

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-008701

06/08/2026

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT
M. Dern
Deputy

HOME BUILDERS ASSOCIATION OF
CENTRAL ARIZONA, et al.

ERICA LEAVITT

v.

ARIZONA DEPARTMENT OF WATER
RESOURCES, et al.

SAMBO DUL

DAVID ANDREW GAONA
KORY A LANGHOFER
DOCKET CV TX
JUDGE BLANEY

UNDER ADVISEMENT RULING

The Court has reviewed and considered Plaintiffs Home Builders Association of Central Arizona's ("HBACA"), Speaker of the Arizona House of Representatives Steve Montenegro's, and Arizona Senate President Warren Petersen's (together: "Plaintiffs") *Partial Motion for Summary Judgment for Count I*, Defendants Arizona Department of Water Resources and Director Thomas Buschatzke's (together: "ADWR") *Response* thereto, the parties' associated briefing, and the arguments received at the April 9, 2026, 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 and Pinal Active Management Areas that are subject to the rule that Plaintiffs are 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

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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.

Plaintiffs filed their *First Amended Complaint* alleging that ADWR promulgated rule amendments that contradict statutory terms and that are not authorized by statute, specifically, R12-15-710(H). Plaintiffs allege, *inter alia*, that the newly amended rule requires developers to establish the availability of water beyond what is required in the statute that the rule seeks to implement. Plaintiffs brought claims for: (1) declaratory and injunctive relief arguing that the amended R12-15-710 is inconsistent with the plain language of A.R.S. § 45-576(M); (2) regulatory taking in violation of the Arizona Constitution (brought by HBACA only); and (3) mandamus relief (brought by HBACA only) against the Director, ordering the Director to enforce the requirements of § 45-576(M) and not to enforce the amended R12-15-710(H).

Plaintiffs move for partial summary judgment on Count I of the *First Amended Complaint*, which seeks a declaratory judgment under A.R.S. §§ 12-1831 and 41-1034(A) declaring that amended R12-15-710(H) contradicts and exceeds ADWR’s statutory authority under §45-576(M), is inconsistent with statute, is not reasonably necessary to carry out the statute’s purpose, and is void. Count I further seeks an order enjoining ADWR from implementing and enforcing the Rule.

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.

Pursuant to § 45-576(A), a developer seeking approval of a subdivision plat in an AMA must receive either: (1) a certificate of Assured Water Supply (“Certificate”) from ADWR; or (2) a commitment of service from a municipal provider (“Provider”), such as cities, towns, or private companies with a designation from ADWR that the Provider’s service area has an Assured Water Supply (“Designation”). A city, town, or county may only approve a subdivision plat if ADWR has issued a Certificate to the subdivider or Designation to the Provider. § 45-576(B). ADWR will only issue these documents if groundwater is “physically available” for the water needs of the proposed use for 100 years. § 45-576(M).

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In the last few years, ADWR has released updated versions of a groundwater model covering most of the Phoenix AMA and Pinal County AMA, which purport to show that there is insufficient available groundwater within the two AMAs and groundwater has been overallocated. Based on that model and ADWR's application of a new, broader, AMA-wide focus, ADWR has taken a regulatory stance that it will not issue any certificates based on groundwater to developers located within the AMAs. Because the updated Models purportedly show that groundwater will not be physically available across the subject AMAs for 100 years, ADWR has effectively issued a moratorium on new approvals.

ADWR argues that the amended Rule in question – its amended R12-15-710(H) – provides developers with a voluntary, alternative path to obtain a Designation despite ADWR's moratorium. Plaintiffs argue in response that ADWR's amended R12-15-710(H) is not an alternative – it is the only path for a developer to obtain approval of a plat due to ADWR's refusal to otherwise approve new assured water supply applications. Plaintiffs also argue that the amended Rule improperly imposes a “water tax” on new users. Under the amended R12-15-710(H), ADWR will deem existing groundwater as “physically available” to grant a Designation, even if ADWR does not find the groundwater is actually “physically available.” But to qualify for the finding of physical availability, the Provider must obtain water from a newly created category called “New Alternative Water Supplies.” See R12-15-701 (including effluent water, surface water, Central Arizona Project Aqueduct, and transported groundwater). And the amended R12-15-710(H) further requires that Providers secure an additional 25% of New Alternative Water Supply to qualify. This requires a developer to show an increased quantity of water beyond the needs of the applicant's “proposed use.”

Plaintiffs further argue that despite ADWR's use of the phrase “25 percent” in the amended R12-15 710(H), the rule effectively imposes a 33.3% water tax on new users because it requires applicants to obtain 4/3 of their projected water use (or 133%) to break even once ADWR requires the additional 25% of water listed in Subsection (H)(2). For purposes of this ruling, it is immaterial whether the additional water requirement is 25% as the Rule states, or 33% as Plaintiffs argue. The real question is whether ADWR may, consistent with Arizona law, impose such an additional obligation on new users.

“The powers and duties of administrative agencies ... are strictly limited by the statute creating them.” *Cleckner v. Arizona. Department of Health Services*, 246 Ariz. 40, 42 ¶ 8 (App. 2019); see also *Cochise County v. Arizona Health Care Cost Containment System*, 170 Ariz. 443, 445 (App. 1991) (“The scope of an agency's power is measured by statute and may not be expanded by agency fiat.”). Pursuant to A.R.S. § 41-1030, an agency's rule must be: (1) consistent with statute; (2) necessary to fulfill a statutory purpose; and (3) specifically authorized by statute. To be enforceable, a rule must meet all three criteria.

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THE COURT FINDS that the amended R12-15 710(H) is not a voluntary, alternative path for developers to obtain a Designation despite ADWR's moratorium on approval of new assured water supply applications; ADWR's moratorium makes the amended Rule the only path for developers seeking to obtain an approved subdivision plat. The Legislature created two paths to establish an assured water supply to develop a subdivision: (1) obtain a Certificate; or (2) obtain a Designation. A.R.S. § 45-576(A). Through the implementation of its moratorium and its nearly simultaneous promulgation of a Rule that demands more water than the statute requires, ADWR has in effect attempted to rewrite the governing statute at the agency level.

THE COURT FURTHER FINDS that R12-15-710(H) is not consistent with the statute it seeks to implement: A.R.S. § 45-576. The statute plainly requires that applicants show that water will be continuously available to satisfy the water needs of the proposed use for at least one hundred years. The amended Rule's mandate that an applicant show an additional 25% of water, beyond the projected needs of the proposed use, conflicts with the plain language of the statute.

THE COURT FURTHER FINDS that, for the same reasons stated immediately above, R12-15-710(H) is not specifically authorized by any statute. § 41-1030(D). Instead of identifying a statute that specifically authorizes ADWR to require a showing of an additional 25% of available water beyond the applicant's proposed use, § 45-576, ADWR improperly relies upon the general grant of rulemaking authority in A.R.S. § 45-576(H).

THE COURT FURTHER FINDS that because Plaintiffs have shown that ADWR acted unlawfully by implementing and intending to enforce the amended R12-15-710(H) without proper authority, Plaintiffs need not satisfy the standard for injunctive relief to obtain the injunctive relief that they seek. *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 that preclude summary judgment and Plaintiffs are entitled to judgment as a matter of law on Count I of their *First Amended Complaint*.

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

IT IS ORDERED granting Plaintiffs' *Partial Motion for Summary Judgment for Count I* as follows:

1. Declaring the amended R12-15-710(H) void because it is not consistent with the statute it seeks to implement and is not specifically authorized by any statute, and

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2. Enjoining ADWR from enforcing R12-15-710(H).

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