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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

HOME BUILDERS ASSOCIATION OF CENTRAL ARIZONA, Plaintiff, vs. ARIZONA DEPARTMENT OF WATER RESOURCES, an agency of the State of Arizona; THOMAS BUSCHATZKE, Director of the Arizona Department of Water Resources, in his official capacity, Defendants.	Case No. CV2025-002623 **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** (Assigned to The Honorable Scott Blaney)

INTRODUCTION

This case involves unlawful rules adopted by the Arizona Department of Water Resources ("ADWR") that have effectively—and illegally—brought new home construction to a standstill in some of the fastest-growing and most affordable areas of Maricopa County.

State law requires developers to obtain a "Certificate of Assured Water Supply" from ADWR before they can build. A Certificate verifies that there is "[s]ufficient groundwater, surface water or effluent of adequate quality" to serve the applicant's proposed land-use. A.R.S. § 45-576(M)(1).

But ADWR's two new rules—called the "Unmet Demand" and "Depth-to-Water" Rules (collectively, the "AMA-Wide Rules")—force applicants to prove that there is sufficient groundwater, not for the *applicant's* proposed use, but instead *throughout the entire Active Management Area* ("AMA") in order to obtain a Certificate.[1] This is an extremely burdensome new demand. The Phoenix Active Management Area is 5,646 square miles.[2] That's larger than the state of Connecticut. To require applicants to prove adequate groundwater for such a vast region in order to build is to effectively strangle development. Worse, it's illegal, for two reasons.

First, the AMA-Wide Rules are agency rules under Arizona law. They apply generally to all applicants for Certificates, and impose binding legal standards that implement, interpret, and prescribe the law. That makes them rules under the Administrative Procedure Act ("APA"). *See Arizona State Univ. ex rel. Arizona Bd. of Regents v. Arizona State Ret. Sys.*, 237 Ariz. 246, 250–52 ¶¶ 16–22 (App. 2015). Yet ADWR imposed them without following APA rulemaking procedures. Consequently, Plaintiff is entitled to a declaration under Section 41-1034(B) that the AMA-Wide Rules are, in fact, rules, and that they are invalid.

Second, ADWR lacks statutory authority to adopt or enforce the Rules. Arizona law requires agency rules to be (1) consistent with governing statutes, (2) reasonably necessary to achieve the purpose of those statutes, and (3) specifically authorized by the Legislature. *See* A.R.S. § 41-1030(A), (D). The AMA-Wide Rules meet none of these standards. They contradict Section 45-576, which defines "assured water supply" as sufficient water to serve *the applicant's "proposed use"*—not for the applicant to prove sufficient water for unrelated demands for users located elsewhere. The Rules are also not necessary to fulfill the Legislature's objectives under Arizona's water laws; they attempt

[1] An AMA is a region designated by ADWR for managing groundwater; these regions are subject to regulation under the state's Groundwater Code. There are six AMAs in Arizona.

[2] *See* ADWR, Phoenix AMA Model FAQs, https://www.azwater.gov/sites/default/files/2023-11/PHX_Model_FAQs_new.pdf (visited May 2, 2025).

to implement policy preferences that the Legislature never adopted. Most importantly, ADWR has *no* specific statutory authority to impose them. That means they're invalid.

FACTUAL BACKGROUND

State law requires that, before land within an AMA may be subdivided and developed, there must be a demonstration that sufficient water exists to support the proposed use for 100 years. *See* A.R.S. § 45-576(A); Pl.'s Statement of Facts in Supp. of Mot. for Summ. J. ("PSOF") ¶¶ 1, 6–7. In the Phoenix AMA, developers generally satisfy this requirement by obtaining a Certificate of Assured Water Supply ("Certificate"), which is unique to each development and must be secured before essential planning steps (such as platting subdivision lots or receiving a Public Subdivision Report).[3] *See* A.R.S. §§ 9-463.01(I), 11-822(A), 32-2183(G); PSOF ¶ 5.

To obtain a Certificate, a developer must show that "sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of *the proposed use* for at least one hundred years." A.R.S. § 45-576(M) (emphasis added); PSOF ¶ 6. A key element of this showing is the physical availability of groundwater. Under ADWR regulations, physical availability requires that groundwater be pumped from wells within the service area, at depths not exceeding 1,000 feet below ground surface. A.A.C. R12-15-716(B); PSOF ¶¶ 10–11.

If these criteria are met – including submission of hydrologic studies that accurately describe local groundwater conditions—the Department "shall issue" a Certificate. A.R.S. § 45-578(D); PSOF ¶ 8. Historically, this site-specific assessment has allowed homebuilders to demonstrate compliance and proceed with construction.

However, in November 2024, ADWR released a revised groundwater model for the Phoenix AMA (the "Phoenix AMA Model"). PSOF ¶ 12. ADWR has taken a regulatory stance that it will not issue any Certificates based, in whole or in part, on

[3] An alternative method of obtaining an assured water supply is to secure service from a city, town or private water company that has been designated as having an assured water supply. If the water provider is not designated, the developer must obtain a Certificate. PSOF ¶¶ 2–3.

groundwater to developers located within the Phoenix AMA model domain—even if those developments otherwise meet all statutory and regulatory criteria for groundwater availability. PSOF ¶ 13.

ADWR's actions are based on two ADWR policies—the AMA-Wide Rules—neither of which has been adopted through the formal rulemaking process required by Arizona law, and neither of which has been authorized by the Legislature. PSOF ¶ 14.

The first, the "AMA-Wide Unmet Demand Rule," provides that if modeling predicts that ***a single well***[4] may not be able to fully satisfy its predicted demand ***in any location*** within the Phoenix AMA Model domain, ***within the next 100 years,*** then ADWR concludes that there's no physically available groundwater ***anywhere*** within the Phoenix AMA Model domain. PSOF ¶ 15. The second—the "AMA-Wide Depth-to-Water Rule," provides that if modeling predicts that, within the next 100 years, depth-to-water will exceed 1,000 feet ***in any location*** within the Phoenix AMA Model domain, ADWR concludes that there's no physically available groundwater ***anywhere*** within the Phoenix AMA Model domain. PSOF ¶ 16. This blanket presumption applies even if a developer proposes wells in a different area with demonstrably adequate supplies, or even if a well could be reasonably relocated. PSOF ¶ 17.

In short, ADWR has transformed the statutorily required *site-specific* assessment of groundwater availability into an *area-wide* prohibition**.**

These AMA-Wide Rules directly conflict with both the statutory text and past Department practice. And that has real-world consequences: ADWR has now indefinitely placed on hold the Certificate applications of developers because of these Rules—including applications submitted by members of Plaintiff Home Builders Association of Central Arizona ("HBACA"). As a result, ADWR has effectively frozen new home construction in major growth corridors across Maricopa County, including Buckeye and Queen Creek. ADWR's regulatory stance has effectively stranded property owners

[4] If the well is connected to a municipal water system, tied to an assured water supply determination, or permitted for the recovery of long-term storage credits, which encompasses thousands of wells throughout the Phoenix AMA.

without any legal pathway to develop their land, causing immediate and ongoing financial harm.

Arizona law does not permit such sweeping action absent formal rulemaking and legislative authorization. Instead, agencies must operate within the bounds of their delegated authority. ADWR's imposition of AMA-wide restrictions violates the APA and other state laws.

LEGAL STANDARD

A motion for summary judgment "shall" be granted "if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgement as a matter of law." Ariz. R. Civ. P. 56(a). Here, there are no material factual disputes, and whether the AMA-Wide Rules are agency rules authorized by statute is a pure question of law, properly decided on summary judgment.

ARGUMENT

Administrative agencies are "creatures of statute," and possess only those powers expressly granted them by state law. *See Facilitec, Inc. v. Hibbs,* 206 Ariz. 486, 488 ¶ 10 (2003). An agency must "'exercise its rule-making authority within the grant of legislative power as expressed in the enabling statutes.'" *Cochise Cnty. v. Kirschner*, 171 Ariz. 258, 261 (App. 1992) (citation omitted). Determining whether a rule falls within an agency's statutory authority is a matter of statutory interpretation. *Dioguardi v. Superior Ct.*, 184 Ariz. 414, 417 (App. 1995). Courts will not "'read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself,'" nor will they "'inflate, expand, stretch or extend a statute to matters not falling within its expressed provisions.'" *Roberts v. State*, 253 Ariz. 259, 266 ¶ 20 (2022) (citation omitted).

By imposing the AMA-Wide Rules, ADWR has overstepped its statutory authority.

Arizona law provides a remedy. Under Section 41-1034(B), any person affected by an agency policy or practice that the person alleges constitutes a rule may obtain a

judicial declaration to that effect. Further, under Section 41-1030(A), an agency rule is "invalid" if it is not made "in substantial compliance" with the APA.

The AMA-Wide Rules are binding, and apply to all property owners seeking Certificates in the Phoenix AMA. Yet they were imposed without compliance with the APA's rulemaking procedures. Plaintiff is therefore entitled to a judicial declaration under Section 41-1034(B), confirming that these measures are in fact rules, and that because they were adopted outside the required process, they are invalid under Section 41-1030(A). *See also Republican Nat'l Comm. v. Fontes*, 566 P.3d 984, 992 ¶ 22 (App. 2025) ("[A] rule is invalid if it is not made and approved in substantial compliance with the APA procedures," and invalidating an agency rule on that basis). Judgment should therefore be entered in favor of Plaintiff on Counts 1 and 3.

In addition, Section 41-1030(A) provides that a rule is invalid if inconsistent with statutory authority or not reasonably necessary to effectuate the purpose of the statute. Under Section 41-1030(D), all rules must also be specifically authorized by statute. The AMA-Wide Rules meet none of these requirements. They are therefore not only procedurally flawed, but substantively unauthorized. For these additional reasons, judgment should be entered in favor of Plaintiff on Counts 2 and 4.

I. The AMA-Wide Rules are APA rules.

The APA defines a "rule" as "an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency." A.R.S. § 41-1001(21). Thus, an agency practice or policy is a rule if it [1] "is generally applicable," and [2] "implements, interprets or prescribes law or policy, ***or*** describes the procedure or practice requirements of an agency." *Arizona State Ret. Sys.*, 237 Ariz. at 250 ¶ 16 (emphasis added).

The AMA-Wide Rules easily satisfy this standard.

A. The Rules are generally applicable.

An agency rule is "generally applicable" when it applies uniformly to all parties subject to the rule. *Arizona State Ret. Sys.* held that a policy adopted by the State

Retirement System was a rule because it had been applied consistently to all employers in the pension system. *Id.* Likewise, in *Carondelet Health Services, Inc. v. Arizona Health Care Cost Containment Sys. Admin.*, the court found that an agency's interpretation of a reimbursement formula qualified as a rule because the methodology was "generally applied to all hospitals." 182 Ariz. 221, 227 (App. 1994).

The "unmet demand" Rule meets this standard. ADWR applies this Rule across the board to all applicants seeking Certificates—including all subdivision developers. ADWR acknowledges this. It says in its motion to dismiss that "a subdivision developer must obtain … a certificate of assured water supply … before selling homes within an [AMA]," and that "[i]f previously allocated groundwater uses are unmet in the affected area, then ADWR cannot approve the application." ADWR Motion to Dismiss (Mot.) at 1, 6. This blanket application of the "unmet demand" Rule to all Certificate applicants confirms its general applicability.

The same is true for the "depth-to-water" Rule. It also applies uniformly to all applicants for Certificates, including those subdividing land for residential development, as ADWR again concedes in its motion to dismiss (at 14). Application of the Rule is not discretionary or selectively applied; it serves as a new requirement—one that is virtually impossible to satisfy—for all Certificate applicants in the Phoenix AMA.

B. ADWR is implementing, interpreting, and prescribing state law and describing a procedure and practice of the agency when imposing the Rules.

The AMA-Wide Rules also meet the second element of the definition of "rule": they implement, interpret, or prescribe statutory law. *See Arizona State Ret. Sys.*, 237 Ariz. at 250 ¶ 16. In fact, the bulk of ADWR's motion to dismiss (at 11–17) is devoted to explaining how these Rules *do,* in fact, implement, interpret, or prescribe Section 45-576. So, again, ADWR concedes they're Rules.

"Implement" means "[t]o put into practical effect; carry out." *American Heritage Dictionary* 880 (4th ed. 2006); *see also Arizona State Ret. Sys.*, 237 Ariz. at 251 ¶ 17

(citing this definition). "Interpret" means "[t]o explain the meaning of." *Id.* "Prescribe" means "[t]o dictate, ordain, or direct." Black's Law Dictionary (12th ed. 2024).[5]

In *Arizona State Ret. Sys.*, the Arizona Board of Regents ("ABOR") challenged a policy adopted by the Arizona State Retirement System ("ASRS"), which required ABOR to fund pension liabilities for retiring employees. The court found that ASRS's policy *implemented* a statute because it "'put [that statute] into practical effect.'" 237 Ariz. at 251 ¶ 17 (citation omitted).

The same is true here. Section 45-576(M) defines an "assured water supply" and sets forth the criteria for ADWR to issue Certificates. By imposing the "unmet demand" and "depth-to-water" Rules, ADWR is putting that statute "into practical effect." *Arizona State Ret. Sys.*, 237 Ariz. at 251 ¶ 17. The Rules do not merely provide suggestions for internal agency procedures—they impose binding requirements on all applicants seeking a Certificate. That's a textbook definition of implementation. ADWR is not just applying a statute—it's creating rules that *implement* (or purport to implement) statutory requirements. That means the Rules fall squarely within the APA's definition of a "rule" and cannot be imposed without complying with rulemaking procedures.[6]

Similarly, the AMA-Wide Rules represent ADWR *interpreting* Section 45-576(M). *Arizona State Ret. Sys.* found that ASRS was interpreting a pension statute (A.R.S. § 38-749) by applying actuarial assumptions in a policy it imposed on ABOR. 237 Ariz. at 251 ¶ 18. The court reasoned that, while the statute required ASRS to make a calculation, it did not specify *how* to do so; thus, "to implement A.R.S. § 38–749, one must first interpret it," *id.* ¶ 19, and the rule in question performed that task.

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[5] "When a word is not defined in the ordinance or in any statute, we generally 'refer to a widely used dictionary to determine its meaning.'" *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 183 ¶ 33 (App. 2008) (citation omitted).

[6] ADWR is also *prescribing* Section 45-576 by imposing the Unmet Demand and Depth-to-Water Rules. These Rules have had immediate, substantive effects: applications for Assured Water Supply Certificates in the Phoenix AMA have been denied because ADWR concluded that groundwater was insufficient under its newly applied standards. Comp. at ¶ 102. That means ADWR has effectively *dictated* and *directed* the denial of essential permits based on its interpretation of statutory authority.

The same is true here. The AMA-Wide Rules dictate *how* ADWR calculates whether an assured water supply exists. That calculation is ADWR's method of *interpreting* the requirement imposed by Section 45-576(M). The Rule therefore interprets the statute. For reasons given below, Plaintiffs contend that this interpretation is invalid—but what is important here is that the AMA-Wide Rules are acts of *interpretation*. ADWR itself admits this, repeatedly referring to the Rules as an "interpretation" of the statute. *See* ADWR Motion to Dismiss at 16 ("ADWR's consideration of AMA-wide depth-to-water level exceedances [is an] . . . *interpretation* [of the statute that] protects against [harms]"; "ADWR's *interpretation and application of [the statute's] meaning* should be 'given effect.'" (emphases added)).

Whatever the wisdom of the AMA-Wide Rules, it's undeniable that they interpret and implement the statute. That means they're "rule[s] within the meaning of the APA," *Arizona State Ret. Sys*., 237 Ariz. at 252 ¶ 22, and because ADWR failed to comply with APA rulemaking procedures, they're invalid.

II. The AMA-Wide Rules are not consistent with or reasonably necessary to carry out the purposes of Section 45-576, nor are they specifically authorized by law.

In 2022, the Legislature amended Section 41-1030 to ensure that administrative agencies cannot act outside the bounds of their statutory authority. The amendment specifically limits the policymaking authority of administrative agencies. The law now provides—in unequivocal terms—that a rule is "invalid unless it is **consistent with statute** [and] **reasonably necessary to carry out the purpose of the statute**." A.R.S. § 41-1030(A) (emphasis added). The statute also states that "An agency shall not … [m]ake a rule that is not **specifically authorized by statute**." *Id.* § 41-1030(D)(3) (emphasis added). Thus, for an agency rule to be lawful, it must satisfy three independent criteria: (1) consistency with statute, (2) necessity to fulfill the statute's purpose, and (3) specific statutory authorization. Failure to meet *any* of these requirements renders a rule invalid. The AMA-Wide Rules fail on *all* three counts.

A. The AMA-Wide Rules are inconsistent with Section 45-576.

The AMA-Wide Rules are inconsistent with Arizona law because they impose an *AMA-wide* standard for evaluating applications for Certificates—despite the statute's requirement that the standard be tied to *the applicant's* "proposed use." A.R.S. § 45-576(M). That statute defines "assured water supply" as "[s]ufficient groundwater … to satisfy the water needs of **the proposed use** for at least one hundred years. (Emphasis added).

Thus, whether an "assured water supply" exists is determined on a use-by-use basis. The statute does not require applicants to prove up a sufficient water supply to cover *an entire AMA.* But ADWR is requiring the latter—without, and indeed, contrary to, statutory authority.

When interpreting statutes, courts "look first to [the statute's] language," and seek to give meaning to each word, clause, and phrase, "so that no part of the legislation will be void, inert or trivial." *Cleckner v. Arizona Dep't of Health Servs.*, 246 Ariz. 40, 43 ¶ 9 (App. 2019). If "a statute's plain language is unambiguous in context, it is dispositive." *In re Drummond*, 257 Ariz. 15, 18 ¶ 5 (2024).

Section 45-576(M) is unambiguous: an applicant must demonstrate that sufficient groundwater exists to meet the needs of *his or her own* proposed use, not those of unrelated users elsewhere in the AMA. Yet the AMA-Wide Rules require just that—an applicant must prove sufficient groundwater for other demands—including even users located on the opposite end of the (5,646 square-mile) AMA.

According to ADWR, "[i]f an applicant [for a Certificate of assured water supply] submits a model run that shows unmet demand for other groundwater uses in the affected area, it has not fully accounted for uses in the area." Mot. at 12. In other words, if ADWR's model detects any "unmet demand" *anywhere within the AMA*, the agency considers the groundwater supply insufficient for any new applicant.

In short, AWDR's Rules change the statute from requiring a *user-specific* demonstration[7] of adequate water to instead require a demonstration of adequate water *area-wide*. This not only violates the plain language of Section 45-576, which refers to groundwater use "that *the applicant* will cause" – but it imposes a new, unauthorized, and extremely burdensome regulatory scheme. As a result, property owners are effectively barred from developing land based on conditions far beyond their own proposed water use.

In addition to the plain language of Section 45-576(M)(1), the Legislature recently reaffirmed that that statute requires a *site-specific* analysis of a *proposed development's* water use—*not* an AMA-wide inquiry. In a Concurrent Resolution adopted on May 7, 2025, the Legislature unequivocally stated: "[P]ursuant to A.R.S. section 45-576, the Arizona Legislature does not define 'assured water supply' as meaning sufficient water to satisfy the needs of other users who are not the applicant and instead limits the requirement to 'the needs of the proposed use.'" PSOF ¶ 19. The Resolution further confirms that the statute "did not authorize the Governor or the Director of [ADWR] to deny or withhold a certificate or designation of assured water supply based on well depth or 'unmet demand.'" PSOF ¶ 21. The Legislature then declared that:

> [A]ny … rule, regulation, policy or condition is contrary to the text and legislative intent of the 1980 Groundwater Management Act and is accordingly void and unenforceable … [including] [a]ny denial or withholding of the approval or timely resolution of an application for a certificate or designation of assured water supply on the basis… [o]f other users' well depth or "unmet demand."

PSOF ¶ 22.

Thus, the Legislature itself has affirmed in clear terms that the AMA-Wide Rules are contrary to the text and intent of the Groundwater Management Act. *See Scottsdale*

[7] *See* Jack A. Vincent, *What Lies Beneath: The Inherent Dangers of the Central Arizona Groundwater Replenishment District*, 38 Ariz. St. L.J. 857, 857 (2006) ("Arizona water law requires that, before developers can obtain a plat for any new subdivision, they must obtain a certificate from the Department of Water Resources ('DWR') stating that there is a supply of water *to serve the needs of that development* for at least 100 years.") (emphasis added).

Healthcare, Inc. v. Arizona Health Care Cost Containment Sys. Admin., 206 Ariz. 1, 5 ¶ 10 (2003) ("Our chief goal is to ascertain and give effect to the legislative intent.").

Silver v. Pueblo Del Sol Water Co., 244 Ariz. 553 (2018), is also instructive. There, the plaintiffs argued that ADWR should consider unspecified and unquantified federal reserved water rights when determining whether a homebuilder had an adequate water supply (under a different but essentially equivalent statute). *Id.* at 556 ¶ 1. The plaintiffs contended, *just like ADWR does now*, that ADWR must assess the effect of an applicant's water use on other users. *See id.* at 559 ¶ 20. The Supreme Court *rejected* that argument.

It held that state law and agency rules require the opposite: ADWR must assess how "existing uses" affect the groundwater supply available *to the applicant*, ***not*** how the applicant's groundwater use might affect other users. *Id.* In other words, the law exists "to ensure that enough groundwater is physically available in the aquifer to meet the needs of *the applicant*," and "is *not* a mechanism for considering potential legal disputes between groundwater users." *Id.* (emphasis added). The groundwater statutory framework focuses on whether an applicant has sufficient groundwater to meet its *own* projected needs, not hypothetical effects on other water users.

Because the AMA-Wide Rules reverse the physical availability framework, ADWR's regulatory stance demonstrates that (i) the AMA-Wide Rules are new and revised interpretations of the law and are therefore each a "rule": and (ii) that they are adopted in direct contravention of the Arizona Supreme Court's interpretation of the law as expressed in *Silver*.

The AMA-Wide Rules unlawfully impose on applicants the burden of proving not only that they have sufficient water for their *own* proposed use, but also that no unmet demand exists anywhere else in the 5,646 square mile Phoenix AMA. This fundamentally alters the statutory inquiry under Section 45-576(M) and imposes obligations that the statute simply does not require. In doing so, ADWR has exceeded its legal authority and adopted an interpretation squarely at odds with the law.

B. The AMA-Wide Rules are not necessary to carry out the purpose of state law—they're contrary to it.

Nor are the AMA-Wide Rules "reasonably necessary to carry out the purpose" of Section 45-576. The purpose of the assured water supply program is to ensure that enough water will be "available to satisfy *the water needs* ***of the proposed use*** for at least one hundred years." A.R.S. § 45-576(M)(1). The Supreme Court has explained that Title 45 represents a legislative "balance" between responsible water management and the protection of property owners' development rights. *Silver*, 244 Ariz. at 562 ¶ 31.

ADWR's AMA-Wide Rules upend that balance. By inserting its own policy preferences into the statutory framework, ADWR has improperly usurped the Legislature's role on foundational questions of water policy—in some of the fastest-growing and most affordable regions of Maricopa County. But "[an] agency's policy preferences cannot trump the words of the statute." *Nat'l Treasury Emps. Union v. Chertoff*, 452 F.3d 839, 865 (D.C. Cir. 2006).[8]

Silver is instructive on this point also. It made clear that courts "do[] not have the constitutional authority to construe a statute so that it encompasses matters that were not covered or addressed by the legislature." 244 Ariz. at 564 ¶ 41. Yet that's precisely what ADWR is asking this Court to do in defending its AMA-Wide Rules.

ADWR advances a series of *policy* arguments to justify these Rules, including the claim that without them, developers might use too much water, inflict "catastrophic cost[s]" on existing users, etc. Mot. at 13. But whatever the merits or demerits of these claims, they're not for ADWR to decide, or for this Court to authorize. *Cf. Universal Roofers v. Indus. Comm'n of Ariz.*, 187 Ariz. 620, 622 (App. 1996) ("[W]e can agree that Argonaut's policy arguments have merit, and we still conclude that, because the statute has a plain and sensible meaning as written, the Court should not rewrite it … . Whether the statute should be amended to read as argued by Argonaut is for the legislature to

[8] And, of course, "[a] bald declaration of an agency's policy preferences does not discharge its duty to [comply with the APA]." *City & Cnty. of San Francisco v. United States Citizenship & Immigr. Servs.*, 981 F.3d 742, 759 (9th Cir. 2020).

decide."). As *Silver* makes clear, "the degree of acceptable risk to consumers' water supplies is a policy judgment best suited for the legislature." 244 Ariz. at 566 ¶ 44; *see also Arizona Pub. Serv. Co. v. Long*, 160 Ariz. 429, 436 (1989) ("[W]e must look to the legislature to enact the laws they deem appropriate for wise use and management of what may be a valuable water resource for Arizona.").[9]

By adopting the AMA-Wide Rules, ADWR has acted beyond its statutory authority, violating not only the letter, but also the spirit, of Section 45-576. Those Rules are not only unnecessary to fulfill the purpose of the assured water supply program—they fundamentally contradict it.

C. The AMA-Wide Rules aren't specifically authorized by statute.

Any remaining doubt about the illegality of the Rules is resolved by Section 41-1030(D)(3), which expressly prohibits agencies from making rules that are "not *specifically authorized by statute*." (Emphasis added). "Specifically" means "[o]f, relating to, or designating a particular or defined thing; explicit <specific duties>." SPECIFIC, Black's Law Dictionary (12th ed. 2024). "Authorized" means "[t]o give legal authority; to empower." AUTHORIZE, *id.*

The Supreme Court has defined express statutory authority as authority granted "in direct terms, definitely and explicitly," rather than "general, implied, or not directly stated." *City of Flagstaff v. Associated Dairy Prods. Co.*, 75 Ariz. 254, 257 (1953). Specific statutory authority "confers powers to do a particular thing set forth and declared exactly, plainly and directly with well-defined limits." *Id.*

ADWR does not and cannot point to *any* provision of Arizona law that authorizes it to impose an AMA-wide standard to deny applications for Certificates. That's because

[9] *See further Pitney-Bowes, Inc. v. California*, 166 Cal. Rptr. 489, 497 n.12 (App. 1980) ("[A]bsent a clear legislative mandate, in the interest of the wise public policy of avoiding uncalled for and unnecessary regulation in the free market place, courts should exercise judicial restraint and refrain from scratching administrative agencies' itch to expand their regulatory powers.").

none exists. And the absence of specific statutory authorization renders the Rules invalid under Section 41-1030(D)(3).[10]

The recent amendment to Section 41-1030(D)(3) marks a sea change in Arizona administrative law—significantly curtailing agencies' policymaking authority. The legislative record leaves no doubt about its purpose and scope.

During debate over H.B. 2599, Senator Mesnard, who introduced the amendment to Section 41-1030(D), stating that agencies shall not "[m]ake a rule that is not specifically authorized by statute,"[11] testified in support of the measure. He was unequivocal about the rationale behind the change: administrative agencies "are not supposed to be making policy."[12]

The Legislature adopted the amendment, codifying the "specifically authorized" language. As the Court of Appeals has recognized, "[a] court will interpret a statute so it can discern and apply the legislature's intent when it enacted the statute under review." *Antonio P. v. Arizona Dep't of Econ. Sec*., 218 Ariz. 402, 405 ¶ 11 (App. 2008). Here, the Legislature's express addition of "specifically authorized" in Section 41-1030(D)(3) leaves no room for doubt: agencies may not create rules that are not "specifically authorized by statute." This statutory restriction reaffirms a foundational principle of Arizona law—that policymaking authority rests with the Legislature, not with administrative agencies.

The absence of *specific* statutory authority is no accident. The statutes *do* give ADWR specific authority to do other things. Arizona's groundwater laws are among the most comprehensive and detailed in the country.[13] This is true regarding the statutory

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[10] Courts, of course, presume the legislature intends omissions in well-considered legislative schemes. *Alaface v. Nat'l Inv. Co*., 181 Ariz. 586, 593 (App. 1994); *State v. Gray*, 227 Ariz. 424, 429 ¶ 15 n.5 (App. 2011).

[11] https://www.azleg.gov/legtext/55leg/2R/adopted/S.2599MESNARD1059.pdf.

[12] https://www.azleg.gov/videoplayer/?eventID=2022041070&startStreamAt=839 at 22:50.

[13] Arizona's groundwater statutes have often been praised for their thoroughness. *See, e.g.,* Jon L. Kyl, *The 1980 Arizona Groundwater Management Act: From Inception to Current Constitutional Challenge*, 53 U. Colo. L. Rev. 471, 471, 503 (1982) (praising the Act as "a thorough blueprint for state management and regulation of groundwater"); Philip R. Higdon & Terence W. Thompson, *The 1980 Arizona Groundwater Management*

framework for groundwater management generally, and the assured water supply program in particular. *See* A.R.S. §§ 45-401–45-706. When the Legislature intends to impose a specific groundwater management requirement, it knows how to—and it does so explicitly. **It did not do so here.**

In *Merrick v. Rottman*, 135 Ariz. 594 (App. 1983), the Funeral Directors Board claimed that it had power to issue cease-and-desist notices for alleged violations of the law. *Id.* at 595. The court said no—because "the act … contains specific provisions as to how the act is to be enforced," and cease-and-desist orders were *not* included. *Id.* at 598. "Given these specific enforcement powers, no additional powers may be implied." *Id*. at 590. The same logic applies here. Arizona law "provides quite specifically for the contents of an application for a certificate of assured water supply, the procedures for obtaining one, and appeals of adverse decisions," Higdon & Thompson, *supra,* at 642—and it does *not* include the requirements ADWR has added.

Courts should not read into the law provisions that the Legislature deliberately omitted. In *Arizona Public Service Co. v. Long*, 160 Ariz. 429, 435–36 (1989), the court held that because the Legislature extensively regulated effluent water use in some respects but not others, courts could not read into the law provisions that were omitted. "[I]t [is] almost impossible to believe," it said, "that if the legislature had intended to manage, restrict or regulate the use of municipal effluent, it would not have done so explicitly." *Id.* Likewise, if the Legislature intended to require applicants to satisfy an *AMA-wide* unmet demand or depth-to-water standard—requiring proof of adequate water not for a specific user but across a region more than twice the size of Delaware—it would have done so clearly and explicitly. It did not. Instead, it expressly limited the definition of assured water supply to mean sufficient water for "the proposed use." A.R.S. § 45-576(M).

ADWR has done far more than fill a statutory gap—it has "effected a 'fundamental revision of the statute, changing it from one sort of scheme of regulation into an entirely

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Code, 1980 Ariz. St. L.J. 621 (1980) (describing the "painstaking" and "comprehensive" nature of the code).

different kind." *W. Virginia v. EPA*, 597 U.S. 697, 701 (2022) (citation omitted, alterations adopted). In the absence of specific statutory authorization, ADWR lacks the authority to make such a sweeping policy change.

Because the AMA-Wide Unmet Demand Rule and AMA-Wide Depth-to-Water Rule are not specifically authorized by statute, they are invalid under Section 41-1030(D)(3).

CONCLUSION

Based on the foregoing, the Court should grant summary judgment in favor of Plaintiff on all counts.

RESPECTFULLY SUBMITTED this 27th day of May 2025.

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CERTIFICATE OF SERVICE

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