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Arizona Court Rolls Back Another ADWR Rule. Developers Win—For Now

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On June 8, 2026, Judge Scott A. Blaney of the Maricopa County Superior Court issued a ruling in favor of the Home Builders Association of Central Arizona ("HBACA"), granting partial summary judgment against the Arizona Department of Water Resources ("ADWR") and barring the agency from enforcing a rule that required developers to establish the availability of water beyond what is needed for their subdivision plats.

Background

Within Arizona's Active Management Areas ("AMAs"), developers must obtain from ADWR either a Certificate of Assured Water Supply or a commitment of service from a provider with a Designation of Assured Water Supply in order to receive approval of their subdivision from a city, town, or county. ADWR can only issue a Certificate or Designation if sufficient water is "physically available" for the needs of the proposed use for 100 years.

In recent years, ADWR has released updated groundwater models for the Phoenix and Pinal County AMAs. These models purport to show that groundwater has already been overallocated in the region. Because that means groundwater will not be "physically available" for the next 100 years, ADWR has refused to approve new assured water supply Designations based solely on groundwater.

ADWR's amended Rule R12-15-710(H) provided developers with a way around this effective moratorium:

- **Amended R12-15-710(H)**: ADWR will deem existing groundwater "physically available" and grant a Designation, even if ADWR does not find the groundwater is actually "physically available," if (1) the water provider obtains water from alternative supplies such as surface water, transported groundwater, or Central Arizona Project Aqueduct water, and (2) the provider secures an additional 25% of this alternative water beyond the needs of the proposed use. (the "Rule").

ADWR argued that the amended Rule created a voluntary, alternative path to obtain a Designation despite ADWR's moratorium on new approvals.

Plaintiff Homebuilders argued that this new path was not optional but the *only possible* way to obtain approval of a subdivision plat when ADWR otherwise refused to grant Certificates or Designations. They described the

Rule as imposing a “water tax” on new users, in excess of what the statute requires.

The Court's Ruling

The Court granted HBACA's Partial Motion for Summary Judgment challenging the amended Rule, declaring the Rule void and enjoining its enforcement because:

1. **The Rule did not represent a voluntary path for developers.** ADWR's moratorium forced developers into following this Rule to receive approval, rather than the two statutory routes (Certificate or Designation) that the Legislature created. ADWR has, the Court says, “attempted to rewrite the governing statute at the agency level.”
2. **The Rule was inconsistent with and unauthorized by statute.** R12-15-710(H) is not consistent with the statute it seeks to implement, which requires that applicants show that water will be continuously available to satisfy the water needs of the proposed use for at least 100 years. This Rule conflicts with that plain language by requiring 25% more water than would be sufficient to satisfy the needs of the proposed use. Therefore, the Rule is not authorized by that statute, and ADWR does not identify any other statute that would grant it the *specific* authority to implement this Rule.
3. **Enforcement of the Rule was unlawful.** Because HBACA showed that ADWR acted unlawfully in implementing and intending to enforce this Rule, HBACA need not prove irreparable injury or balance of hardship to receive the desired injunctive relief.

Key Takeaways

- **ADWR cannot enforce the Rule.** As was standard before the Rule was implemented, the agency must analyze whether water is physically available *in the amount necessary* to meet the purposes of the subdivision – that's it.
- **ADWR's ability to regulate in response to changing groundwater conditions is diminished.** This ruling, in combination with ADWR's other recent loss to HBACA, has constrained ADWR's recent attempts to update groundwater regulations, creating doubt as to how the agency will modify its regulations to adapt to Arizona's changing water landscape in the future.
- **The 100-year availability requirement still stands.** Developers may continue to struggle to obtain an assured water supply Certificate in portions of the AMAs where the ADWR model shows groundwater is not physically available. For those sites, developers would still need to satisfy their water needs through alternative sources.
- **HBACA wants a new groundwater model.** HBACA has disputed the validity of the agency's groundwater models, urging the State to replace ADWR's model with “a real study with accurate scientific

validation."[1]

Next Steps

Governor Katie Hobbs has issued a statement indicating that ADWR will appeal when this ruling is final. We will continue to monitor developments, including any potential appeal by ADWR or any efforts by ADWR to initiate new rulemaking.

Dani Zylstra is a 2026 Holland & Hart Summer Clerk and co-author of this article

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1 Nate Beck, *Ariz. Judge Backs Homebuilders, Voids Water Surplus Rule*, Law360 (June 10, 2026, 6:40 PM EDT), https://www.law360.com/articles/2487805/ariz-judge-backs-homebuilders-voids-water-surplus-rule

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