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Mohave County v. Arizona Department of Water Resources, CA-CV 16-0259, (2017)

In a lawsuit filed against the Arizona Department of Water Resources, a state agency, an award of attorneys' fees under ARIZ. REV. STAT. § 12-348.01 *is not* subject to the \$10,000 cap found in ARIZ. REV. STAT. § 12-348(E)(4).

In an underlying dispute, Mohave County objected to the Arizona Department of Water Resources' ("ADWR") denial of certain water rights. The Arizona Supreme Court found ADWR properly denied Mohave County's objections, awarded ADWR attorneys' fees under ARIZ. REV. STAT. § 12-348.01, and remanded the case back to the trial court for a determination of the amount of attorney's fees to be awarded. On remand, ADWR sought approximately \$135,000 in attorneys' fees. Mohave County opposed the amount and argued that ARIZ. REV. STAT. § 12-348(E)(4) applied and capped the an award of attorney's fees at \$10,000. The trial court agreed, and applied the \$10,000 cap to ADWR's attorney fee award. ADWR timely appealed.

ARIZ. REV. STAT. § 12-348(E)(4), states "an award of fees against a city, town or county as provided in this section shall not exceed ten thousand dollars." By contrast, ARIZ. REV. STAT. § 12-348.01, states that "[n]otwithstanding [ARIZ. REV. STAT.] section 12-348," in a suit between a county and a state agency, "the court shall award reasonable attorney fees to the successful party."

The Court of Appeals reasoned that the language in ARIZ. REV. STAT. § 12-348.01 does not limit the amount for an award of attorneys' fees in a suit between a county and a state agency, and found it to be "a self-contained article" dealing with the issue. Specifically, the Court held the statutes' use of the phrases "[n]otwithstanding section 12-348" and "as provided in this section" "meant any fee award was *not* subject to the \$10,000 cap found in ARIZ. REV. STAT. § 12-348(E)(4)." Accordingly, the Court of Appeals reversed and remanded the case back to the trial court for further determination of the amount of the award of attorneys' fees.