

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-002623

01/21/2026

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT
A. Navarro Albor/Y. Rodriguez
Deputy

HOME BUILDERS ASSOCIATION OF
CENTRAL ARIZONA

JONATHAN RICHES

v.

ARIZONA DEPARTMENT OF WATER
RESOURCES, et al.

NICOLE D KLOBAS

JENNY J WINKLER
JUDGE BLANEY

MINUTE ENTRY

The Court has reviewed and considered Defendants Arizona Department of Water Resources and Director Thomas Buschatzke's (together: "ADWR") *Motion to Dismiss* Plaintiff Home Builders Association of Central Arizona's ("Plaintiff HBACA") *Complaint for Declaratory and Injunctive Relief*, the parties' associated briefing, and the arguments received at the September 29, 2025 oral argument.

HBACA is a trade association for the residential construction and development industry, and many of its members are subdivision developers with the Phoenix Active Management Area ("Phoenix AMA") that are subject to the rules that HBACA is challenging. ADWR is a state agency charged with, *inter alia*, the control and supervision of groundwater use in the State of Arizona consistent with Title 45 of Arizona Revised Statutes and other applicable Arizona law. Specific to the issues currently before the Court, ADWR is the agency charged with administering the "Assured Water Supply" program. See A.R.S. § 45-576.

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Under the Assured Water Supply Program, developers of subdivided real estate located within an AMA must demonstrate an assured water supply before they can subdivide and sell lots. A.R.S. § 45-576(A). To demonstrate an assured water supply, municipal water providers may apply for a Designation of Assured Water Supply to cover their entire service area. A.R.S. § 45-576(A). If they do not obtain service from a designated provider, however, individual developers located within the Phoenix AMA – such as HBACA’s members – must apply for and obtain a Certificate to subdivide. A Certificate is unique to the individual development and demonstrates sufficient water for that development. 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). As part of this showing, a developer must demonstrate that the water supply will be “physically available” for 100 years. See A.A.C. R12-15-716.

If the developer demonstrates, *inter alia*, that sufficient groundwater is physically available to meet the water demand of the subdivision, the Director is required to issue a certificate to the developer. A.R.S. § 45-578(D).

To determine whether a developer has demonstrated that groundwater for the proposed use is physically available for 100 years, the applicant must submit to ADWR hydrologic studies that “accurately describe the hydrology of the affected area” and demonstrate that “the groundwater” to serve the development “will be physically available for the proposed use.” A.A.C. R12-15-716(B); *see also* A.R.S. § 45-576(M). The sources of groundwater are wells that will serve the proposed use. Accordingly, the applicant must show: “The groundwater will be withdrawn ... from wells owned by the applicant or the proposed municipal provider that are located within the service area of the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for future uses of the applicant or the proposed municipal provider.” *Id.*; R12-15-716(B)(1)(a). Groundwater is “physically available” if it “will be withdrawn from depths that do not exceed” 1,000 feet below ground surface. R12-15-716(B)(2).

In November 2024, ADWR released an updated version of a groundwater model covering most of the Phoenix AMA (the “Phoenix AMA Model”), which purported to show that unmet demand and exceedances of the 1,000-foot depth-to-water limit exist within the Phoenix AMA. Based on that model and the application of the associated

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AMA-Wide Rules, discussed *infra*, ADWR has taken a regulatory stance that it will not issue any certificates based on groundwater to developers located within the Phoenix AMA model domain.

HBACA filed its *Complaint* alleging that ADWR created and has begun enforcing two new rules without the authority to impose the new rules and without complying with the mandatory procedures of the Arizona Administrative Procedure Act (“APA”), A.R.S. § 41-1001, *et seq.*. An agency such as ADWR may make rules only if the Legislature has given it the authority to do so. If an agency has such authority, its rulemaking process must follow the procedures in the APA, unless the agency’s actions are expressly exempt from the APA’s rulemaking procedures. The APA provides procedures for agency rulemaking and for the appeal of agency decisions. In the absence of an exemption, a rule is valid only if it is made in substantial compliance with the APA. The procedures in the APA are designed to ensure adequate public participation and transparency in the rulemaking process.

More specifically, HBACA alleges that under ADWR’s new AMA-Wide Unmet Demand Rule, if modeling predicts that within the next 100 years a single well may not be able to fully satisfy its predicted demand in any location within the Phoenix AMA Model domain, then ADWR concludes that there is no physically available groundwater anywhere within the Phoenix AMA Model domain, even if that well could be reasonably relocated to secure a full water supply. HBACA further alleges that under ADWR’s AMA-Wide Depth-to-Water Rule, 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, then ADWR concludes that there is no physically available groundwater anywhere within the Phoenix AMA Model domain.

HBACA argues that ADWR has placed developers’, including HBACA members’, applications for Certificates on indefinite hold based upon these new AMA-wide rules. Critically, HBACA points out that ADWR has transformed the physical availability assessment from a site-specific assessment into an AMA-wide standard. This means that HBACA members are unable to develop their land because ADWR will not issue them Certificates. According to the *Complaint*, ADWR’s AMA-wide rules have halted all new home construction in large portions of Maricopa County and left property owners, including HBACA members, without the ability to develop their land.

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ADWR moves to dismiss HBACA's claims, arguing that ADWR was within its authority to implement the new, broader AMA-wide unmet demand and depth-to-water changes under the existing rules and A.R.S. § 45-576.

As a general policy matter, "motions to dismiss for failure to state a claim are not favored under Arizona law." *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594 (1983). When considering such a motion to dismiss, the Court will "look only to the pleading itself and consider the well-pleaded factual allegations contained therein." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 ¶ 7 (2008). The Court must assume the truth of the well-pleaded factual allegations and indulge all reasonable inferences therefrom, "but mere conclusory statements are insufficient." *Coleman v. City of Mesa*, 230 Ariz. 352, 356 (2012) (*quoting Fid. Sec. Life Ins. Co. v. State Dep't of Ins.*, 191 Ariz. 222, 224 (1998)). "Dismissal is appropriate under Rule 12(b)(6) only if as a matter of law plaintiff would not be entitled to relief under any interpretation of the facts susceptible of proof." *Id.* (internal quotations omitted).

It is not the Court's task when adjudicating a motion to dismiss to examine the strength of a party's claim. Whether Plaintiffs will ultimately identify sufficient, competent evidence to establish their entitlement to relief is not the proper focus of a Rule 12 motion. *Cullen*, 218 Ariz. at 419, ¶ 6 ("Under Rule 8, Arizona follows a notice pleading standard, the purpose of which is to give the opponent fair notice of the nature and basis of the claim and indicate generally the type of litigation involved.") (internal quotations omitted). A defendant's disagreement with the well-pleaded allegations in a complaint is not relevant at the motion to dismiss stage because the Court will "not resolve factual disputes between the parties on an undeveloped record." *Coleman*, 230 Ariz. at 363.

To state a claim that ADWR's creation and implementation of the new AMA-wide standards violated the APA, HBACA must properly allege that the AMA-Wide Unmet Demand Rule and the AMA-Wide Depth-to-Water Rule are actually "rules" pursuant to the APA and therefore ADWR's actions in implementing the changes constituted "rulemaking" as contemplated in the APA. The APA defines "rulemaking" as "the process to make a new rule or amend, repeal or renumber a rule." A.R.S. § 41-1001(22). A "rule" is defined in part 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, a rule is an agency statement that: (1) is generally applicable; and (2) implements, interprets or prescribes law or

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policy, or describes the procedure or practice requirements of an agency. *Arizona Bd. of Regents v. Arizona State Retirement System*, 237 Ariz. 246, 250, ¶ 16 (App. 2015). “In order to be a ‘rule’ under the Arizona scheme, a statement must be both of general applicability and have future effect.” *Havasu Heights Ranch and Development Corp. v. State Land Dep’t of the State of Arizona*, 158 Ariz. 552, 559 (App. 1988).

THE COURT FINDS that HBACA has properly alleged with well-pleaded allegations that the AMA-Wide Unmet Demand Rule and the AMA-Wide Depth-to-Water Rule are in fact “rules” under the APA. The AMA-wide rules are agency statements that have general applicability to all developers seeking the issuance of Assured Water Supply determinations based upon groundwater. And it is beyond dispute that the AMA-Wide Unmet Demand Rule and the AMA-Wide Depth-to-Water Rule implement law and policy – specifically A.R.S. § 45-576. The Court notes that ADWR does not argue that an exception to the APA applies in this case pursuant to A.R.S. § 41-1002(A). Indeed, the existing rule – R12-15-716 – was implemented in 2006 through proper rulemaking.

THE COURT FURTHER FINDS that HBACA has properly alleged through well-pleaded allegations that ADWR engaged in rulemaking through its creation and implementation of the AMA-wide rules. HBACA argues that these are new rules that go beyond the scope of R12-15-716(B) in its present form and in its traditional application. HBACA alleges in the *Complaint* that prior to ADWR’s recent shift to an AMA-wide analysis, developers were able to demonstrate a sufficient supply of groundwater for their proposed use by submitting a hydrologic study involving a single well point. *Complaint* at ¶¶ 31, 36. But ADWR’s 2024 release of the updated Phoenix AMA Model and its associated, updated regulatory stance (which includes the AMA-Wide Unmet Demand Rule and the AMA-Wide Depth-to-Water Rule), shifted the focus from a single well point to the entirety of the Phoenix AMA. This new expansion of the scope of the “affected area,” ¶ 36, has created obstacles to obtaining the required certificates and resulted in ADWR halting the issuance of any Assured Water Supply determinations in the Phoenix AMA. *Id.* at ¶¶ 37-51, 57, 58, 63-65.

HBACA alleges that as a result of the implementation of these new rules and ADWR’s unilaterally declared prohibition on issuance of certificates, its members have lost and will continue to lose substantial financial resources because they are precluded from developing their land. *Id.* at 61.

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THE COURT FURTHER FINDS that HBACA has sufficiently alleged through well-pleaded allegations that the AMA-Wide Unmet Demand Rule and the AMA-Wide Depth-to-Water Rule are not lawful. In Arizona, an agency rule is invalid unless it is: (1) consistent with the statute; (2) reasonably necessary to carry out the purposes of the statute; and (3) specifically authorized by the statute. A.R.S. § 41-1030(A)&(D).

Here, the AMA-wide rules do not appear on the limited record before the Court to be consistent with the plain language of the statute they seek to implement: A.R.S. § 45-576. The statute specifically requires the applicant to demonstrate that there is sufficient groundwater for the applicant's "proposed use." The existing rule, R12-15-716(B), which again was properly implemented through APA procedures, focuses on "the area where groundwater withdrawals are proposed to occur." ADWR has not identified anything in the statute or in the existing, properly-implemented rule that supports the new, broader definition of the "affected area." Indeed, any support for such a rule – such as ADWR's assertion that the Director made a new determination regarding the necessary scope of "affected area" – requires a fact-intensive inquiry not appropriate at the motion to dismiss stage. *Cullen*, 218 Ariz. 417, 419 ¶ 7 (court will "look only to the pleading itself and consider the well-pleaded factual allegations contained therein.").

The second prong – reasonable necessity – is also fact intensive and ADWR's arguments again rest largely upon a factual determination purportedly made by the Director. On this limited record, the Court cannot determine as a matter of law that the two new rules are or are not reasonably necessary to carry out the purposes of the statute.

Finally, ADWR has not shown on this limited record that the new AMA-wide rules are specifically authorized by the statute.

THE COURT THEREFORE FINDS that ADWR has failed to establish as a matter of law that HBACA would not be entitled to relief under any interpretation of the facts susceptible of proof.

On good cause, and in the Court's discretion,

IT IS ORDERED denying ADWR's *Motion to Dismiss*.

IT IS FURTHER ORDERED declining to address the parties' remaining arguments as either moot or unpersuasive.