application to San Simon: Harm from Delay

If APA rulemaking is required, the Department cannot timely act on pending INA petitions, including the San Simon Valley Subbasin petition. The resulting delay worsens groundwater drawdown, increases pumping costs, and accelerates subsidence for groundwater-dependent agriculture. The interim acreage limitation's purpose, to slow depletion while long-term management plans are developed, is defeated by delay. Amici curiae will suffer direct harm from the extended timeline that APA rulemaking imposes.

The Legislature recognized groundwater as a critical public resource and granted the Legislature broad authority to regulate it in the public interest. *Davis v. Agua Sierra Res., Ltd. Liab. Co.*, 220 Ariz. 108, 112, 203 P.3d 506, 510 (2009).

The Groundwater Management Act's purpose is to protect the state's economy and welfare and to provide a framework for comprehensive groundwater management. *Yavapai-Apache Nation v. Fabritz-Whitney*, 227 Ariz. at 503, 260 P.3d at 303 (Ct. App. 2011). Requiring APA rulemaking for INA designations would frustrate this purpose by delaying critical groundwater protection measures and allowing continued unregulated pumping during extended rulemaking proceedings.

CONCLUSION

For the foregoing reasons, amici curiae respectfully submits that this Court should:

1. Accept special action jurisdiction over ADWR's Petition for Special Action;
2. Reverse the Maricopa County Superior Court's decision holding that INA designations constitute rules subject to the APA's rulemaking procedures;
3. Hold that INA designations are not rules under the APA because they are not generally applicable and do not implement, interpret, or prescribe law or policy; and
4. Remand the matter to the Superior Court for further proceedings consistent with this Court's opinion.

* * *

Respectfully submitted this 10th of June 2026,

/s/Matthew L. Rojas
Matthew L. Rojas (025030)
mrojas@culpkelly.law
CULP & KELLY LLP
909 W. Fillmore St.
Phoenix, AZ 85007

*Attorneys for Amici Curiae
Cal Allred, Mark Cook, Environmental
Defense Fund*