

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JASON FLORES-WILLIAMS
LAW OFFICE OF JASON FLORES-WILLIAMS
1851 BASSETT, STE 509
DENVER, CO 80202
303-514-4524
JFW@JFWLAW.NET
Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

THE COLORADO RIVER
ECOSYSTEM,

a/n/f

DEEP GREEN RESISTANCE, THE
SOUTHWEST COALITION,
DEANNA MEYER, JENNIFER
MURNAN, FRED GIBSON, SUSAN
HYATT, WILL FALK.

Plaintiff,

vs.

STATE OF COLORADO

Defendant.

Case No.: [Number]

**COMPLAINT FOR
DECLARATORY RELIEF**

1 **I. INTRODUCTION**

2
3 Our system of law has failed to stop the degradation of the natural environment, and
4 consequently, has failed to protect the natural and human communities which depend on it for
5 their survival and livelihood. Environmental law has failed to protect the natural environment
6 because it accepts the status of nature and ecosystems as property, while merely regulating the
7 rate at which the natural environment is exploited. Its failure can be seen from the worsening of
8 climate change, the continued pollution of ground and surfacewater, and the decline of every
9 major ecosystem on the continent.
10

11 The Colorado River is one such ecosystem. Climate change is worsening Colorado River
12 droughts, many of its tributaries have receded, and the River has been prevented from making its
13 way to the sea. The Colorado River’s continuing existence, let alone its ability to continue to
14 provide sustenance for both human and natural communities, is now at issue.
15

16 Faced with similar threats to important ecosystems, courts and legislatures around the
17 globe have begun to create a new kind of environmental law, one which recognizes that
18 ecosystems themselves possess certain rights, and which allows communities to sue on their
19 behalf for damages caused to the ecosystem. By recognizing standing on behalf of the ecosystem
20 itself, injuries caused to the ecosystem are directly recoverable, rather than being dependent
21 solely on harms caused to the users of those ecosystems. Much in the same way that African-
22 Americans and women became “visible” to courts in the 1800’s, courts and legislatures now are
23 making ecosystems visible to the institutions of government.
24
25

26 Through this action, the Plaintiffs are asking this Court to recognize and declare that the
27 Colorado River is capable of possessing rights similar to a “person,” and that as part of that
28 declaration, that the Colorado River has certain rights to exist, flourish, regenerate, and naturally
COMPLAINT FOR DECLARATORY RELIEF - 2

1 evolve. In the absence of such a finding, Plaintiffs contend that existing environmental laws will
2 continue to fail to protect the Colorado River, and thus, continue to fail to protect the human and
3 natural communities that are dependent on the River.
4

5
6 **II. PARTIES**

7 **A. THE COLORADO RIVER**

- 8
- 9 1. No ecosystem is more responsible for the facilitation of life - human and non-human - in
10 the arid Southwest than the Colorado River.
 - 11 2. Human language lacks the complexity to adequately describe the Colorado River
12 Ecosystem. Any attempt to define it or account for the sheer amount of life made possible
13 by it will necessarily be arbitrary
 - 14 3. Nevertheless, we are asked to bring an accurate description of the Colorado River from
15 the vastness of the real, physical world into the small confines of a courtroom. We shall
16 start with this: The Colorado River Ecosystem is best understood as a complex collection
17 of relationships.
 - 18 4. These relationships are nearly infinite. The most fundamental include the attraction
19 between hydrogen and oxygen; the liquid, ice, and gas that water and heat create
20 together; the irresistible paths fashioned by the interplay of mountain and gravity; and the
21 climate born from the intercourse of the Sun's energy and Earth's atmospheric gasses.
 - 22 5. If we begin with water, we see - high in the sky - water dancing as vapor on wind
23 currents. When the dance brings enough water together, clouds form. As clouds pass over
24 the high Colorado Rockies, water freezes and falls as snow. Over the course of winter,
25 clouds contribute their stores of water and snowpack builds. In Spring, snowmelt forms

1 creeks and streams who are guided by mountains through canyons and valleys. Rare
2 summer rains do what they can to join the snowmelt.

3 6. Beneath the Earth’s surface, springs pull groundwaters to form their own creeks and
4 streams. Snowmelt, rain, and spring waters intermingle with gravity. And, gravity gathers
5 these waters as they tumble down stone faces, run across tree roots, and seep into sand
6 and soil. The snowmelt, spring water, and gravity build in power as they mix. They
7 soften mountainsides, carve through red rock, and brave the deserts who seek to exhaust
8 them.
9

10 7. The moving waters that create the Colorado River and sustain countless species of flora
11 and fauna cover much more expansive distances than the space between riverbanks
12 commonly understood as the “Colorado River.”
13

14 8. The traditional conception of the Colorado River locates the river’s headwaters in La
15 Poudre Pass, in Colorado’s Rocky Mountains. Before the construction of dams and large-
16 scale diversion, the Colorado flowed 1,450 miles into the Pacific Ocean near Sonora,
17 Mexico. Since the completion of the Glen Canyon Dam in 1963, the Colorado has rarely
18 connected with the sea.
19

20 9. The Colorado River Drainage Basin is the seventh largest drainage basin in North
21 America, covering 246,000 square miles. Ninety-seven percent (97%) of the drainage
22 basin is in the United States. Twenty-five significant tributary rivers join the Colorado
23 River, including the Green, Gila, San Juan, Little Colorado, Dolores, Gunnison, and
24 Virgin Rivers.
25

26 10. Fourteen native fish lived in the Colorado River when European settlers arrived in the
27 West, including four fish that are now endangered: the humpback chub, Colorado
28

1 pikeminnow, razorback sucker, and bonytail. Only six known humpback chub
2 populations persist. Colorado pikenminnow are no longer found below the Glen Canyon
3 Dam. Wild populations of bonytail no longer exist. Endangered fish species with
4 restricted ranges in Colorado tributaries include the Little Colorado spinedace, Kendall
5 Warm Springs dace, desert pupfish, and springfish.
6

7 11. Springs that feed the Colorado, and the Colorado's tributaries, support several species of
8 very rare snails including the Overton assiminea, Grand Wash springsnail, Pahranaagat
9 pebblesnail, Moapa pebblesnail, and Hot Creek pebblesnail.
10

11 12. The Colorado River's natural communities include a diversity of forest and flora
12 including dense spruce-fir, pinyon-juniper, and mixed broadleaf and cottonwood forests;
13 moist mountain grasslands where tufted hair grass, Thurber's fescue, and blue joint grass
14 flourish; prolific willow carrs; desert scrublands; and sparse saltbush-greasewood basins.
15

16 13. The Colorado River's riparian communities are among the most important habitats for
17 winged creatures in the Western United States. One hundred and thirty-nine (139)
18 confirmed butterfly species can be found in Rocky Mountain National Park, alone.
19 Iconic, and endangered or threatened, birds like the bald eagle, greater sage grouse,
20 Gunnison sage grouse, peregrine falcon, yellow-billed cuckoo, summer tanager, and
21 southwestern willow flycatcher make their homes in the Colorado River watershed.
22

23 14. The scarcity of water in the deserts of the Southwest make the Colorado River Watershed
24 vital for several amphibian species including the Colorado River toad, lowland leopard
25 frog, and the relict leopard frog. Development and water diversion endanger these rare
26 desert amphibians.
27
28

1 15. Many of the West’s most recognizable mammals depend on the Colorado River
2 Watershed for water and to sustain adequate food sources. Gray wolves, grizzly bear,
3 black bear, mountain lions, coyotes, and lynx walk the banks of the Colorado. Elk, mule
4 deer, and bighorn sheep live in the Basin’s forests. Beavers, river otters, and muskrats
5 live directly in the River’s flow as well as in streams and creeks throughout the Colorado
6 River Basin.
7

8 16. The Colorado River provides water for close to 40 million people and irrigates nearly 4
9 million acres of American and Mexican cropland.
10

11 17. In 1922, the Colorado River Compact allocated the River’s water between 7 states
12 (Colorado, New Mexico, Utah, Wyoming, Nevada, Arizona, and California). The
13 Compact set the River’s annual average at 15 million acre feet (“maf”) and used this
14 number to distribute water among the states. Between 1914-1923, the River’s annual
15 average was 18.8 million acre feet which is the wettest recorded ten-year period of the
16 last 100 years. The River now averages 14.7 million acre feet annually.
17

18 18. Thirty-four (34) Native American reservations exist within the Colorado River Basin,
19 many of whom seek new water rights not contemplated in the Colorado River Compact.
20 In 1944, the International Boundary Water Commission facilitated a treaty between the
21 United States and Mexico which granted Mexico 1.5 million maf annually.
22

23 19. Agriculture uses the vast majority of the Colorado’s water. In 2012, 78% of the
24 Colorado’s water was used for agriculture alone. Forty-five percent (45%) of the water is
25 diverted from the Colorado River Basin which spells disaster for Basin ecosystems.
26 Major cities that rely on these trans-Basin diversions include Denver, Los Angeles, and
27 Salt Lake City.
28

1 **B. DEEP GREEN RESISTANCE AND DEEP GREEN RESISTANCE MEMBERS AS**
2 **NEXT FRIENDS**

3 20. Members of DEEP GREEN RESISTANCE (“DGR”) serve as “next friends,” for, and
4 guardians of, the Colorado River Ecosystem. DGR is a worldwide, membership-based,
5 grassroots organization rooted in the truth that all life is sustained by soil, air, water, and
6 countless natural communities of living creatures. Because ecosystems sustain life, DGR
7 recognizes that the needs of ecosystems are primary and DGR is committed to protecting
8 vulnerable ecosystems across the planet. DGR, as shown infra, has exemplified a long-
9 standing history of responsible care for the Colorado River Basin.
10

11 21. Next Friend and Guardian DEANNA MYER is a member of DGR and DGR’s Southwest
12 Coalition and resides at 1680 M Hwy 67 Sedalia, CO 80135.
13

14 22. Next Friend and Guardian JENNIFER MURNAN is a member of DGR and DGR’s
15 Southwest Coalition and resides at 5125 Ute Hwy Longmont, CO 80503.
16

17 23. Next Friend and Guardian FRED GIBSON is a member of DGR and DGR’s Southwest
18 Coalition and resides at 6830 Dream Weaver Dr Colorado Springs, CO 80923
19

20 24. Next Friend and Guardian SUSAN HYATT is a member of DGR and DGR’s Southwest
21 Coalition and resides at 457 Walker St Moab, UT 84532.
22

23 25. Next Friend and Guardian WILL FALK is a member of DGR and DGR’s Southwest
24 Coalition and resides at 371 N 200 E Heber City, Utah 84032.
25

26 26. DEEP GREEN RESISTANCE (DGR) is a social and environmental justice organization
27 formed in 2011. Over the past 6 years, DGR has grown to include members across the
28 nation and worldwide.

29 27. DGR is committed to the principle that the soil, the air, the water, the climate, and the
30 food we eat, are created by complex communities of living creatures like those creating

1 the Colorado River. The needs of these living communities, worldwide, are primary.
2 Similarly, the needs of the Colorado River, in the American Southwest, are primary.
3 Local, state, and national jurisprudence must emerge from a humble relationship with the
4 living communities which give us life.
5

6 28. DGR engages in a diversity of tactics to protect ecosystems. This includes building public
7 awareness of the interconnectedness of life, the creation and distribution of ecological
8 and political analysis in media worldwide, fundraising to support grassroots campaigns,
9 organizing conferences to bring the most talented minds of the environmental and social
10 justice movements together to discuss strategy, developing activist training programs, and
11 conducting non-violent, civil disobedience to confront ecological violence.
12

13 29. Aside from legal definitions, DGR conducts itself as an organization by: (1) publishing
14 by-laws which govern its activities; (2) operating a process for gaining membership
15 which includes a written application and interview; and by (3) conducting an active
16 membership maintenance program where members must either pay monthly dues or file a
17 quarterly written proposal detailing the work the member plans on doing within DGR's
18 mission.
19

20 30. SOUTHWEST COALITION is a subcommittee of Deep Green Resistance specifically
21 focused on preserving the Colorado River and the Colorado River Ecosystem.
22

23 31. A number of DGR members live in the Colorado River's drainage basin, or live in
24 communities who depend on the Colorado. These include members who live in Moab,
25 UT; Heber City, UT; Boulder, CO; Colorado Springs, CO; and Sedalia, CO. These
26 members form the majority of DGR's SOUTHWEST COALITION.
27
28

1 32. Relevant SOUTHWEST COALITION Members are listed individually herein as “next
2 friends” of the natural communities creating the Colorado River: Deanna Meyer, Jennifer
3 Murnan, Fred Gibson, Michael Carter, Susan Hyatt, and Will Falk.

4
5 33. In 2015, DGR SOUTHWEST COALITION officially committed to protecting water as
6 its primary focus in a public document titled, “Water: Southwest Coalition Statement of
7 Commitment and Call for Allies.” The health of the Colorado River was prioritized in
8 this document.

9
10 34. The document states, “More than any other area of North America, the Southwest faces
11 water shortages just as demands for water increase...Deep Green Resistance chapters
12 across the Southwest recognize the imminent catastrophe. We view the protection of
13 ground and surface water as critically important. We declare water preservation and
14 justice as our primary focus...”

15
16 35. In 2013, prior to DGR SOUTHWEST COALITION’s publication of this document, DGR
17 formed an alliance with members of the Ely Shoshone Tribe and the Great Basin Water
18 Network to oppose the Southern Nevada Water Authority’s (SNWA) Groundwater
19 Development Project. The Project, which has still failed to gain the necessary permits,
20 would pump 27 billion gallons of groundwater from southeastern Nevada and transport it
21 by pipeline to service Las Vegas. A significant portion of this water naturally flows into
22 the Colorado River through the White and Moapa Rivers. Stopping SNWA protects
23 billions of gallons of the lower Colorado’s water.

24
25 36. In opposition to the SNWA Groundwater Development Project, DGR members organize
26 an annual Sacred Water Tour to show the public the natural and human communities that
27 will be destroyed if the Project is approved. Included on this tour are several areas within
28

1 the Colorado River Drainage Basin. The 2017 Sacred Water Tour was the event's 4th
2 edition. Additionally, DGR members have engaged in a public awareness campaign
3 about the Project with news and opinion articles in local and national media platforms;
4 and through radio interviews and podcasts, videos, and photo journals.
5

6 37. In 2015, in conjunction with DGR SOUTHWEST COALITION's Water Statement,
7 several DGR members formed the Pinyon-Juniper Alliance to oppose the Bureau of Land
8 Management's and U.S. Forest Service's "pinyon-juniper treatment projects." These
9 projects, happening across the Colorado River Basin, clearcut millions of acres of old-
10 growth pinyon-juniper forests to open rangeland for livestock grazing and to clear the
11 way for mine expansions. Pinyon-juniper deforestation contributes to desertification and
12 causes precious high desert topsoil and surface pollution to wash into the Colorado River.
13

14 38. The Pinyon-Juniper Alliance circulated a petition asking BLM to place a moratorium on
15 pinyon-juniper treatment projects while conducting additional research into how, among
16 other things, deforestation affected the Colorado River. The petition gained over 61,787
17 signatures. DGR members are also involved in organizing experts in the scientific and
18 ecologic communities to speak out against pinyon-juniper deforestation. DGR members
19 wrote a widely-shared essay series about pinyon-juniper deforestation, made videos, and
20 gave radio interviews on the topic.
21

22 39. DGR SOUTHWEST COALITION recently approved a plan to build a water protection
23 and climate change action campaign in Northeastern Utah. The plan targets oil and
24 natural gas hydraulic fracturing (fracking) processes around the Duchesne River which is
25 a major tributary of the Colorado River. Fracking is known to pollute ground and surface
26 water sources. The plan also targets the yellow crude oil refining process in Northeastern
27
28

1 Utah which involves heated oil tanker trucks carrying volatile, toxic oil along highways
2 running near creeks, streams, and the Duchesne River, which all empty into the Colorado
3 River. An educational component of the plan seeks to illustrate how climate change
4 threatens the snowpack that feeds the Colorado River and how fracking produces toxic
5 runoff that may find its way to the River.
6

7 40. Defendant John Hickenlooper is the Governor of the State of Colorado, and is being sued
8 in his official capacity as the executive of the State. The Governor's Office is located at
9 136 State Capitol Building, Denver, Colorado 80203.
10

11 **III. JURISDICTION and VENUE**
12

13 30. Diversity is extant between Plaintiff and Defendant so that jurisdiction is proper pursuant
14 to 28 U.S.C. § 1332.
15

16 31. This Court is vested with original jurisdiction over these federal claims by operation of
17 28 U.S.C. §§ 1331 and 1343.
18

19 32. This Court is vested with authority to grant the requested declaratory judgment by
20 operation of 28 U.S.C. §§ 2201 and 2202, and pursuant to Federal Rule of Civil
21 Procedure 57.

22 33. Venue is proper in the United States District Court for the District of Colorado under 28
23 U.S.C. § 1391(b), in that the events giving rise to the claim occurred within the district.
24

25 **IV. BACKGROUND OF CLAIMS**
26
27
28

1 35. Life is created by complex natural communities of living creatures in ecosystems. Water,
2 air, soil, climate, and the food we eat depend on natural communities. The needs of these
3 communities are primary; individual morality, institutional morality, and Law must
4 emerge from a humble relationship with these natural communities. True sustainability is
5 impossible without such a relationship.
6

7 36. For the vast majority of human history, humans lived in humble relationships with natural
8 communities. We developed traditional cultures that were rooted in the radical
9 interconnectedness of all living beings. Along with other teachings, these cultures
10 insisted upon the inherent worth of the natural communities who give us life.
11

12 37. The dominance of a culture that defines Nature as property enables its destruction.
13 Meanwhile, the planet is on the verge of total collapse. To avert collapse, the destruction
14 must stop. For the destruction to stop, institutions within the dominant culture must
15 recognize the inherent worth of the natural communities who give us life. If American
16 courts do not recognize the inherent worth of natural communities, the dominant culture
17 will not change, and collapse will only intensify. American courts must recognize the
18 legally enforceable rights of ecosystems and nature for those reasons.
19

20 38. The concept that nature should have the right to sue for its own protection has been
21 recognized by members of the United States Supreme Court. In his dissenting opinion in
22 the landmark environmental law case, *Sierra Club v. Morton*, 405 U.S. 727 (1972),
23

24 Justice Douglas argued that "inanimate objects" should have standing to sue in court:

25 Contemporary public concern for protecting nature's ecological equilibrium
26 should lead to the conferral of standing upon environmental objects to sue for
27 their own preservation.
28

1 39. As a practical matter, the difficulty in recognizing this equitable concept (of conferring
2 standing and rights on Natural entities) arises from the fact that nature--which any of us
3 who have spent a day in the Rockies or along The Colorado would never describe as
4 “inanimate”—does not have the ability to hire a law firm, actively participate in its
5 representation or testify in Court. (One shudders at the idea of nature testifying against
6 us. That said, in many real ways, it *is* testifying against us right now.)
7

8 40. But as Justice Douglas stated in his dissent, inanimate objects who do not have the
9 ability to testify themselves are commonly parties in litigation. A ship has a legal
10 personality, a fiction found useful for maritime purposes. The corporation sole - a
11 creature of ecclesiastical law – has been deemed to be an acceptable adversary and large
12 fortunes ride on its cases. The ordinary corporation has been repeatedly recognized as a
13 "person" for purposes of constitutional protection and enforcement.
14

15 41. Corporate rights provide an instructive analogy. The Colorado is 60 to 70 million years
16 old and has enabled, sustained, and *allowed* for human life for as long as human life has
17 been extant in the Western United States, yet the Colorado has no rights or standing
18 whatsoever to defend itself and ensure its existence; while a corporation that can be
19 perfected in fifteen minutes with a credit card can own property, issue stock, open a bank
20 account, sue or defend in litigation, form and bind contracts, claim Fourth Amendment
21 guarantees, due process, equal protection, hold religious beliefs and perhaps most
22 famously invest unlimited amounts of money in support of its favorite political candidate.
23
24 See *Citizens United v. Federal Election Commission*, 130 S. Ct. 876, 903 (2010). See
25 also, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2759 (2014).
26
27
28

1 42. The American system of law is replete with doctrines, examples and solutions with
2 regard to when a party cannot bring suit itself and requires another to stand in its stead,
3 including *guardian ad litem*s, *parens patriae*, executors who can bring suits on behalf of
4 an estate, and trustees. The fiduciary relationship in which one party can litigate in the
5 best of interests of another party has long been recognized by U.S. courts.
6

7 43. One does not have to wax poetic to reasonably assert that a natural entity that has existed
8 for millions of years as a complex ecosystem, and which created the Grand Canyon
9 through its natural flow has, in many ways, respectfully, more volition or will than some
10 of the dependent persons and entities that are currently represented by *guardian ad litem*s
11 and executors in our courts of law.¹
12

13 44. For that reason and others, courts around the world have come to legally recognize that
14 natural entities on which life depends have the right to exist, which in our law is cognized
15 as the standing, and the right, to bring actions to be heard before our courts.
16

17 45. On July 27, 2014, Te Urewera, an 821-square mile area of New Zealand, was designated
18 as a legal entity with “[A]ll the rights, powers, duties and liabilities of a legal person.”
19 Section 11(1), Te Urewera Act of 2014.

20 46. Te Urewera can now bring causes of action on its own behalf without having to prove
21 direct injury to human beings.
22
23

24 ¹ In his 1797 Transaction of the American Philosophical Society, Thomas Jefferson, the chief framer of our
25 constitutional rights, stated:

26 The movements of nature are in a never ending circle. The animal species which has once been put into a
27 train of motion, is still probably moving in that train. For if one link in nature's chain might be lost, another
28 and another might be lost, till this whole system of things should vanish by piece-meal; a conclusion not
warranted by the local disappearance of one or two species of animals, and opposed by the thousands and
thousands of instances of the renovating power constantly exercised by nature for the reproduction of all
her subjects, animal, vegetable, and mineral.

1 47. In 2008, the country of Ecuador amended its national constitution to establish the rights
2 of ecosystems within the country to exist, regenerate, evolve, and be restored. Those
3 constitutional provisions have triggered several enforcement cases protecting the rights of
4 rivers and other ecosystems in the country.
5

6 48. In November of 2016, Colombia’s Constitutional Court found that
7 the Atrato River, including its tributaries and watershed, is “an entity subject to rights to
8 protection, conservation, maintenance and restoration.” In addition, the Court decreed
9 that the Colombian State shall “exercise legal guardianship and representation of the
10 rights of the river in conjunction with the ethnic communities that inhabit the Atrato river
11 basin.” In its ruling, the court explained
12

13 *that human populations are those that are interdependent on the natural world –*
14 *not the other way around- and that they must assume the consequences of their*
15 *actions and omissions in relation to nature. It’s about understanding this new*
16 *socio-political reality with the aim of achieving a respectful transformation with*
17 *the natural world and its environment, just as has happened before with civil and*
18 *political rights...economic, social and cultural rights...and environmental*
19 *rights...Now is the time to start taking the first steps towards effectively protecting*
20 *the planet and its resources before it is too late or the damage is irreversible, not*
21 *only for future generations but for the entire human species.*

22 Const. Ct. of Colombia, Judgment T-622 DE 2016.

23 49. On March 20, 2017, the High Court of Uttarakhand at Nainital, in the State of
24 Uttarakhand in northern India, issued a ruling declaring that the Ganges and Yamuna
25 Rivers are “legal persons/living persons.” This comes after numerous rulings by the
26 court which found that while the rivers are “central to the existence to half of Indian
27 population and their health and well being,” they are severely polluted, with their very
28 existence in question. The court declared that throughout India’s history, it has been
necessary to declare that certain “entities, living inanimate, objects or things” be declared

1 as “juristic person[s].” In the case of the Ganga and Yamuna, the court explained that the
2 time has come to recognize them as legal persons “in order to preserve and conserve” the
3 rivers. (Writ Petition (PIL) No.126 of 2014).
4

5 50. Over three dozen municipalities within the United States, including the City of
6 Pittsburgh, have adopted municipal laws recognizing the legally enforceable rights of
7 ecosystems and nature, and the authority of municipal residents to bring suits in the name
8 of individual ecosystems.
9

10 51. The Court will rightly concern itself with the question of judicial efficiency with regard
11 to the possibility, which opposing party will almost certainly present, of an unwieldy
12 amount of law suits suddenly being brought on behalf of the Colorado River and the
13 Colorado River Ecosystem by individuals who are well-intentioned and rightly
14 concerned, but who lack the direct relationship and stewardship of the Colorado.
15

16 52. This concern is easily addressed by requiring that the filer of the suit evidence a
17 relationship to The Colorado, so that the filer is provably capable of representing its best
18 interests. The same operation of law occurs in class action certifications with regard to
19 certifying representative plaintiffs and class counsel as well as in any adjudication in
20 which a person is appointed *guardian ad litem*.²
21

22 **V. COUNTS IN THE NATURE OF DECLARATORY JUDGMENT**

23 **COUNT ONE**

24 **DECLARATORY JUDGMENT**
25
26

27 ² For purposes of judicial economy, Fed. R. Civ. P 53 empowers the Court to appoint a special master. In cases
28 where identifiable natural entities such as the Colorado are being threatened or facing extinction, an R.53
appointment could be in place to screen claims brought in the name of the Colorado River Ecosystem.

1 53. All prior paragraphs of this Complaint are incorporated herein.

2 54. The Colorado River Ecosystem is essential to life – human and non-human – in the
3 American Southwest.

4 55. Threats to the Colorado River Ecosystem are threats to life.

5 56. Because threats to the Colorado River Ecosystem are threats to life, the Colorado River
6 Ecosystem must possess the ability to protect itself from threats to its survival.

7 57. The ability to protect itself requires that the Colorado River Ecosystem have access to the
8 courts, and that the courts recognize that the Colorado River Ecosystem possesses rights.

9 58. Recognition of the capacity of Colorado River Ecosystem to possess rights requires a
10 recognition that the Colorado River Ecosystem is a “person” for purposes of asserting
11 those rights.

12 59. Recognition as a “person” requires that courts find that “next friends,” or guardians, may
13 defend and enforce those rights on behalf of the Colorado River Ecosystem.

14 60. Therefore, the “next friend” Plaintiffs, request that this Court declare that the Colorado
15 River Ecosystem is a “person” capable of possessing rights and securing those rights
16 through enforcement and defense of those rights, and that the Plaintiffs may serve as
17 “next friends” to seek that relief.

18
19
20
21 **COUNT TWO: DECLARATORY JUDGMENT RELIEF:**
22 **THE COLORADO RIVER ECOSYSTEM’S RIGHTS**

23 61. All prior paragraphs of this Complaint are incorporated herein.

24 62. As a “person” pursuant to the law, the Colorado River Ecosystem must possess certain
25 specific rights to protect and defend itself.
26
27
28

1 63. Basic rights necessary for the protection of the Colorado River Ecosystem inherently
2 include the Colorado River Ecosystem’s right to exist, the right to flourish, the right to
3 regenerate, the right to be restored, and the right to naturally evolve.
4

5 64. Lacking those basic rights, the Colorado River Ecosystem’s status as a “person” would be
6 meaningless, because it would be unable to secure and protect those basic rights, and
7 thus, would be unable to protect its life and existence.

8 65. Therefore, the Plaintiffs ask this Court to declare that the Colorado River Ecosystem has
9 a right to exist, flourish, regenerate, be restored, and naturally evolve.
10

11 **COUNT THREE: DECLARATORY JUDGMENT:**
12 **STATE ACTIONS VIOLATING ECOSYSTEM RIGHTS**

13 66. All prior paragraphs of this Complaint are incorporated herein.

14 67. The Colorado River Ecosystem possesses the right to exist, flourish, regenerate, be
15 restored, and naturally evolve.
16

17 68. The rights of the Colorado River Ecosystem establish duties on behalf of the State of
18 Colorado, and all other governments, to respect those rights.

19 69. Actions taken by Defendant State of Colorado, to approve permits and issue other
20 regulatory approvals for certain actions regarding the Colorado River Ecosystem, may
21 violate those rights.
22

23 70. In August 2015, the portal of the Gold King Mine was breached, releasing an estimated
24 three million gallons of mine wastewater and 880,000 pounds of heavy metals down the
25 Animas and San Juan rivers (two of the Colorado’s tributaries). This waste flowed into
26 the Colorado River and injured downriver communities. The spill is part of decades of
27 toxic drainage from mines at the headwaters of the Animas River near Silverton, Co.
28

1 71. Before the spill, the State of Colorado and Sunnyside Gold Corporation reached a
2 decision to shut down a water treatment plant in favor of placing bulkheads at the
3 entrance of Sunnyside’s drainage point, the American Tunnel. Most researchers familiar
4 with the Animas watershed believe the bulkheads caused the mine pool of the Sunnyside
5 Mine to back up and cause other mines including the Gold King to discharge acidic
6 water.
7

8 72. Recently, the United States Supreme Court denied the State of New Mexico’s motion for
9 leave to file a bill of complaint against the State of Colorado for harms caused. The Court
10 did not write an opinion with the denial. EPA decided to list the Upper Animas Mining
11 District on the Superfund National Priorities list. Apparently, the Court believes that
12 EPA’s decision to list the District on the NPL completely resolves the harms that EPA,
13 Colorado, and others wrought on the Animas River, the Colorado River, and downstream.
14

15 73. The underlying policy problem here is the American legal system’s insistence that the
16 EPA provides adequate protections, and is the only proper mechanism for gaining
17 recourse for injuries to ecosystems.
18

19 74. Over-Allotment: One reason the Colorado River rarely reaches the sea is the compacts
20 and laws that regulate how much water can be diverted from the river allow humans to
21 take more water from the river than physically exists. The State of Colorado takes more
22 water from the river than any of the other jurisdictions, save California.
23

24 75. The State of Colorado is party to the 1922 Colorado River Compact, the 1948 Upper
25 Colorado River Compact, and a related set of laws, court decrees and an international
26 treaty collectively known as the “Law of the River.” The parties to the 1922 compact
27 assumed that the river’s flow would remain at a reliable 17 million acre-feet of water per
28

1 year. But, hydrologists now know this 17 million acre-feet per year standard represented
2 an unusually high flow and was a mistake. Streamflow records showed that the Colorado
3 River's flow was only 9 million acre-feet in 1902, for example. From 2000-2016, the
4 River's flow only averaged 12.4 million acre-feet per year.

5
6 76. Regardless, the 1922 Compact was enacted over calls for time-limited allocations that
7 would allow for the parties to reassess allotments. The Compact's framers divided, in
8 perpetuity, 15 million-acre feet. So, for most of the last 16 years, the States are legally
9 allowed to use more of the Colorado River's water than actually exists.

10
11 77. This 15 million-acre feet was further divided with 7.5 million acre-feet allocated to the
12 lower basin states (Arizona, California, and Nevada) and 7.5 million acre-feet allocated
13 to the upper basin states (Colorado, New Mexico, Utah, and Wyoming).

14
15 78. In the negotiations, Colorado and the other upper basin states succeeded in barring the
16 application of the Doctrine of Prior Appropriation across states lines to allocation of
17 Colorado River water. The Doctrine of Prior Appropriation is commonly known as "first
18 in time, first in right." In 1948, the Upper Colorado Basin Compact was enacted between
19 Colorado, New Mexico, Utah Wyoming, and Arizona (a small part of Arizona lies in the
20 upper basin) with Colorado receiving most of the Upper Basin's allotted 7.5 million acre-
21 feet. Colorado was allowed 51.75 percent, Utah 23 percent, Wyoming 14 percent, and
22 New Mexico 11.25 percent. The small part of Arizona received 50,000 acre-feet.

23
24 79. Dams: Another reason the Colorado River rarely reaches the sea is the presence of dams
25 that block the river's flow. The State of Colorado operates dams on the Colorado River
26 including the Price-Stubb Dam, Grand Valley Diversion Dam, Windy Gap Dam, Granby
27 Dam, and Shadow Mountain Dam. The State also operates dams on major tributaries of
28

1 the Colorado River including the Blue Mesa Dam and the Morrow Point Dam on the
2 Gunnison River, the Dillon Dam and Green Mountain Dam on the Blue River, and the
3 McPhee Dam on the Dolores River.

4
5 80. The State of Colorado has constructed these dams in an effort to seize a larger share of
6 dwindling water supplies before that water flows downstream.

7 81. In addition to choking up the Colorado River, dams are disasters for downstream
8 ecosystems and endemic species. Dams are leading cause of the population collapses of
9 the Colorado River's four species of endangered fish, the humpback chub, bonytail chub,
10 Colorado pikeminnow, and razorback sucker. Farther downstream, the world's most rare
11 marine mammal, the vaquita porpoise who calls the Gulf of California home, is
12 dangerously close to extinction because the Colorado River rarely reaches the Gulf of
13 California.
14

15 82. The Plaintiffs are asking this Court to declare these and other actions taken by the State
16 of Colorado, and certain inaction by the State of Colorado, capable of violating the rights
17 of the Colorado River Ecosystem.
18

19
20 **VI. REQUEST FOR HEARING**

21
22
23 83. Plaintiffs request that this Honorable Court, pursuant to FRCP 65, grant an evidentiary
24 hearing as the issues herein are of importance to the public interest.
25

26 **VII. NOTICE OF NO RELATED CASES PURSUANT TO D.C.COLO.L**
27 **Civ R 3.2.**
28

1 84. Pursuant to D.C.COLO.L Civ R 3.2, there are no related or similar cases before any
2 courts. This is a matter of first impression.
3

4
5 **VIII. DECLARATORY RELIEF SOUGHT**

6 85. Plaintiff the Colorado River Ecosystem seeks a declaration from this Court that:

- 7 a. The Colorado River Ecosystem is a “person” capable of possessing rights;
8 b. The Colorado River Ecosystem possesses the rights to exist, flourish, regenerate, be
9 restored, and naturally evolve;
10 c. That DGR may serve as guardians, or “next friends,” for the Colorado River
11 Ecosystem; and
12 d. That certain activities permitted by, or carried out by, the State of Colorado, may
13 violate the rights of the natural communities creating the Colorado River, and that the
14 Plaintiffs may proceed to file for injunctive relief to enjoin the State of Colorado from
15 taking action related to those activities, or to force the State of Colorado to take
16 certain actions, as violations of the rights of the Colorado River Ecosystem.
17
18

19
20 Respectfully submitted this the **26th** day of **September** 2017,
21

22
23 s/Jason Flores-Williams, Esq.
24 *Counsel for Plaintiff*
25 Phone: 303-514-4524
26 Email: Jfw@jfwlaw.net
27 1851 Bassett St.
28 #509
Denver, Colorado 80202