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Tapped Out: Court Rejects ADWR Groundwater Rules on Procedural Grounds

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On April 21, 2026, Judge Scott A. Blaney of the Maricopa County Superior Court issued a significant ruling in favor of the Home Builders Association of Central Arizona (“HBACA”), granting summary judgment against the Arizona Department of Water Resources (“ADWR”) and invalidating two rules that had effectively halted groundwater-based subdivision development across large portions of Maricopa County.

Background

Under Arizona's Assured Water Supply Program, developers within an Active Management Area (“AMA”) must obtain a Certificate of Assured Water Supply before subdividing and selling lots. To obtain a Certificate, a developer must demonstrate that sufficient groundwater will be physically available to meet the development's water needs for 100 years. Historically, developers could satisfy this requirement through a site-specific hydrologic study focused on a single well point within their proposed development area.

In November 2024, ADWR released an updated Phoenix AMA groundwater model. According to the Court, based on this new model, ADWR began applying two new standards when reviewing Certificate applications:

- **The AMA-Wide Unmet Demand Rule:** If modeling predicted that any single well anywhere within the Phoenix AMA Model domain might not fully satisfy its demand within 100 years, ADWR would conclude that no physically available groundwater existed anywhere within the entire Phoenix AMA—even where a well could be reasonably relocated to secure an adequate supply.
- **The AMA-Wide Depth-to-Water Rule:** If modeling predicted that water depth would exceed 1,000 feet anywhere within the Phoenix AMA Model domain within 100 years, ADWR would similarly conclude that no physically available groundwater existed anywhere within the entire Phoenix AMA.

Opponents argued that these two standards were administrative rules created by ADWR without first complying with the mandatory procedures. In their view, the impact of ADWR's application of these rules has been staggering: ADWR stopped issuing Certificates to groundwater-reliant developers across the Phoenix AMA, halting new home construction across large portions of Maricopa County.

ADWR's counsel confirmed at oral argument that while applications were being "reviewed," none were being granted. However, ADWR's position is that the Unmet Demand and Depth-to-Water standards were not "based on" the updated Phoenix AMA model but instead were components of preexisting "physical availability" rules under the Assured Water Supply Program. ADWR contends that the standards merely "describe modeling outcomes that fail to meet the requirements" in the baseline physical availability rules. Thus, in ADWR's view, the Unmet Demand and Depth-to-Water standards were not "new" at all.

The Court's Ruling

The Court granted HBACA's Motion for Summary Judgment challenging ADWR's 2024 Phoenix AMA-wide standards on two key grounds:

1. The AMA-Wide Rules Are "Rules" Subject to the APA

The Court found that both the AMA-Wide Unmet Demand Rule and the AMA-Wide Depth-to-Water Rule constitute "rules" under the Arizona Administrative Procedure Act ("APA"). As agency statements of general applicability that implement state water law and policy, they were required to go through the APA's formal rulemaking process—including public notice, public participation, and transparency requirements. ADWR did not follow that process.

The Court rejected ADWR's argument that it was simply applying its existing Physical Availability Rule (Ariz. Admin. Code R12-15-716) in a new way. Applying the doctrine of "substance over form," the Court found that ADWR had fundamentally transformed the physical availability assessment from a site-specific inquiry into an AMA-wide standard. The Court reasoned that this is a material change, which cannot be characterized as mere reinterpretation of an existing rule. As the Court noted, a government agency cannot "rationalize a new rule by camouflaging it as just a new implementation of an old rule."

2. The Rules Are Invalid and Enjoined

The Court ruled that because ADWR failed to comply with the APA, both rules are invalid. ADWR is now enjoined from relying on either rule when reviewing and adjudicating Certificate applications, at least pending any appeal or re-promulgation of the rules in accordance with the APA's procedural requirements. Judge Blaney also denied ADWR's Cross-Motion for Summary Judgment in its entirety.

Key Takeaways

- **ADWR Must Resume Processing Applications Under Prior Standards.** ADWR can no longer use these standards as a basis to deny or indefinitely hold Certificate applications. Developers should be able to once again demonstrate physical availability of groundwater through site-specific hydrologic studies.
- **ADWR's Ability to Regulate Groundwater Development Is More Constrained, At Least for Now.** While the Court's ruling does not

permanently prohibit ADWR from addressing groundwater availability concerns, ADWR cannot adopt new AMA-wide restrictions informally or through updated modeling guidance. Any future rules of general applicability must go through the full APA rulemaking process, which requires public notice, an opportunity for public comment, and regulatory review. This is a meaningful procedural hurdle.

- **Future Regulation Is Possible, But Not Guaranteed.** ADWR could potentially promulgate new rules through proper APA procedures that address the groundwater concerns underlying its 2024 model. However, the APA process is time-consuming and resource-intensive, and there is no certainty that ADWR will pursue or successfully complete that process. In the meantime, the prior site-specific framework governs.
- **Responding to Changing Groundwater Conditions Will Be More Cumbersome.** One practical consequence of this ruling is that ADWR's ability to quickly adapt its regulatory posture in response to new groundwater data or changing conditions is significantly limited. Rather than updating its modeling and immediately shifting its review standards, ADWR must now engage in a formal, public rulemaking process before implementing any new AMA-wide standards. This provides additional protection for developers planning long-term projects.

Next Steps

The Court directed HBACA to submit a proposed form of Judgment by May 8, 2026. ADWR will have 20 days thereafter to file any objections. ADWR has indicated that it intends to appeal. We will continue to monitor developments, including any potential appeal by ADWR or any efforts by ADWR to initiate APA rulemaking.

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