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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2025-002623 04/21/2026

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT
Z. Wilhelm
Deputy

HOME BUILDERS ASSOCIATION OF CENTRAL ARIZONA
.

JONATHAN RICHES

v.
ARIZONA DEPARTMENT OF WATER RESOURCES, et al.

NICOLE D KLOBAS

JENNY J WINKLER
STACY C SKANKEY
EMILY ELIZABETH PETRICK
KIMBERLY PARKS
SEAN THOMAS HOOD
NYLA KNOX
PATRICK B SIGL
RHETT B LARSON
KELLY SCHWAB
GRANT H FRAZIER
MADDALENA SAVARY
BRENNAN A R BOWEN
AYESHA K VOHRA
JUDGE BLANEY

UNDER ADVISEMENT RULING

The Court has reviewed and considered the parties' respective cross-motions for summary judgment and related briefing, relevant portions of the record in this case, and the arguments received at the February 20, 2026 oral argument.

The Court previously issued a ruling denying Defendants Arizona Department of Water Resources and Director Thomas Buschatzke's (jointly "ADWR") *Motion to Dismiss Plaintiff's*

Complaint for Declaratory and Injunctive Relief on January 21, 2026 (filed 01/23/2026). The Court issued that ruling after the briefing closed on the parties' present motions for summary judgment but before oral argument on the present motions. Because the present motions for summary judgment largely rely upon the same legal arguments that the Court considered in ruling on the *Motion to Dismiss*, much of the analysis below was also included in the January 21, 2026 ruling.

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 now 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.

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 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. At oral argument, counsel for ADWR confirmed this fact, stating that while ADWR continues to "review" applications, those applications are not being granted. 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. Thus, 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.

Both parties move for summary judgment. Summary judgment is appropriate only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See* Rule 56(a), *Arizona Rules of Civil Procedure; Orme School v. Reeves*, 166 Ariz. 301, 305 (1990); *Hourani v. Benson Hosp.*, 211 Ariz. 427, 432 (App. 2005). All facts must be viewed in the light most favorable to the nonmoving party. *See Grain Dealers Mutual Insurance Co. v. James*, 118 Ariz. 116 (1978); *Farmers Ins. Co. v. Vagnozzi*, 138 Ariz. 443, 448 (1983). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts" are not proper on summary judgment. *Orme School*, 166 Ariz. at 309-10 (*citing Anderson v. Liberty Lobby*, 477 U.S. 242, 255 (1986)). But the Court will not deny a motion for summary judgment on the speculation "that some slight doubt …, some scintilla of evidence, or some dispute over irrelevant or immaterial facts might blossom into a real controversy in the midst of trial." *Orme School*, 166 Ariz. at 311.

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 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 ADWR recently changed the longstanding process and criteria for how it reviews applications through implementation of the AMA-Wide Unmet Demand Rule and the AMA-Wide Depth-to Water Rule. ADWR appears to argue that it can unilaterally change process and criteria while still claiming adherence to its current rules, stating:

> As a threshold matter, ADWR submits that how ADWR reviewed something in the past is immaterial and cannot defeat summary judgment, as ADWR must apply its Physical Availability Rule correctly now and in the future, *regardless of how it was applied in the past*.

Defendants' *Reply in Support of Cross-Motion for Summary Judgment* at pg. 4 (emphasis added). This argument lack merit and improperly elevates form over substance. The long-standing doctrine of substance over form requires the Court to examine the objective realities of ADWR's actions and the results of those actions, rather than whether ADWR says it is just applying an existing rule in a different manner. *See Frank Lyon Co. v. United States*, 435 U.S. 561, 573 (1978) ("In applying this doctrine of substance over form, the Court has looked to the objective economic realities of a transaction rather than to the particular form the parties employed."). Here, ADWR is utilizing criteria when reviewing applications that did not previously exist while claiming that it is still applying the existing rules. In rejecting this argument, the Court agrees with and adopts Plaintiff's concern that:

> [A government agency cannot] be allowed to rationalize a new rule by camouflaging it as just a new implementation of an old rule. To permit this would neuter all statutory limits on agency rule-making – and would "elevate form over substance" in a manner singularly inappropriate in the context of agency regulations.

Plaintiff's *Reply in Support of Motion for Summary Judgment* at pg. 3 (citing *Johnson Utilities, LLC v. Arizona Corp. Comm'n*, 249 Ariz. 215, 235, ¶ 97 (2020) (Bolick, J., concurring in part).

THE COURT FURTHER FINDS 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 ADWR engaged in rulemaking through its creation and implementation of the AMA-wide rules. HBACA has established that these are new rules that go well beyond the scope of R12-15-716(B) in its present form and in its traditional application. 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. 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," 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. HBACA has established 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.

THE COURT FURTHER FINDS that because ADWR did not comply with the APA when implementing the challenged rules, the Court need not reach the issue of the legality of the rules themselves; that is, whether the new rules comply with applicable statutes. The Court questioned the legality of the rules on page 6 of its January 21, 2026 Ruling. But because the Court will invalidate the two new AMA-Wide Rules and order ADWR to comply with the APA process, neither the Court nor the parties can know what the rules will ultimately look like after ADWR completes the APA process.

THE COURT FURTHER FINDS that because Plaintiff has shown that ADWR acted unlawfully by implementing two agency rules without first complying with the mandatory provisions of the APA, Plaintiff need not satisfy the standard for injunctive relief. *See Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 64 ¶ 26 (2020) ("A plaintiff need not show irreparable injury or balance of hardship 'when the acts sought to be enjoined have been declared unlawful.'" (citation omitted).

THE COURT FURTHER FINDS that no genuine issues of material fact exist and Plaintiff is entitled to judgment as a matter of law on Counts One and Three of Plaintiff's *Complaint*.

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

IT IS ORDERED granting Plaintiff's *Motion for Summary Judgment* in part and declaring:

1. ADWR failed to comply with the provisions of the APA when promulgating the AMA-Wide Unmet Demand Rule. The Rule is therefore invalid and ADWR is enjoined from relying upon the Rule when reviewing and adjudicating applications.

2. ADWR failed to comply with the provisions of the APA when promulgating the AMA-Wide Depth-to Water Rule. The Rule is therefore invalid and ADWR is enjoined from relying upon the Rule when reviewing and adjudicating applications.

IT IS FURTHER ORDERED denying Defendants' *Motion for Summary Judgment*.

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

IT IS FURTHER ORDERED directing Plaintiff to prepare and lodge a form of Judgment on or before **May 8, 2026**. Plaintiff shall file any statement of taxable costs or application for attorney's fees by this deadline as well. Defendants shall file any objections or responses to the form of judgment or to the request for costs or fees within **twenty (20) days** thereafter.