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8 Counsel for Plaintiff

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF YAVAPAI**

11 THE CENTER FOR BIOLOGICAL
12 DIVERSITY, a not-for-profit corporation;

13 Plaintiff,

14 v.

15 THE CITY OF PRESCOTT, a municipal
16 corporation of the State of Arizona; JOHN
17 DOES 1-10,

18 Defendants.

No.

COMPLAINT

(Special Action)

19 Plaintiff, by its undersigned attorneys for its complaint, allege upon personal
20 knowledge and upon information and belief as follows:

21 **NATURE OF THIS ACTION**

22 1. This is an action to compel the Defendant, City of Prescott (the "City"), to
23 produce public records that were requested by Plaintiff, the Center for Biological Diversity,
24 pursuant to A.R.S. § 39-121 *et seq.*

25 2. By failing to produce and/or allow for proper inspection of the requested
26 records, the City failed to perform a duty required by law as to which it has no discretion
and/or issued a determination that was arbitrary and capricious or an abuse of discretion.

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JURISDICTION AND VENUE

8. Jurisdiction is proper pursuant to A.R.S. § 39-121.02(A), which provides that a special action may be brought in the Superior Court of Arizona by any person who has been wrongfully denied access to , or the right to copy, a public record.

9. Venue is proper in Yavapai County, Arizona pursuant to Rule 4(b), Rules of Procedure for Special Actions.

ALLEGATIONS COMMON TO ALL COUNTS

10. On May 8, 2008, the Center, pursuant to A.R.S. Title 39-121, requested the following documents (See Ex. 1) from the City of Prescott:

- All documentation regarding the Big Chino water Ranch Pipeline Project. This should include but not be limited to documentation for Phase II, Design, as well as all drawings, specs and bid documents. This should not including (sic.) Phase I Conceptual Design Report.
- All documentation and records regarding and related to the acquisition of easements for the Big Chino Water Ranch pipeline. This should include but not be limited to documents identifying the pipeline route(s), the parcels over which easements are needed for right-of-way, the title reports, appraisals, prepared offers and presented offers.
- The March 2008, 22-page report and digital groundwater flow model input/output files from Southwest Ground-water Consultants provided to Arizona Department of Water Resources in fulfillment of the agency’s request identified in correspondence received by the City in January 2008 relating to the City’s Application for Modification of Designation of Assured Water Supply (ADWR No. 86-401501.0001).

1 11. On May 21, 2008, Defendant responded with a request for clarification (See
2 Ex. 2). In addition to stating that the City does not read the public records statute to allow
3 for not-for-profit entities to obtain records at no cost, the Defendant stated that: (a) the
4 Center’s request did “not sufficiently describe the documents requested as to items 2 and 3 of
5 the request. . .” and (b) “[t]here may be some other concerns, depending on what documents
6 you are specifically seeking that will become clear when you address our specificity
7 request.”

8 12. On July 28, 2008, the Center sent a letter to the City clarifying its request.
9 (See Ex. 3). The Center’s response letter noted, inter alia, that (a) the City’s request for
10 clarification does not request clarification of the documents requested in the first bullet point;
11 (b) the third bullet point, which was specific to begin with, was clarified as re-requesting the
12 22-page report that was mentioned in the City Council Agenda Memo for May 6, 2008,
13 entitled “Approval of amendment Two to Contract No. 07-235, Big Chino Water Ranch
14 Physical Availability Demonstration . . .”; and (c) with regard to bullet number two,
15 according to the Center “as this is a very broad request of ‘all documentation’, we would
16 expect that you would provide ‘all documentation’ regarding and related to the acquisition of
17 easements for the Big Chino pipeline for our review. We are specifically interested in
18 knowing the route of the proposed pipeline, the names and addresses of individuals
19 contacted about the possibility of acquiring easements on their property, any bid and
20 appraisal documents, offers prepared and/or presented. . .”

21 13. With regard to payment for the documents, the Center provided, in part, that
22 “this information should be made immediately available for our review . . . Should you
23 believe that copies of information will only be available to us at a cost, we will pay the cost
24 up front once we review documents and determine which we shall require. . .”
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1 14. The City failed to respond to the initial request and/or the requested
2 clarification provided by the Center.

3 15. On August 22, 2008, the Center requested a response to its July 28 clarification
4 and its May 8, 2008, request for production. (See Ex. 4).

5 16. On September 29, 2008, the Defendant indicated that the requested records
6 were available for review.

7 17. The Center scheduled the review to begin on October 2, 2008.

8 18. The documents provided were not fully responsive to the Center’s request for
9 production.

10 19. The City provided documents pertaining to Phase II, Level 1 Pipeline Design
11 and Pump Stations/Reservoir Design.

12 20. The City, however, withheld documents pertaining to Phase II, Levels 2 and 3
13 of the Pipeline Design and Pump Stations/Reservoir Design. Notwithstanding the fact that
14 the information request specifically indicated that the documents, “should include but not be
15 limited to documentation for Phase II, Levels 1, 2, 3 of Pipeline Design, Levels 1, 2, 3 Pump
16 Stations/Reservoir Design . . .”. These documents are also referred to as the 50 percent and
17 90 percent design completion reports. (See first bullet point, Ex. 1).

18 21. On October 22, 2008, at a meeting with Matt Podracky, Senior Assistant City
19 Attorney, the Center requested to review the withheld documents, including specifically the
20 50 percent and 90 percent design completion reports. (See Ex. 5).

21 22. In response, Mr. Podracky stated that he had to speak to James Holt, Big Chino
22 Water Ranch Project Manager about providing access to the requested documents.

23 23. Shortly after October 22, 2008, the City produced a “log”, dated October 1,
24 2008. The log purports to identify documents and to explain why they were withheld. On
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1 its face, however, the log fails to adequately identify documents and/or categories of
2 documents and/or to justify withholding, as required by statute. (See Ex. 6).

3 24. The log does not pertain to and/or identify the 50 percent and 90 percent
4 design completion reports. Indeed, it is impossible to ascertain exactly what the log does
5 pertain to.

6 25. On November 4, 2008, the Center went to the legal department for the City to
7 ask for access to the 50 percent and 90 percent design completion reports and/or a
8 determination as to why the reports were being withheld. (See Ex. 7). The Center was told
9 that they had to talk to Mr. Podracky, who was unavailable.

10 26. On November 6, 2008, the Center asked Mr. James Holt for access to the 50
11 percent and 90 percent design completion reports. Mr. Holt told the Center to discuss the
12 request with Mr. Podracky. (See Ex. 8).

13 27. On November 7, 2008, the Center received a return call from Mr. Podracky. A
14 meeting was scheduled for November 13 as Mr. Podracky indicated he would need that time
15 to track down the requested 50 percent and 90 percent design completion reports. (See Ex.
16 9).

17 28. On November 13, 2008, the Defendant failed to provide access to the
18 requested documents, but rather indicated that the City would produce the requested records
19 on November 17, 2008. (See Ex. 10).

20 29. No documents and/or access to documents was provided on November 17,
21 2008.

22 30. On or about February 10, 2009, the Center met with City of Prescott Attorney
23 Gary Kidd to request the 50 percent and 90 percent design completion reports. Mr. Kidd
24 indicated that he would get back to the Center “soon.”

25 31. The Center did not hear back from Mr. Kidd regarding the requested reports.
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40. Plaintiff realleges and incorporate the preceding paragraphs as if fully set forth herein.

41. Defendant provided a “log” that does not enable the Center to identify documents included and/or provide an adequate explanation of why they are being withheld.

42. The Defendant has failed to adequately identify the documents and/or categories of documents that it continues to withhold in violation of A.R.S. 39-121.01(D)(2).

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

- 1. The immediate release of all requested information/documents;
- 2. Award to Plaintiff its reasonable attorneys’ fees and costs;
- 3. Grant to Plaintiff such other and further relief as this Court may deem just, equitable or proper.

DATED: .

THE SHANKER LAW FIRM, P.L.C.

By _____
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