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Dear Agricultural Stakeholders,

I received your letter dated September 2, 2020 containing extensive comments about the process for the Fourth and Fifth Management Plans (4MPs and 5MPs). I am answering the substance of your correspondence. I will consider the face-to-face discussion you requested if, after reading my responses, you still desire such a meeting.

While we encourage and appreciate your participation and feedback on the management plans, A.R.S. § 45-563 provides that “the director shall develop [the management plans],” and the final authority on their content lies with the Director. The statutes do not require all stakeholders to agree with changes in the management plans but do require increasing conservation with each plan to achieve reductions in groundwater withdrawals (A.R.S. § 45-563(A)). Stakeholders and the Groundwater Users Advisory Councils (GUACs) occupy an important advisory role in the development process, and the Arizona Department of Water Resources (ADWR) has worked extensively throughout the 4MP and 5MP processes to seek both that advice and respectful conversations on a wide range of issues and with stakeholders representing each of the sectors impacted by the Management Plans.

I disagree with your characterization regarding the 4MP and 5MP processes and with your characterizations of the professionalism and competence of staff. My staff has demonstrated the utmost professionalism and competence when confronted with multiple comments questioning their motivations and integrity.

Fourth Management Plans – Background and Response

In July 2019, ADWR announced a proposed series of incremental adjustments to the conservation requirements in the remaining 4MPs as required by law. ADWR simultaneously began an extensive ADWR-led stakeholder process to develop the 5MPs. As ADWR stated at that time, we recognize that as the state is entering a drier future, difficult conversations will need to occur about ways by which the State can continue this culture of conservation. The minor changes to the Phoenix, Pinal, and Santa Cruz AMAs 4MPs—i.e., small incremental adjustments, with contributions from all three sectors—are a beginning. These modifications are designed to introduce changes at the margin now and to open conversations for larger conservation increases in the 5MPs. All sectors have a role to play in advancing toward the goals of each AMA, and there have been productive conversations with a broad range of stakeholders throughout this process.

ADWR's effort on the 4MPs in 2019 was not the first work to develop those plans. Previous efforts extending back to 2010 and 2011 informed the development of the various 4MPs. Many concepts and drafts were presented to and discussed with GUAC members and other stakeholders prior to 2019. A large amount of stakeholder involvement occurred over the span of a decade to develop draft plans, and it was those draft plans that were updated and advanced over the last year. Updates to those previous drafts were presented, debated, and discussed in numerous public meetings and in many separate conversations with stakeholders. Modifications to the original proposals were made in all three sectors in response to changes requested by the stakeholders. Additionally, many comments from GUAC members and other stakeholders were incorporated into the adopted 4MP for the Phoenix AMA and the most recent 4MP drafts for the Pinal AMA.

I disagree with the claim that statutory obligations were not met prior to the promulgation of the Phoenix and Pinal AMA 4MPs. I believe that ADWR complied with both the letter and the spirit of the law in promulgating the plans. As stated earlier, A.R.S. § 45-563(A) provides that the Director is responsible for developing the management plans, and the GUACs are to "comment to the area director and to the director on draft management plans for the active management area before they are promulgated by the director." (A.R.S. § 45-421(1)). With respect to the Pinal AMA 4MP, ADWR requested from the Pinal AMA GUAC comments concerning the draft 4MP on May 27, 2020 to provide the GUAC an opportunity to fulfill its statutory requirement; our response to the comments received is available on the [Management Plans page](#) of ADWR's website. Additionally, the Pinal AMA GUAC formally voted to support the promulgation of a draft 4MP on September 17, 2017. That draft was revised to include updated data and references to current events, to combine the final two chapters, and to make the incremental adjustments to conservation programs presented to the GUAC. These revisions were communicated with stakeholders and with the GUAC. See the attached timeline for additional details on those communications.

I also disagree with the assertion that concerns regarding the 4MPs "have gone almost entirely unaddressed." In addition to the stakeholder outreach and revisions to the original proposal previously mentioned, ADWR received and reviewed informal comments from GUACs and stakeholders prior to beginning the promulgation process. Many changes and suggestions were incorporated into the final draft, which was presented for public comment during the formal public hearing process. ADWR received five oral and seven written comments on the draft Pinal AMA 4MP as a part of the formal hearing record. As a part of that process, ADWR will make and file in the Department a summary and findings of matters considered during the hearing on the draft Pinal AMA 4MP, including responses to comments received, within 30 days of the August 20 hearing. Likewise, ADWR responded to comments received as a part of the Phoenix AMA 4MP hearing record, which can also be found on the [Management Plans page](#) of ADWR's website.

As for some of the particular concerns expressed in your letter:

- Regarding the modification of Best Management Practice (BMP) points: The intent of those modifications in both the Agricultural BMP Program and in the Municipal Non-Per Capita

Program was stated in multiple public meetings: to incentivize those conservation methods or BMPs that require more investment or that are demonstrated to provide more conservation benefit. This structure does not prohibit particular practices, but rather incentivizes those that provide more conservation potential. The changes to the points structure and targets are both consistent with this strategy and consistent with the statutory requirement to increase conservation over successive plans.

- Regarding audits: Audits are a part of ADWR's existing statutory authority and have been conducted in the past. The inclusion of audit language in the 4MP did not create a new activity. Data from audits is utilized to confirm compliance and reporting practices in individual cases and to help ensure high quality data is being provided. That data is critical to ADWR's work in the AMAs, as it is used to analyze conservation and the efficacy of programs and to guide the development of future programs. Additionally, I am currently working with staff to prioritize and expand ADWR's enforcement program, which was diminished as a result of staffing reductions from the Great Recession.
- Regarding ADWR's analysis that the BMP Program is not achieving conservation equivalent to the Base Program: As demonstrated in the meeting summaries below, ADWR staff have occupied significant time in the 5MP process detailing the extensive analysis of the BMP Program, including significant time in multiple public meetings for questions and comments and numerous solicitations for suggestions. ADWR staff analyzed a variety of different datasets using multiple methods and conducted extensive additional analysis in response to stakeholder feedback. A full accounting of that work was presented at the [5MP Agricultural Subgroup Meeting on May 18, 2020](#), and ultimately, each analysis supported the conclusion that the Agricultural BMP Program is not currently achieving conservation at least equivalent to the Base Program as required by A.R.S. §§ 45-567.02(G) and 45-568.02(G).

Whether looking at total water use or groundwater use, legally irrigable acres or actively irrigated acres, BMP farms use more water on an acre-foot per acre basis than those in the Base Program. Additionally, the statute requires that conservation be at least equivalent to the water duties established in that management plan, and water duties and total allotments are still assigned for each right associated with each BMP farm, despite those participants not being required to comply with that limit. BMP farms as a whole use more water than the allotments that would have been assigned to them under the Base Program. Further, the amount by which the allotments are exceeded has grown over time, meaning the program is also not meeting the requirement in A.R.S. § 45-563(A), which requires conservation programs to be designed to reduce withdrawals of groundwater. This information was presented at the May 18, 2020 meeting mentioned above.

While a formal definition for conservation does not exist in the Groundwater Code, the contextual definition comes from the statutory requirement that conservation programs are to be "designed to achieve reductions in withdrawals of groundwater." Put simply, conservation must result in a reduction in water use; this is consistent with both the letter and the intent of the Groundwater Code. Increasing water use over time, as the BMP Program has done, is not consistent with conservation goals or with reducing withdrawals of groundwater.

Fifth Management Plans Background and Response

COVID-19 protocols required that all meetings be virtual starting in April 2020. Nevertheless, ADWR staff worked to continually improve meeting and engagement methods: expanding feedback tools, providing background, questions and initial proposals for input, and developing a [webpage](#) compiling relevant information for each proposal being discussed. ADWR staff have made extensive efforts to respond to stakeholder questions with additional data and analyses and to conduct all stakeholder meetings in a manner that both provides information and actively encourages stakeholder input and involvement. While the current circumstances require additional effort to develop 5MP conservation program concepts, I believe that there is ample opportunity for engagement and discussion, both within the meetings and through other methods.

There have been five Management Plans Work Group meetings and five meetings of the Agricultural Subgroup. Those meetings have allocated substantial time for questions, suggestions, and discussion. Over the years, ADWR has found that the most successful path forward is for ADWR to present proposals for initial discussion. The general process for each of the 5MP sector subgroups has been as follows, with examples of how the 5MP Agricultural Subgroup has fit into this process:

1. ADWR staff provide background and data on existing programs and request feedback and suggestions on data analyses and new programs
 - 5MP Agricultural Subgroup Meeting on September 5, 2019: ADWR staff provided information and data on existing programs, discussed statutory requirements for the 5MPs, requested feedback on additional data and analysis needed, and requested feedback and thought on how programs might be updated for the 5MPs.
 - 5MP Agricultural Subgroup Meeting on May 18, 2020: ADWR staff provided a comprehensive presentation of the data analysis done on the BMP Program, including additional analysis done in response to stakeholder suggestions and questions. Each of those analyses demonstrated that the BMP Program was not achieving conservation equivalent to the Base Program. With all available data pointing in the same direction, ADWR stated that it would be moving forward with adjustments to the BMP Program in the 5MPs designed to move that program closer to equivalency with the Base Program.
2. ADWR staff summarize a range of options for updating the conservation programs for the 5MPs based on research and comments received and request additional ideas and thoughts on how to move forward.
 - 5MP Agricultural Subgroup Meeting on November 18, 2019: ADWR staff presented additional data on analysis related to the BMP program in response to questions and suggestions heard at the September meeting. Staff also began discussions of individual BMPs and how they might be updated or improved, whether any additional BMPs should be added, and requested additional suggestions and input on how the program might be updated for the 5MPs. At this meeting, staff stated that data indicated that the BMP Program was not achieving conservation equivalent to the Base Program, and that ADWR would be developing proposed methods to move the programs closer to equivalency. Staff requested suggestions for such methods.

3. ADWR compiles and analyzes any proposals and ideas received from stakeholders and develops framework proposals to move forward. ADWR staff and/or stakeholders present to the subgroup on these proposals and frameworks, and ADWR staff request comments and discussion on any decision points or details needing clarification.
 - 5MP Agricultural Subgroup Meeting on March 3, 2020: ADWR staff presented initial outlines of proposed updates to the BMP Program and of a proposed new agricultural conservation program for the 5MPs. These outlines were idea-stage suggestions and were presented early to allow time for feedback on whether they might work and for guidance on how they might be further developed. In response to questions and concerns expressed at this meeting, ADWR scheduled an additional data discussion to ensure suggestions for further data analysis were addressed as much as possible (see May 18, 2020 meeting under item 1 above).
4. Additional meetings are held as needed to fill in additional details as needed.
 - 5MP Agricultural Subgroup Meeting on July 20, 2020: ADWR staff outlined data associated with 5MP proposals and pointed to specific areas needing additional input and development. Feedback was requested, and a questionnaire was provided to allow for additional feedback outside of the meeting.
 - To continue to build on our stakeholder outreach, there is an upcoming 5MP Agricultural Subgroup Meeting scheduled for October 7, 2020, where details of the proposed 5MP programs will continue to be discussed.

All meeting information can be found at <https://new.azwater.gov/5MP/meetings>. Additionally, in the Management Plans Work Group meeting on August 18, 2020, ADWR staff detailed the general processes for developing concepts for the 5MPs, detailed the multiple feedback methods available to stakeholders, and introduced a new [5MP Concepts webpage](#) designed to compile all of the information on each 5MP concept, including data dashboards and any comments received.

Collaborative, Transparent Process

Throughout the 4MP and 5MP processes, ADWR has repeatedly pointed to the statute requiring that each management plan contain a mandatory conservation program “designed to achieve reductions in withdrawals of groundwater.” (A.R.S. § 45-563). Additionally, ADWR has time and again stated that as Arizona moves into a drier future, we are looking to achieve a higher level of conservation under the 5MPs, with contributions from all sectors. That is the reality of designing programs to reduce withdrawals of groundwater and move the AMAs closer to their respective goals. While these conversations are necessarily difficult, Arizona stakeholders have successfully navigated other challenging issues and processes in the past by remaining professional and keeping discussions respectful and relevant.

ADWR staff have endeavored diligently to present information in a professional manner with an understanding that many of the topics presented would likely produce heated debate. ADWR has maintained an extensive, open process and has worked to increase that transparency over time, with the development of questionnaires, with the publication of the [5MP Concepts webpage](#), with repeated

September 15, 2020

Page 6 of 6

requests for ideas and input, and with increased personal outreach including separate meetings with some of your letter signatories.

My team looks forward to continuing the public stakeholder process, with continued engagement and input on the substantive issues before us from a broad group of stakeholders. As ADWR staff have said throughout this process, proposals that will lead to increased conservation in all sectors are welcome for discussion and indeed are encouraged.

Sincerely,



Thomas Buschatzke
Director, Arizona Department of Water Resources

cc:

Stefanie Smallhouse, President, Arizona Farm Bureau Federation
Steve Pierce, President, Arizona Farm & Ranch Group
Kevin Rogers, Executive Director, Arizona Cotton Growers Association
Bas Aja, Executive Director, Arizona Cattle Feeders Association
Stephen Q. Miller, Supervisor, Pinal County District #3
Scott L. Riggins, Pinal AMA Independent Groundwater Pumper, Farmer, Landowner
Bruce Heiden, President, Roosevelt Irrigation District
Bryan Hartman, President, Maricopa Stanfield Irrigation & Drainage District
Tony Solano, Director, Maricopa Stanfield Irrigation & Drainage District, Assistant General Manager ED3
Central Arizona Irrigation & Drainage District
New Magma Irrigation & Drainage District
Queen Creek Irrigation District
San Carlos Irrigation & Drainage District
United Dairymen of Arizona
Chuck Podolak, Office of the Governor, Natural Resources Policy Advisor
Senator Sine Kerr, Water and Ag Committee Chair
Senator Frank Pratt, Natural Resources and Energy Committee Chair
Representative Gail Griffin, Natural Resources, Energy, and Water Committee Chair
Representative Tim Dunn, Land and Agriculture Committee Chair
David Snider, Chairman: Pinal AMA GUAC
Stephen Cleveland, Chairman: Phoenix AMA GUAC

Attachment: Pinal AMA 4MP Communications & Meetings

Pinal AMA Fourth Management Plan

Recent stakeholder meetings and outreach related to the Pinal AMA 4th Management Plan

1. Pinal GUAC (9/17/2017)
 - The Pinal GUAC voted to support the promulgation of an earlier draft of the 4MP. They sent a letter dated 11/8/2017 documenting this support. That draft was then updated as efforts on the 4MPs were renewed, as documented below.
2. GWAICC (6/13/2019)
 - Provided information on management plans status and announced proposed incremental changes to Phoenix, Pinal, and Santa Cruz AMA 4th Management Plans
3. Pinal GUAC (6/26/2019)
 - Provided brief management plans status update and directed stakeholders to upcoming Management Plans Work Group Meeting for details on changes for Phoenix, Pinal, and Santa Cruz AMAs
4. Management Plans Work Group (7/9/2019)
 - Detailed incremental changes to Phoenix, Pinal, and Santa Cruz AMAs 4MPs
5. Pinal GUAC (7/31/2019)
 - Provided details of proposed changes for Phoenix, Pinal, and Santa Cruz AMA 4th Management Plans and detailed opportunities for stakeholder engagement
6. Meeting with Scott Riggins (8/9/2019)
 - Staff met with Mr. Riggins to discuss the proposed changes to the 4th Management Plan
7. GWAICC (9/12/2019)
 - Requested feedback from council on moving forward with incremental changes to the remaining 4MPs
8. Pinal GUAC (9/18/2019)
 - Went over Pinal 4MP process and specified that same structure in the Phoenix AMA 4MP would apply to Pinal AMA 4MP
9. Email announcing decision to move forward with incremental adjustments (9/27/2019)
10. 5MP Turf Breakout Group (10/24/2019)
 - Discussed changes to original proposal in response to stakeholder feedback, applies to all 3 remaining 4MPs
11. Phoenix AMA 4MP Stakeholder Meeting (10/16/2019)
 - Detailed changes to 4MP, specified that same structure would apply to Pinal and Santa Cruz AMAs
12. Pinal GUAC (11/15/2019)
 - Update on 4MP (and 5MP) process and timeline
13. GWAICC Meeting (12/3/2019)
 - Discussed comments received in response to consideration of incremental changes, and timeline for moving forward with 4MPs
14. Email to Pinal AMA GUAC Stakeholders (3/6/2020)
 - Announced the publication of the Pinal AMA Draft 4MP and [a change overview document](#) and requested comments
15. Email to Pinal AMA GUAC Stakeholders (4/2/2020)

- Specified the need to postpone GUAC and other public meetings due to COVID –19 and requested again verbal and written comments on the Draft 4MP
 - Did not receive any comments in response to these requests
16. Pinal GUAC Meeting (5/27/2020)
- Provided overview of management plans progress, the draft plan, and changes between the Pinal AMA 3rd and 4th Management Plans; requested written comments from the GUAC and stakeholders by June 5 and gave an estimated timeline for hearing and adoption.
 - Comments received were posted online.
17. Meeting with Scott Riggins (6/19/2020)
- Discussed changes to Pinal AMA 4MP, including areas of concern for Mr. Riggins.
18. Email to GUAC members (7/15/2020)
- Provided summary of comments received and described which portions were incorporated into the updated draft. ADWR’s response to those comments is posted online.
19. Notice of Hearing on the Pinal AMA 4th Management Plan (7/14/2020)
- This notice also opened the hearing record/formal comment period, which closed at 5pm on the date of the hearing. Notice was published in the Casa Grande Dispatch and mailed to the last known address of rightsholders.
20. Hearing on the Pinal AMA 4th Management Plan (8/20/2020)
21. Findings from the Hearing on the Pinal AMA 4th Management Plan (to be published by 9/21/2020)

References

GUAC meetings:

Agendas, presentations, and recordings can be found at <https://new.azwater.gov/ama/guac/meetings>

GWAICC meetings:

Agendas, presentations, and recordings can be found at <https://new.azwater.gov/gwaicc>

Management Plans Work Group and 5MP Subgroup meetings:

Agendas, presentations, and recordings can be found at <https://new.azwater.gov/5MP/meetings>

Promulgation Process:

Documents related to the hearing and adoption process can be found at <https://new.azwater.gov/ama/management-plans>