



# NEWS RELEASE

Arizona House of Representatives

Representative Austin Smith (R-29)

1700 West Washington • Phoenix, Arizona • 85007

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Friday, March 17, 2023

FOR IMMEDIATE RELEASE

## Representative Austin Smith Calls on Attorney General Mayes to Announce Whether She Intends to Investigate Root Cause of Rio Verde Foothills Water Crisis

**STATE CAPITOL, PHOENIX** – State Representative Austin Smith today sent a letter to Arizona Attorney General Kris Mayes to find out if she intends to investigate whether illegal lot splits in the Rio Verde Foothills area are responsible for the water crisis its residents presently face. Such lot splits are commonly known as “wildcat subdivisions.”

**“Arizona law has long prohibited individuals from acting in concert to circumvent the requirement for an assured water supply,”** said Representative Smith. **“In her campaign for Attorney General, Kris Mayes said that she would use all available tools to ensure that consumers are protected from the possibility of growth that lacks available water supplies, including the use of consumer fraud laws to protect future and present homeowners and Arizona’s water supplies. However, since her election, I have not seen any commitment from her office to initiate an investigation into the facts that led to the dire situation in Rio Verde Foothills.”**

A copy of Representative Smith’s full letter to AG Mayes is attached below.

*Austin Smith is a Republican member of the Arizona House of Representatives serving Legislative District 29 in Goodyear, Surprise, El Mirage, Youngtown, Wittmann, Morristown, and Allah. He serves as Vice Chairman of the House Natural Resources, Energy & Water Committee and is also a member of the Municipal Oversight & Elections, and Ways & Means Committees. Follow him on Twitter at @azaustinsmith.*

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WAYS & MEANS

Arizona House of Representatives  
Phoenix, Arizona 85007

March 17, 2023

*Via Email & Regular U.S. Mail*

Hon. Kris Mayes  
Arizona Attorney General  
2005 N. Central Ave.  
Phoenix, AZ 85004

**Re: Rio Verde Foothills Water Crisis**

Dear Attorney General Mayes,

I am writing to request clarity regarding your office's intentions or ongoing efforts to investigate and potentially prosecute the actors who are ultimately responsible for causing the current water crisis in Rio Verde Foothills.

As you may be aware, in January 2023, the City of Scottsdale discontinued standpipe service to all private water haulers that were delivering water to non-residents. Since then, members of the Legislature have been working collaboratively with stakeholders, striving find both temporary and long-term solutions that would work for all parties involved (i.e., the City of Scottsdale, Maricopa County, and the residents of Rio Verde Foothills).

Any solution to this crisis must be designed to uphold the private property rights of existing and future residents. The residents of Rio Verde Foothills need a solution as quickly as possible, and ideally, without creating unnecessary layers of government, setting a precedent that would have a chilling effect on other municipalities that serve neighboring communities, or leading to unintended consequences that could prevent lawful land divisions and growth in any part of the state.

Unfortunately, some members of the Legislature have focused more on asking "how we got here" rather than on "how we can find a solution for the residents of Rio Verde Foothills." According to them, the allowance of unchecked growth and "wildcat subdivisions" are the culprit. Their concerns are similar to those you expressed during your 2022 campaign for Attorney General, wherein you said, "Sprawl and unchecked growth is threatening rural Arizona's ability to remain sustainable."<sup>1</sup>

Under Arizona law, the development of "wildcat subdivisions" is illegal, and any person who commits a scheme to defraud or omits material facts regarding the supply of water to buyers (A.R.S. §§ 32-2183.03(C) and 32-2185.09(A)), acts in concert with another seller to circumvent the requirement to obtain an assured water supply (A.R.S. §§ 11-831(F) and 32-2181(D)), or sells unimproved lots or parcels or fails

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<sup>1</sup>[Attorney General Candidate Kris Mayes' 16-point Plan to Preserve Water Supplies, Investigate the Saudi Water Grab in the Butler Valley and Combat Water Pollution, Kris Mayes, https://static1.squarespace.com/static/625f065db24689513f797107/t/62fc0b05201c0f03f7a36da7/1660685103846/KM+Water+Plan-3.pdf](https://static1.squarespace.com/static/625f065db24689513f797107/t/62fc0b05201c0f03f7a36da7/1660685103846/KM+Water+Plan-3.pdf) at 8 (last visited Mar. 17, 2023).

to provide assurances for the completion of off-site improvements within a subdivision (A.R.S. §§ 32-2185.01(A) and 32-2181(A)(17)) is in violation of state statute.

Over 40 years ago, the Legislature determined that developers in active management areas must obtain a certificate of assured water supply before they can sell or lease lands and that seeking to circumvent this requirement is unlawful and contrary to the public interest.<sup>2</sup> If Arizona's leaders believe that the development of wildcat subdivisions are responsible for Rio Verde Foothills' current situation, then it seems incumbent on them to call for an investigation of the development of the Rio Verde Foothills area and hold all parties responsible to the fullest extent of the law.

On August 16, 2022, you stated while you were on the campaign trail that, as Attorney General, you would use "***all available tools*** to ensure that consumers are protected from the possibility of growth that lacks available water supplies. . . . [Including] ***the use of consumer fraud laws to protect future and present homeowners*** and Arizona's water supplies."<sup>3</sup>

To date, however, I have not seen any commitment from your office to initiate an investigation of alleged "wildcat subdivisions" or make any other inquiries, within your authority as Attorney General, to determine the facts that prompted the dire situation in Rio Verde Foothills.

A solution for the residents of Rio Verde Foothills requires not only a solution to the immediate problem, but also a proactive effort to prevent these types of situations from being allowed to occur again. Arizona law has long prohibited individuals from acting in concert to circumvent the requirement for an assured water supply. I see no reason why your office would not make it a priority to investigate if that is what has occurred in the Rio Verde Foothills area.

Please advise whether you intend to undertake, or have already initiated, an investigation into any alleged violations of "wildcat subdivisions" in the Rio Verde Foothills area. I request a status update to the Legislature as soon as practicable regarding all relevant findings.

If you believe my concerns should be directed to another governmental entity, please advise immediately so that no additional time is wasted on this critical issue.

Respectfully,



Representative Austin Smith

cc: Susan Nicolson  
Director of the Department of Real Estate

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<sup>2</sup> Groundwater Management Act, ch. 1, 1980 Ariz. Sess. Laws 1331, 1444-46 (1980) <https://azmemory.azlibrary.gov/nodes/view/252965?keywords=&type=all&lsk=9a62eb22307f9ee192ec85de22934415>.

<sup>3</sup> Attorney General Candidate Kris Mayes' 16-point Plan to Preserve Water Supplies, Investigate the Saudi Water Grab in the Butler Valley and Combat Water Pollution, *supra* note 1 at 8 (emphasis added).