STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

THE CENTER FOR BIOLOGICAL DIVERSITY.

Plaintiffs,

vs. **Civil Action No.**

OFFICE OF THE STATE ENGINEER and STATE ENGINEER ELIZABETH ANDERSON in her official capacity.

Defendants.

SANTA TERESA CAPITAL, LLC.

Real Party in Interest.

COMPLAINT TO ENFORCE THE NEW MEXICO CONSTITUTION AND WATER CODE AND FOR DECLARATORY AND INJUNCTIVE RELIEF TO STOP ILLEGAL TRANSFER OF WATER TO PROJECT JUPITER.

Plaintiffs, through undersigned counsel, bring this action for declaratory and injunctive relief, pursuant to N.M. Const. art. XVI, §§ 2 and 3; N.M. Const. art. III, § 1; N.M. Const. art. II, § 18; N.M. Const, art. VI, § 13 the New Mexico Water Code, NMSA 1978, §§ 72-1-1—72-20-103 (1978); the New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 – 44-6-15 (1975) and the Court's inherent power in equity.

Plaintiffs seek a declaratory judgment that Defendants are out of compliance with their duty to manage water according to beneficial use under N.M. const. art. XVI, §§ 2-3, NMSA 1978, §§ 72-1-2 (1907), 72-12-2 (1931), and 72-12-8 (1985), as applied to the LRG-03150-E water right, which is overly broad and speculative; Defendants exceeded the bounds of their statutory authority by issuing an emergency authorization under NMSA 1978, § 72-12-22 (1959) for a change in well location that in fact also allowed a change in water use; Defendants exceeded the bounds of their statutory authority by issuing an emergency authorization under NMSA 1978, § 72-12-22 when no emergency circumstances existed; Defendants are out of compliance with their duty to apply the due process procedures required by NMSA 1978, §§ 72-12-7, 72-12-3 (1985), and N.M. Const. art. II, § 18 before allowing a change in water use; and Defendants are out of compliance with their duty to uphold separation of powers principles under N.M. const. art. III, § 1.

In addition, Plaintiffs seek an order enjoining Defendants to bring the LRG-03150-E water right into compliance with the requirements of the Constitution and the Water Code, and enjoining Real Party in Interest Santa Teresa Capital, LLC from further diversion of water under the LRG-03150-E water right for the construction of the Project Jupiter data center, and any other novel use, until Defendants have come into compliance with all constitutional and statutory requirements.

INTRODUCTION

1. This case concerns issues of great public importance—currently, the executive branch is flouting constitutional obligation and legislative authority, giving away hundreds of millions of gallons of New Mexico's precious freshwater resources in violation of the state's beneficial use requirement, separation of powers principles, and due process guarantees.

2. The Office of the State Engineer ("OSE") has granted an emergency authorization to a private corporation, Santa Teresa Capital ("STC"), for a new use of New Mexico's scarce freshwater resources to build a gas-powered, hyperscale data center in southern New Mexico known as "Project Jupiter."

3. Through this emergency authorization, OSE is allowing water that has been used for one specific purpose and in one specific place for over 40 years— to irrigate one sod farm—to instead be used in a different location, for a different purpose, and at previously unused rates, violating the beneficial use requirement enshrined in the New Mexico Constitution, art. XVI, §§ 2-3, as well as the laws of the state, NMSA 1978, §§ 72-1-2, 72-12-2, and 72-12-8.

4. Further, OSE issued the emergency authorization for STC to change its well location under NMSA 1978, § 72-12-22. However, because the authorization also allowed STC to change a water use, and because no emergency existed, application of NMSA 1978, § 72-12-22 was improper; application of NMSA 1978, § 72-12-7 was required. OSE's actions thus violate the bounds of NMSA 1978, § 72-12-22, deny New Mexicans the due process guaranteed NMSA 1978, §§ 72-12-7 and 72-12-3, as well as article II, § 18 of the New Mexico Constitution, and ultimately usurp legislative authority in violation of article III, § 1 of the New Mexico Constitution.

5. While an administrative proceeding is pending on the change in well location requested in STC's October 2025 application, that proceeding will not settle questions surrounding the unlawful and unconstitutional nature of Defendants' actions, nor will it secure the relief requested by Plaintiff: to revise an unlawfully broad and speculative water right and to stop the unlawful new use of water for Project Jupiter's construction unless and until all of OSE's legal duties are met.

6. OSE has unlawfully bypassed constitutional and statutory protections and is giving away hundreds of millions of gallons of precious freshwater resources in drought-stricken southern New Mexico.

7. Defendants' actions harm Plaintiff, New Mexico's water conservation efforts, and the public welfare of the state. Defendants also violate foundational separation of powers requirements by acting beyond the boundaries of their constitutional and statutory authority. Plaintiff seeks declaratory and injunctive relief to stop OSE's harmful violation of its constitutional and statutory duties and the resulting unlawful diversion of water.

PARTIES

I. Plaintiff

8. Plaintiff Center for Biological Diversity ("the Center") is a national nonprofit environmental organization that works through science, law, and policy to protect the lands, water, air, and climate that all living species need to survive. The Center is incorporated in California and headquartered in Tucson, Arizona. The Center has more than 130,000 members, including more than 1,900 members in New Mexico, and maintains offices across the United States, including in New Mexico.

9. The Center and its members include individuals with scientific, professional, educational, recreational, aesthetic, moral, and spiritual interests in the conservation of our environment, water and wildlife.

10. The Center and its members are harmed by OSE's violation of basic constitutional requirements concerning the beneficial use of water, separation of powers, and due process. Article XVI, section 3 of the New Mexico Constitution demands that beneficial use be the measure of all water rights. The beneficial use requirement pre-dates the New Mexican state and is designed to ensure that the people of New Mexico in this water-scarce region have access only to the water they require for immediate, pressing needs—not to an excess of water to hoard for future economic enrichment. Here, OSE has flouted these protections and allowed STC to profit from just the type of speculation and hoarding that the Constitution seeks to prevent.

11. Further, OSE has wrongly applied New Mexico water law and issued an emergency authorization for a change of well location that also allowed a change in water use. OSE did so without the required due process for a change in water use, in contravention of mandatory statutory duties outlined by the Legislature, as well as due process protections enshrined in our Constitution. In doing so, the executive branch has violated separation of powers principles, denied Center members of the right to participate in the decision making process *before* water is diverted to a new use, and ultimately, rubber stamped an unlawful diversion that results in the Center's New Mexico members having to live in a state with less and less fresh water—a resource that is precious to all New Mexicans. Consequently, this matter of great public importance harms the Center and its members.

12. OSE's actions also harm Plaintiff and New Mexico members who visit and use the habitat of wildlife around and downstream of the area covered by STC's water right for a broad

range of reasons. By unlawfully authorizing the diversion of massive quantities of water for a new use, OSE adversely impacts at-risk species in the area. Plaintiff's members, in turn, suffer diminished opportunities to study and enjoy these species in their current habitats.

13. The interests that the Center for Biological Diversity seeks to protect through this lawsuit are germane to its mission, goals, and purposes.

14. The Center and its members have suffered concrete, actual and imminent injuries that are fairly traceable to Defendants' failure to fulfill their duties under the New Mexico Constitution and Water Code. These harms are likely to be redressed by a favorable court decision in which the Defendants are ordered to come into compliance with the New Mexico Constitution and Water Code.

II. Defendants

15. Defendants Office of the State Engineer ("OSE") and Elizabeth Anderson in her official capacity have authority over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico.

III. Real Party in Interest

16. Real Party in Interest Santa Teresa Capital, LLC ("STC") submitted the permit application to change the point of diversion for water right LRG-03150-E to support the new use of providing water to the Project Jupiter data center under construction in Doña Ana County.

JURISDICTION AND VENUE

17. This Court has jurisdiction of the subject matter of this action pursuant to the New Mexico Constitution, art. VI, § 13, NMSA 1978 § 44-6-2 (1975), NMSA 1978 § 44-6-9 (1975), and NMSA 1978 § 44-6-13 (1975).

18. Jurisdiction is also proper in this court pursuant to NMSA 1978 §38-3-1.1 (1998),

because Plaintiffs seek a declaratory judgment and further relief regarding the actions of the executive branch of the State of New Mexico.

19. Venue is proper in Santa Fe County pursuant to NMSA 1978 § 38-3-l(G) (1998) because Defendants are located in Santa Fe County.

STATEMENT OF FACTS

I. OSE has authorized hundreds of millions of gallons of water use in violation of its constitutional and statutory duties.

a. OSE has unlawfully permitted hundreds of millions of gallons of water to be pumped from STC's water holdings to support a new use, the construction of the Project Jupiter data center.

20. Construction of Project Jupiter, a hyperscale gas-powered data center, began in Doña Ana County, New Mexico in September 2025.

21. On October 21, 2025, STC submitted an application to OSE for emergency authorization to drill a replacement well.

22. The application was filed under water right LRG-03150-E, an overly broad and speculative water right that allows for use of 2,400 acre-feet of water per annum for commercial, industrial, irrigation, municipal, and recreational purposes over an area of approximately 30,000 acres.

23. The application stated: "1. The *existing well LRG-3150 POD 36* (fka LRG-3150 S9) *has historically been used for commercial purposes to irrigate a commercial sod farm, together with* LRG 3150 S-2: S-8 (kna LRG-3 150 POD 42); S-13 (kna LRG-3150 POD 49); S28 (kna *LRG-3150 POD 45*); *and S-17* (kna S-17 Repl.)."[1]

[1] STC Application, Oct. 21, 2025 (emphasis added).

24. The application further stated: "2. Production from Well LRG-3150 POD 36 has declined drastically and was recently taken out of service due to well screen and casing failure."

25. The application further stated: "3. Wells LRG-3150 S-2 and LRO3150 POD 42 have also failed and are currently out of service and beyond repair."[2]

26. The application further stated: "4. *The remaining, functional Wells LRG-3150 S-17 Repl. and LRG-3150 POD 45 are currently being used for commercial purposes to irrigate a commercial sod farm and to provide construction water for a large-scale industrial project*; the *water requirement combined tor these two uses* cannot be sufficiently supplied from these two remaining, functional wells." [3]

27. The application further stated: "5. Without replacing Well LRG-3150 POD 36, the commercial sod farm will suffer serious economic loss due to reduced or eliminate turf production at the only commercial sod production facility in the region. This would materially hurt regional parks and recreation facilities in Doña Ana and El Paso counties and in the cities of Las Cruces and El Paso, including at football, soccer, and baseball fields; and at public and private golf courses."[4]

28. Finally, the application stated: "6. Without replacing Well LRG-3150 POD 36, *the largescale industrial project (which is a priority project for the State of New Mexico and Doña Ana County), will suffer serious economic* loss due to delayed construction schedule and related impacts."[5]

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[2] *Id.*
[3] *Id.* (emphasis added).
[4] *Id.*
[5] *Id.* (emphasis added).

29. On October 23, 2025, OSE responded to the application, issuing an unlawful emergency authorization for the drilling and use of well LRG-3150-POD 50 under NMSA 1978, § 72-12-22.

30. The authorization stated: "An emergency situation exists in which delays caused by publication and hearing may result in economic loss."[6]

31. The authorization further stated: "Preliminary investigation indicates that the replacement well will not result in depleting the Rio Grande greater than effects *incurred historically by the original well*."[7]

32. The authorization further stated: "Preliminary investigation indicates that the replacement well will not result in the impairment to other wells of other ownership in the area greater than effects *incurred historically by the original well*."[8]

33. The authorization further stated: "The appropriation of water from replacement well LRG-03150-POD 50 shall be from the same underground source or stream as the original well and shall be limited to the same amount of water, place and purpose of use *allowed by the water rights from the original well* as permitted previously."[9] This authorized STC to divert their entire water right—up to 2,400 acre-feet of water per annum—for any commercial, industrial, irrigation, municipal, or recreational purpose over an area of approximately 30,000 acres. This included the diversion of water to the construction of Project Jupiter.

34. The emergency authorization did not compare the actual historic amount, place or purpose of use of water from the original well—or from water right LRG-03150-E as a whole—to the amount of water, place and purpose of use allowed on paper by the original water right.

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[6] OSE Emergency Authorization, Oct. 23, 2025 (emphasis added).
[7] *Id.* (emphasis added).
[8] *Id.* (emphasis added).
[9] *Id.* (emphasis added).

This omission included a failure to address the explicit change of use described in the application for all remaining active wells under the water right—from irrigation of a sod farm to irrigation of a sod farm *and* provision of construction water for the Project Jupiter data center.

35. Following the emergency authorization, LRG-3150 POD 36 ("POD 36"), the original well in need of "emergency" replacement, continued to pump water far in excess of historic use rates.

36. Publicly available OSE data demonstrates that over the previous fifteen years, POD 36 pumped an average of approximately 211 acre-feet per year, or approximately 19 acre-feet per month.

37. Publicly available OSE data demonstrates that between November 2025 and April 2026—after the emergency authorization was issued and before the replacement well came online— POD 36 pumped over 185 acre-feet (60,282,514 gallons) of water, averaging 37 acre-feet (12,056,503 gallons) per month. This represents nearly double the average historic use rate.

38. While POD 36 was pumping vast amounts of water, the replacement well, LRG-3150 POD 50 ("POD 50"), was drilled.

39. POD 50 came into operation on April 14, 2026.

40. Since coming online, POD 50 has pumped increasingly large amounts of water as compared to historic use rates.

41. In just six months, from April to September 2026, POD 50 pumped over 400 acre-feet (approximately 130,340,571 gallons) of freshwater resources, averaging approximately 66.75 acre-feet, or 21,750,582 gallons of freshwater resources, per month. This represents approximately four-times the average historic use rate and an increase of about 47.75 acre-feet, or 15,559,405 gallons, of water per month compared to average historic use.

42. Increased pumping from POD 36 and POD 50 is consistent with an increase in overall diversion of water under STC's LRG-03150-E water right since construction of Project Jupiter began and the unlawful emergency authorization was issued.

43. Publicly available OSE data demonstrates between September 2025, when the construction of Project Jupiter began, and October 2026, over 1,952 acre-feet (636,061,988 gallons) of freshwater resources were diverted under the LRG-03150-E water right. 1,850 acre-feet have been diverted since the unlawful emergency authorization was issued. This is significantly more water than has been diverted under the LRG-03150-E right in any year since 2019.

44. In total, between September 2025, when construction on Project Jupiter began, and October 2026, OSE reports that Project Jupiter's construction has diverted a total of 600 acre-feet (195,510,857 gallons) of New Mexico's freshwater resources from the LRG-03150-E water right.[10] This comprises nearly one-third of all water diverted under the right during that time period.

45. Defendants are thus unlawfully allowing STC to divert hundreds of millions of gallons of New Mexico's precious freshwater resources to support the construction of the Project Jupiter data center.

b. OSE's actions violate the beneficial use requirement of the New Mexico Constitution and Water Code.

i. <u>OSE is allowing an unconstitutionally broad and speculative water right to form the basis of an unlawful diversion.</u>

[10] Testimony of Nathanial Chakeres to Courts, Corrections and Justice Interim Committee Mtg., Oct. 6, 2026, 11:03 AM

46. The New Mexico Constitution provides that "[t]he unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to *belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state.*" N.M. Const. art. XVI, § 2 (emphasis added).

47. The New Mexico Constitution further provides that "beneficial use [is] the basis, the measure and *the limit of the right to use water*." N.M. Const. art. XVI, § 3 (emphasis added).

48. The Water Code also enshrines the language of N.M. Const. art. XVI, § 3 in statute. NMSA 1978, § 72-1-2 applies the beneficial use requirement to water rights in general and NMSA 1978, § 72-12-2 applies the requirement to the use of underground waters.

49. To enforce the beneficial use requirement as applied to the use of underground waters, NMSA 1978, § 72-12-8(A) provides that water shall be forfeited "when for a period of four years the owner of a water right in any of the waters…or the holder of a permit from the state engineer to appropriate any such waters has failed to apply them." Forfeiture procedures are initiated by OSE.

50. The beneficial use requirement is designed to prevent speculation and hoarding, that is, "to protect the publicly-owned waters of the state from being tied up and hoarded for the future enrichment of private speculators, rather than remaining available for beneficial use to meet the public's immediate pressing needs."[11]

51. OSE has articulated in detail the relationship between beneficial use, anti-speculation, and anti-hoarding, and the test required to satisfy these principles: "As an arid state, New Mexico forbids appropriations that exceed the amount necessary to supply the intended beneficial use.

[11] *Augustine Plains Ranch v. N.M. State Engineer*, 2023-NMCA-001, OSE Appellate Answer Brief, p. 9.

Therefore, the anti-speculation doctrine in New Mexico requires that an application to appropriate water contain specific information regarding the purpose of use (reflecting an immediate need for the water), place of use, and the amount of water needed for the beneficial use. An applicant seeking a new appropriation must demonstrate a present intent to put a specific quantity of water to a specified beneficial use to address an imperative need for the water at a particular location. When the applicant does not intend to place the water to beneficial use itself, the end user's intent to place the appropriated water to beneficial use must be clearly established to avoid running afoul of the anti-speculation doctrine."[12]

52. OSE has further clarified: "[T]he proper test for determining whether an application is speculative can be articulated as follows: The applicant must demonstrate an intent to place the entire amount of water it seeks to appropriate to beneficial use and specify the non-speculative need (purpose of use) and the particular place(s) of use where the entire amount of water will be used. If the applicant is not the end user or the end user's agent, the applicant needs to show that the end user will place the water to use. In certain instances, the end user's intent may be established from the precise amount of the appropriation sought to meet the specific purpose of use in a particular area. In most instances, the fundamental inquiry is whether the proposed end user has the requisite intent to place the water to use. This is typically shown through evidence of firm commitments by end users." [13]

53. Water right LRG-03150-E—the underlying right on which OSE's October 2025 emergency authorization was based—violates the beneficial use, anti-speculation and anti-hoarding requirements of the New Mexico Constitution and Water Code.

[12] *Id.* at 9-10 (internal citations omitted).
[13] *Id.* at 14-15 (internal citations omitted).

54. LRG-03150-E is a subdivision of LRG-03150. LRG-03150 was granted to C.L. Crowder Investment Company ("Crowder") in 1981.

55. The right authorized Crowder to divert a massive 110,712.85 acre-feet (36,075,940,334 gallons) of freshwater resources per annum for a broad spectrum of water uses—residential, commercial, recreational, and industrial—to support the anticipated development of the Santa Teresa Project and off-project activities over a 29,468-acre area.[14]

56. The company's claims were based largely on speculation, providing little evidence of firm commitments by end users.

57. One of the few end-user agreements specified in the original right was a 1978 lease with A.G. Sod Company to provide water for a commercial sod farming operation. At the time, Crowder considered the lease temporary and planned for it to be "phased out once the development occurs on the acreage being utilized by them."[15]

58. However, the Santa Teresa area did not develop as Crowder intended, and the water was not put to beneficial use. As of 1990, only about 8,000 acre-feet of water was diverted under the LRG-03150 right.

59. In 1996, Crowder declared bankruptcy, which began a subdivision of the LRG-03150 right. LRG-03150-E was formally created in 2005.

[14] LRG-03150 is remarkably similar to the right which OSE is currently fighting against as illegally broad and speculative in the case of *Augustine Plains Ranch v. N.M. State Engineer*, 2023-NMCA-001.

[15] Statement to OSE by C.L. Crowder Investment Company (July 9, 1982).

60. A statement accompanying the 2005 Change of Ownership for LRG-03150-E stated that all 2,500 acre-feet per annum contained in the right were under lease to Gardner Turfgrass, Inc. pursuant to the "A.G. Turf Farms Lease."[16]

61. Based upon a record of firm end-user commitments (i.e., the A.G. Turf Farms Lease), the water in question had been used for one purpose in one place for nearly thirty years: to irrigate one turf farm over few hundred acres.

62. LRG-03150-E was then subdivided for the express purpose of continuing this single beneficial use.[17]

63. Despite such a clear history and intent of use, however, LRG-03150-E carried over the original, overly broad terms of LRG-03150, permitting municipal, industrial, irrigation, and commercial use—and also inexplicably adding a novel recreational use—over approximately 30,000 acres.

64. These terms—entirely divorced from history and intended purpose of use—violate beneficial use and anti-speculation requirements enshrined in article XVI, § 2-3 of the New Mexico Constitution and NMSA 1978, §§ 72-1-2 and 72-12-2.

ii. <u>OSE has rubber-stamped the terms of LRG-03150-E to permit a diversion of water inconsistent with historic purpose, place, and amount of use, in violation of beneficial use, anti-speculation, and anti-hoarding requirements.</u>

65. Since 2005, the narrow use of LRG-03150-E—to irrigate one turf farm—has continued.

[16] Change of Ownership of a Water Right, LRG-03150 et al., Additional Statement/Explanation (2005).
[17] *See* Application for Permit to Combine and Commingle Underground Water LRG-03150-E and LRG-04064, Exhibit D (July 1, 2009).

66. For years, this use has persisted at levels below 2,400 acre-feet. Publicly available OSE data demonstrates that since 2015, between 553 and 2089 acre-feet have been diverted under LRG-03150-E. More than 2,000 acre-feet have only been diverted in two of the last ten years.

67. Publicly available OSE data demonstrates that in the six years preceding the emergency authorization, since STC took ownership of the LRG-03150-E right, STC has not used anywhere near the 2,400 acre-feet allotted under the right, often using less than half of this amount. In 2019, STC used 2,089 acre-feet; in 2020, STC used 810 acre-feet; in 2021, STC used 1,613 acre-feet, in 2022, STC used 1,123 acre-feet; in 2023, STC used 1,681 acre-feet; in 2024, STC used 553 acre-feet; and in 2025, STC used 1,142 acre-feet.

68. Upon receipt of STC's emergency authorization request, OSE did not ensure that the terms of the request were consistent with STC's historic beneficial use of water.

69. Instead, despite a decades-long single purpose and place of use (to irrigate one sod farm over a few hundred acres) and a years-long quantity of use of less than 2,400 acre-feet, OSE rubber stamped the impermissibly broad and speculative terms of the underlying water right and permitting STC to divert up to 2,400 acre-feet of water for any commercial, irrigation, industrial, municipal or recreational purpose over approximately 30,000 acres of land.

70. OSE's actions are contrary to the requirements of beneficial use, anti-speculation and anti-hoarding, and violate article XVI, § 3 of the New Mexico Constitution, as well as NMSA 1978, §§ 72-1-2, 72-12-2 and 72-12-8.

c. OSE's actions misapply the Water Code, deny required due process, and violate separation of powers principles under the New Mexico Constitution.

i. <u>As STC's sale of water to Project Jupiter constitutes a change in water use, OSE is required to apply NMSA 1978, § 72-12-7; OSE's application of NMSA 1978, § 72-12-22 is unlawful.</u>

71. Through NMSA 1978, § 72-12-22, the Legislature provides a narrow basis for the State Engineer to approve a change in well location before meeting all due process requirements under NMSA 1978, § 72-12-7, and by extension, NMSA 1978, § 72-12-3.

72. NMSA 1978, § 72-12-22 does *not* authorize a change in use prior to notice and hearing, only the drilling of a replacement well in a new location.

73. Under the requirements of beneficial use and anti-hoarding, the only current legal use of the of the water under STC's water right is to continue to irrigate the turf farm at historic use levels.

74. STC's October 2025 request for emergency authorization to drill a new well represents clear and specific intent to use the water for a novel purpose—namely, the construction of Project Jupiter.

75. However, OSE did not treat this request as what it was: a request for a change in water use, triggering NMSA 1978, § 72-12-7.

76. Defendant State Engineer Elizabeth Anderson further confirmed this change in use, stating, "What's happening with Project Jupiter is they're just taking a water right that exists, and using it for something else, having a data center."[18]

77. Changes in use are significant, as they may result in different consumptive use rates of water, even if the metered diversion of water remain the same. *See* 19.27.5.7(E) NMAC.

78. Through NMSA 1978, § 72-12-7, the Legislature instructs that changes in water use "may be granted only after such advertisement and hearing as are prescribed in the case of

[18] John Burnett, *Worries Over Water as a Giant Data Center Movies into the N.M. Desert*, National Public Radio (June 14, 2026), https://www.npr.org/2026/06/12/nx-s1-5786551/worries-over-water-as-a-giant-data-center-moves-into-the-new-mexico-desert.

original applications." The advertising and hearing requirements for original applications are detailed in NMSA 1978, § 72-12-3.

79. NMSA 1978, § 72-12-7 and NMSA 1978, § 72-12-3 dictate that water may only be diverted to a change in use *after* thorough due process procedures are followed, *not* before.[19]

80. NMSA 1978, § 72-12-7 and NMSA 1978, § 72-12-3 specifically require that OSE provide public notice of an application, NMSA 1978, § 72-12-3(D); examine whether a change in water use will interfere with existing water rights, the conservation of water in New Mexico, or the public welfare, NMSA 1978, § 72-12-3(E); and either deny the application outright or provide public notice and a hearing if any are protests are filed to the change in use, NMSA 1978, § 72-12-3(F).

81. Instead of following the procedures proscribed under NMSA 1978, §§ 72-12-7 and 72-12-3 to STC's application indicating a change of water use, OSE applied NMSA 1978, § 72-12-22, the statutory provision governing emergency authorizations.

82. By failing to apply NMSA 1978, §§ 72-12-7 and 72-12-3 to STC's application, Defendants have acted beyond the bounds of their statutory authority and abrogated the non-discretionary duty prescribed by the Legislature to provide New Mexicans with due process *before* allowing a change in water use.

[19] OSE recently followed this procedure regarding the LRG-03150-E water right when STC applied for a change in purpose and place of use in 2019. STC's application sought to establish mining as a new commercial and industrial use under LRG-03150-E. OSE issued notice and engaged in a hearing process before ultimately denying STC's application, all before any water was diverted to the new proposed use. This fulsome procedure stands in contrast to the lack of procedure applied here.

83. Defendants' actions violate separation of powers principles enshrined in article III, § 1 of the New Mexico Constitution, as well as due process procedures guaranteed by the New Mexico Water Code and article II, § 18 of the New Mexico Constitution.

84. Defendants' actions harm Plaintiff, eroding the essential, three-branch nature of government on which Plaintiff and its New Mexico members rely, and denying Plaintiff and its New Mexico members their rightful opportunity to be heard *before* water is diverted to a new use that may interfere with existing water rights, the conservation of water in New Mexico, or the public welfare.

ii. <u>As no emergency existed, OSE is required to apply NMSA 1978, § 72-12-7; OSE's application of NMSA 1978, § 72-12-22 is unlawful.</u>

85. NMSA 1978, § 72-12-22 provides a mechanism to prevent economic loss, such as crop loss, when a well failure prevents a water right holder from using water in the manner that they have historically used it, such as irrigation.

86. STC's application for emergency authorization did not seek to preserve historic water use—the irrigation of a sod farm—but rather to enlarge water diversion for a new use—the construction of Project Jupiter.

87. Publicly available OSE data demonstrates that upon STC's request for emergency authorization, POD 36 was capable of pumping more than enough water to continue to irrigate the sod farm, and that POD 50 was not required on an emergency basis for this purpose.

88. As stated above, OSE-recorded meter readings for POD 36 demonstrate that between November 2025 and April 2026—after the emergency authorization was granted and before the well was taken offline—the well pumped over 185 acre-feet of water. This represents significantly more water than the well had pumped in seven of the last ten years, over a period of just six months.

89. OSE-recorded meter readings for POD 36 affirms that the new well was not urgently required to continue the historic use of the water right, but rather to pump greater quantities of water for a new use.

90. The diversion of water for the construction of Project Jupiter is outside the scope of emergency contemplated by NMSA 1978, § 72-12-22. The emergency is not related to a prior existing use of STC's water right, but rather to a new customer that STC wishes to sell water to for a new use.

91. As no emergency existed, OSE is required to apply NMSA 1978, § 72-12-7, and by extension NMSA 1978, § 72-12-3, to authorize a change in well location.

92. OSE's use of NMSA 1978, § 72-12-22 to authorize a change in well location under non-emergency circumstances expands the statute beyond all meaning and enlarges executive power beyond the bounds established by law.

93. By exceeding its statutory authority under NMSA 1978, § 72-12-22, OSE harms Plaintiff, eroding the essential nature of state government guaranteed to Plaintiff and its members by article III, § 1 of the New Mexico Constitution—a government in which the three distinct departments legislative, executive, and judicial, remain within the bounds of their constitutional powers.

II. OSE's actions harm Plaintiff, the conservation of water, and the public welfare.

a. OSE's actions threaten the conservation of water in New Mexico.

94. For the past two decades, New Mexico has experienced the most severe regional megadrought of the past 1,200 years.

95. The water crisis has been so prolonged and severe that it is no longer just a drought, but rather a state of aridification — the gradual shift from a wetter to a drier climate.

96. As climate change intensifies, snowpack, runoff, and aquifer recharge will continue to decline, reducing New Mexico's groundwater and surface water supplies, while hotter temperatures, increasing aridity, and rising evaporation will increase the state's water needs.

97. In the headwaters of the Rio Grande, reduced snowpack has already decreased water levels by more than 20%.

98. Over the next 50 years, flow volume in all of the state's major rivers, including the Rio Grande, is projected to decline between 16% and 28%.

99. New Mexico projects that 25% less water will be available in 50 years, risking severe water shortfalls, and prompting the state to institute a water conservation action plan due to increasing water insecurity.

100. In this climate, the conservation of water is imperative to the survival of New Mexicans and all living species in New Mexico.

101. Groundwater pumping from Rio Grande tributary aquifers—as done by STC under LRG-03150-E—is legally recognized to deplete river flows and is antithetical to the conservation of water. The more water that is pumped, the greater the depletion, and the greater the harm to conservation.

102. Over the past six years, STC had not used anywhere near the 2,400 acre-feet allotted under the LRG-03150-E right, often using less than half of this amount.

103. OSE has rubber-stamped the terms of an unconstitutionally broad and speculative water right, authorizing STC to pump up to 2,400 acre-feet of water—above and beyond STC's historic beneficial use.

104. Changes in water use may result in different consumptive use rate—even if the same amount of water is diverted, a different use may result in more water being wasted. *See* 19.27.5.7(E) NMAC.

105. The due process procedures required to process a change in water use under NMSA 1978, §§ 72-12-7 and 72-12-3 require that OSE analyze whether a change in water use will harm the conversation of water in New Mexico prior to allowing any such change.

106. OSE has not performed this required analysis, but rather but rather has allowed a change in water use, for STC to supply water to the construction of the Project Jupiter data center, without due process.

107. Hundreds of millions of gallons of water have already been pumped to construct Project Jupiter, even as the power plant required to run the data center remains without a legally required air permit from the New Mexico Environment Department. With the viability of the data center uncertain, the hundreds of millions of gallons that have—and will continue to be—pumped to construct Project Jupiter may be wasted with no beneficial use.

108. By rubber-stamping the terms of an unconstitutionally broad and speculative water right without regard to historic beneficial use and allowing a change in water use without required due process, OSE threatens the conservation of water in New Mexico and harms Plaintiff.

b. OSE's actions interfere with New Mexico's obligations under the Rio Grande Compact and Settlement Agreement.

109. The "public welfare," as used in New Mexico water law, includes "certain core concepts that must be followed[,]" including "state obligations under interstate compacts[.]"[20]

[20] Testimony of Nathanial Chakeres to N.M. Interstate Stream Commission, p. 6 (Oct. 1, 2025).

See 19.25.16.14(C) NMAC. These compacts include the Rio Grande Compact and Groundwater Settlement Agreement, which apportions the Rio Grande's surface water between Colorado, Texas, and New Mexico.

110. The Settlement places an enormous burden on the State of New Mexico and its taxpayers.

111. New Mexico's requirements include decreasing total groundwater pumping in Doña Ana County by 18,200 acre-feet within ten years.

112. This demand comes at a time when water scarcity in the Rio Grande basins is dire. As surface waters have disappeared, the region has increasingly relied on groundwater pumping to meet its needs.

113. Over the past six years, STC had not used anywhere near the 2,400 acre-feet allotted under the LRG-03150-E right, often using less than half of this amount.

114. OSE has rubber-stamped the terms of an unconstitutionally broad and speculative water right, authorizing STC to pump up to 2,400 acre-feet of water—above and beyond historic levels of beneficial use.

115. OSE's actions thus contribute to increased depletions from the Lower Rio Grande at a time when New Mexico is legally required to reduce depletions.

116. The due process procedures required to authorize a change in water use under NMSA 1978, §§ 72-12-7 and 72-12-3 mandate that OSE analyze whether a change in water use will harm the public welfare.

117. OSE has not performed this required analysis, but rather has allowed a change in water use for STC to supply water to the construction of the Project Jupiter data center without due process.

118. By rubber-stamping the terms of an unconstitutionally broad and speculative water right and allowing a change in water use without required due process, OSE interferes with New Mexico's obligations under the Rio Grande Compact, harming the public welfare, and by extension, Plaintiff.

c. OSE's actions diminish Plaintiff's enjoyment of threatened species.

119. Plaintiff's New Mexico members visit and use the habitat of diverse wildlife around and downstream of the area covered by the LRG-03150-E water right for a broad range of reasons.

120. The New Mexico Environmental Review Tool, administered by the New Mexico Department of Game and Fish, anticipates that the area within 2000 meters of the Project Jupiter construction site contains at least 17 animal species designated by Department of Game and Fish to be Species of Greatest Conservation Need. This includes multiple species designated as Threatened under New Mexico's Wildlife Conservation Act, such as the Peregrine Falcon and the Bell's Vireo; multiple species designated as Sensitive by the Bureau of Land Management and U.S. Fish and Wildlife Service, such as the Western Burrowing Owl and the Spotted Bat; and multiple species under watch regarding a potential Sensitive designation by the Bureau of Land Management, including the Black-Chinned Sparrow and the Black-Throated Gray Warbler.

121. This area has also been identified as an important Plant Area by the New Mexico Rare Plant Conservation Strategy and is likely home to the Sand Prickly-Pear, which New Mexico has listed as Endangered.

122. By allowing the diversion of massive quantities of water for a new use, OSE's actions threaten the conservation of water and adversely impacts at-risk species in the area. This,

in turn, harms Plaintiff's New Mexico members, who suffer diminished opportunities to study and enjoy these species in their current habitats.

III. An injunction is required to prevent hundreds of millions of additional gallons of unlawful water use.

123. Under the terms of the LRG-03150-E water right and OSE's October 2025 emergency authorization, STC is currently permitted to divert up to 2,400 acre-feet of water for any commercial, irrigation, industrial, municipal or recreational purpose over approximately 30,000 acres of land without any regard to historic beneficial use or appropriate due process.

124. OSE estimates Project Jupiter's construction will use 750 acre-feet (244,388,571 gallons) in total.[21] This means a minimum of 150 acre-feet (48,877,714 gallons) will still be pumped from STC's water holdings for construction purposes.

125. OSE also estimates that Project Jupiter will require 30 acre-feet (9,775,542 gallons) to fill the data center cooling system,[22] 3-5 acre-feet (977,554 to 1,629,257 gallons) to fill the data center fuel cells,[23] and some additional amount of water to refill these systems on a continuous basis.

126. An injunction is required to prevent the unlawful diversion of hundreds of millions of additional gallons under the LRG-03150-E water right, including the diversion of at least 60,000,000 gallons of water for Project Jupiter.

CAUSES OF ACTION

COUNT 1

[21] Presentation by OSE General Counsel to Courts, Corrections and Justice Committee, Oct. 6, 2026, 11:03 AM.
[22] *Id.* at 11:08 AM.
[23] *Id.* at 11:09 AM.

Failure to uphold the beneficial use requirement and prevent speculation and hoarding under N.M. const. art. XVI, §§ 2-3, NMSA 1978, §§ 72-1-2, 72-12-2, and 72-12-8.

i. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.

ii. The New Mexico Constitution provides that "[t]he unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state." N.M. Const. art. XVI, § 2.

ii. The New Mexico Constitution further provides that "beneficial use [is] the basis, the measure and the limit of the right to use water." N.M. Const. art. XVI, § 3.

iii. The beneficial use requirement is designed to prevent speculation and hoarding, that is, "to protect the publicly-owned waters of the state from being tied up and hoarded for the future enrichment of private speculators, rather than remaining available for beneficial use to meet the public's immediate pressing needs."[24]

iv. NMSA 1978, § 72-1-2, applies the constitutional beneficial use requirement to water rights in general.

v. NMSA 1978, § 72-12-2, applies the constitutional beneficial use requirement to the use of underground waters.

vi. NMSA 1978, § 72-12-8 provides a mechanism to prevent hoarding, authorizing OSE to require forfeiture or partial forfeiture of water rights if water is not put to beneficial use within a period of four years.

vii. Defendants have failed to uphold the beneficial use requirement and to prevent speculation and hoarding as related to STC's water right LRG-03150-E.

[24] *Augustine Plains Ranch*, 2023-NMCA-001, OSE Appellate Answer Brief, p. 9.

viii. Defendants have rubber-stamped the terms of an unlawfully broad and speculative water right to permit STC to divert water that has been used for one specific purpose and in one specific place for over 40 years— to irrigate one sod farm—to instead be used in a different location, for a different purpose, and at previously unused rates.

ix. Defendants' failure to uphold the beneficial use requirement and to prevent speculation and hoarding harms Plaintiff by allowing the unlawful diversion of hundreds of millions of gallons of New Mexico's precious and ever-diminishing freshwater resources; interfering with Plaintiff's members' enjoyment of at-risk species in their native habitat; and impairing New Mexico's ability to comply with its obligations under the Rio Grande Compact and Settlement Agreement.

COUNT 2

Violation of statutory authority granted by the Water Code by acting under NMSA 1978, § 72-12-22.

i. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.

ii. NMSA 1978, § 72-12-22 provides a narrow basis for the State Engineer to approve a change in well location before meeting all due process requirements under NMSA 1978, § 72-12-7.

iii. NMSA 1978, § 72-12-22 allows an applicant to drill a replacement well within 100 feet of the well being replaced prior to publication and hearing and prior to a finding by the State Engineer that the new well will be protective of existing water rights, provided that: (1) the well is drilled into the same and only the same underground stream, channel, artesian basin, reservoir or lake as the original well; (2) the appropriation is of the same amount of water allowed by his water right in the original well; (3) an

emergency situation exists in which the delay caused by application, publication and hearing would result in crop loss or other serious economic loss; and (4) s/he files application, or notifies OSE of these facts and the location of the proposed replacement well by registered letter, prior to drilling; provided that s/he shall file application for a permit within thirty days after drilling begins.

iv. NMSA 1978, § 72-12-22 does not permit emergency changes to water use; it only permits drilling an emergency well for the same use.

v. Defendants exceeded the bounds of their statutory authority, applying NMSA 1978, § 72-12-22 when a change in water use was at issue.

vi. Defendants exceeded the bounds of their statutory authority, applying NMSA 1978, § 72-12-22 under non-emergency circumstances.

vii. Defendants' unlawful application of NMSA 1978, § 72-12-22 harms Plaintiff, denying Plaintiff and its New Mexico members their rightful opportunity to be heard and to prevent water use that interferes with existing water rights, the conservation of water in New Mexico, and the public welfare before the water is diverted.

COUNT 3

Failure to provide statutorily required due process under NMSA 1978, §§ 72-12-7, 72-12-3, and N.M. const. art. II, §18.

i. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.

ii. N.M. const. art. II, §18 provides: "No person shall be deprived of life, liberty or property without due process of law[.]"

iii. The New Mexico Water Code provides specific due process protections that must proceed changes in water use.

iv. NMSA 1978, § 72-12-7 governs the changes in water use for underground waters, and dictates that applications for a change in water use "may be granted only after such advertisement and hearing as are prescribed in the case of original applications."

v. NMSA 1978, § 72-12-3 requires that OSE provide public notice of an application; examine whether a change in water use will interfere with existing water rights, the conservation of water in New Mexico, or the public welfare; and either deny the application outright or provide public notice and a hearing if any are protests are filed to the change in use.

vi. Defendants have failed to provide the required due process procedures under NMSA 1978, §§ 72-12-7 and 72-12-3 before allowing a change in water use.

vii. Defendants' failure to apply NMSA 1978, §§ 72-12-7, 72-12-3 and provide required due process protections before allowing a change in water use harms Plaintiff by denying Plaintiff and its New Mexico members their rightful opportunity to be heard and to prevent water use that interferes with existing water rights, the conservation of water in New Mexico, and the public welfare before the water is diverted.

COUNT 4

Failure to uphold separation of powers as required under N.M. Const. art. III, § 1.

i. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.

ii. N.M. Const. art. III, § 1 provides: "[t]he powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no

person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted."

iii. Defendants have failed to uphold separation of powers principles by ignoring their constitutional and statutory duties to govern the right to use water according to its beneficial use under N.M. const. art. XVI, §§ 2-3 and NMSA 1978, §§ 72-1-2, 72-12-2, and 72-12-8.

iv. Defendants have failed to uphold separation of powers principles by ignoring the specific conditions for emergency authorizations prescribed by the Legislature under NMSA § 72-12-22, and using NMSA § 72-12-22 to allow a change in water use when no emergency circumstance existed.

v. Defendants have failed to uphold separation of powers principles by ignoring the clear due process duties prescribed by the Legislature for changes in water use under NMSA 1978, § 72-12-3 and NMSA 1978, § 72-12-7.

x. Defendants' failure to uphold separation of powers principles harms Plaintiff by eroding the essential nature of state government guaranteed to Plaintiff and its members by article III, § 1 of the New Mexico Constitution—a government in which the three distinct departments legislative, executive, and judicial, remain within the bounds of their constitutional powers.

PRAYER FOR RELIEF

Plaintiff respectfully requests the Court to enter a declaratory judgment, pursuant to the New Mexico Declaratory Judgment Act, NMSA 1978 §§ 44-6-1, et seq., to resolve an

actual controversy with respect to their rights, status, and other legal relations concerning Defendants' failure to fulfill their duties under the New Mexico Constitution and Water Code. Plaintiff further requests, pursuant to the Declaratory Judgment Act, NMSA 1978 § 44-6-13, the Court's constitutional power under N.M. Const. art. VI, § 13, and the Court's inherent power in equity, that the Court enter injunctive relief. Specifically, Plaintiff seeks a judgment:

1. Declaring that Defendants are out of compliance with their duty to manage water according to beneficial use under N.M. const. art. XVI, §§ 2-3, NMSA 1978, § 72-1-2, 72-12-2, and NMSA 1978, § 72-12-8, as applied to the LRG-03150-E water right, which is overly broad and speculative;
2. Declaring that Defendants violated the bounds of their statutory authority by issuing an emergency authorization under NMSA 1978, § 72-12-22 for a change in well location that in fact also allowed a change in water use;
3. Declaring that Defendants violated the bounds of their statutory authority by issuing an emergency authorization under NMSA 1978, § 72-12-22 when no emergency circumstances existed;
4. Declaring that Defendants are out of compliance with their duty to apply the due process procedures required by NMSA 1978, §§ 72-12-7, 72-12-3, and N.M. const. art. II, §18 before allowing a change in water use;
5. Declaring that Defendants are out of compliance with their duty to uphold separation of powers principles under N.M. const. art. III, § 1;
6. Enjoining Defendants to amend the LRG-03150-E water right to comply with the requirements of beneficial use, as dictated by N.M. const. art. XVI, §§ 2-3 and NMSA 1978, §§ 72-1-2, 72-12-2, and 72-12-8;

7. Enjoining Real Party in Interest STC from any further diversion of water from the LRG-03150-E water right to the construction of the Project Jupiter data center or any other novel use until Defendant OSE has satisfied all legal duties;
8. Retaining jurisdiction to ensure that the Defendants promptly and fully comply with the remedies set forth herein;
9. Granting any further and other relief the court deems just and proper.

RESPECTFULLY SUBMITTED,

THE CENTER FOR BIOLOGICAL DIVERSITY
By: */s/gail evans*
Gail Evans
Colin Cox
1025 ½ Lomas NW
Albuquerque, NM 87102
Phone: (505) 463-5293
Email: gevans@biologicaldiversity.org
ccox@biologicaldiversity.org
Attorneys for Plaintiff