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STATE OF ARIZONA  
DEPARTMENT OF WATER RESOURCES

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PUBLIC HEARING ON PROPOSED MANAGEMENT PLAN  
FOR THE SANTA CRUZ ACTIVE MANAGEMENT AREA  
FOR THE FOURTH MANAGEMENT PERIOD, 2010 TO 2020

\* \* \* \* \*

September 22, 2020  
Tubac, Arizona

HEARING OFFICER: JOHN RIGGINS  
Arizona Department of Water Resources  
Chief Compliance Officer & Ombudsman

Prepared By:  
Nicola Bauman, CCR  
Certified Court Reporter  
AZ Certificate No. 50830

Perfecta Reporting  
602.421.3602  
CRRF No. R1071

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BE IT REMEMBERED that pursuant to notice a public hearing was held at the Territorial Schoolhouse at the Tubac Presidio State Historic Park, One Burruel Street, Tubac, County of Santa Cruz, State of Arizona, and via webinar at <https://bit.ly/SantaCruz4MPHearing> before Nicola Bauman (via webinar), AZ Certified Reporter No. 50830 in and for the State of Arizona, on the 22nd day of September, 2020, commencing at the hour of 1:00 p.m.

\* \* \* \* \*

S P E A K E R I N D E X

<u>SPEAKER:</u>	<u>PAGE:</u>
Alexandra Arboleda.....	16

1 Tubac, Arizona  
2 1:00 p.m.

3  
4 P R O C E E D I N G S

5  
6 MR. RIGGINS: Good afternoon, everybody.  
7 For the record, today is September 22, 2020, and the  
8 time is 1:00 o'clock p.m. We are in the Territorial  
9 Schoolhouse at the Tubac Presidio State Historic Park,  
10 located at One Burruel Street, in Tubac, Arizona. This  
11 is the time and place for the public hearing on the  
12 Proposed Management Plan for the Santa Cruz Active  
13 Management Area for the fourth management period.

14 My name is John Riggins. I am the Chief  
15 Compliance Officer and Ombudsman at the Arizona  
16 Department of Water Resources, and I'll be the hearing  
17 officer at today's hearing.

18 With me is Natalie Mast, Statewide Active  
19 Management Areas Director responsible for the management  
20 plans. Natalie will give a brief description of the  
21 proposed management plan, including a summary of  
22 comments provided by the Santa Cruz Active Management  
23 Area Groundwater Users Advisory Counsel on the draft  
24 management plan, data in support of the proposed  
25 management plan, and changes from the Third Management

1 Plan.

2 Also with me today from the Department are  
3 Kelly Brown, Deputy Counsel; Maggie Martin, Management  
4 Plans Specialist; Sharon Scantlebury, Docket Supervisor;  
5 and Lizette Fuentes, Legal Secretary.

6 We have a court reporter present via the  
7 webinar to record and transcribe what is being said  
8 today, so it is important for speakers to please speak  
9 up and speak slowly so the court reporter can accurately  
10 record your comments. If anyone has difficulty hearing  
11 me or a speaker, please let me know.

12 For those in person, if you haven't already  
13 done so, please sign the sign-in sheet on the table near  
14 the entrance. There are also speaker cards on the  
15 table. If you would like to speak today, please fill  
16 out a speaker card, if you haven't done so already, and  
17 submit your card to Sharon Scantlebury, Maggie Martin,  
18 or Lizette Fuentes.

19 For those on the webinar, we have provided a  
20 link to a virtual speaker card in the chat box at the  
21 bottom of the screen. The chat box can be opened by  
22 clicking the speech bubble icon at the bottom of your  
23 screen. If you would like to speak via the webinar  
24 today, submit your virtual speaker card and staff will  
25 assist you with unmuting when it is your turn to speak.

1 Everyone was muted on entry to the webinar.

2 For those participating via telephone and  
3 not on the webinar, we will now unmute you. If you  
4 would like to make a verbal comment during the comment  
5 period of this public hearing, please state and spell  
6 your name and we will unmute you and call upon you when  
7 it is your turn to speak. If you would not like to make  
8 a comment, please simply stay silent. We will call on  
9 telephone participants to speak after webinar  
10 participants.

11 Persons presenting comments at the hearing,  
12 whether in person or virtually, will be subject to a  
13 three-minute time limit to ensure all who wish to speak  
14 receive an opportunity to do so.

15 The purpose of this hearing is to provide  
16 members of the public the opportunity to make oral or  
17 written comments on the Proposed Management Plan for the  
18 Santa Cruz Active Management Area for the fourth  
19 management period. The proposed plan is available on  
20 the Department's website at  
21 [azwater.gov/ama/management-plans](http://azwater.gov/ama/management-plans).

22 We will not be responding to questions or  
23 comments at this hearing today. However, we will do so  
24 in writing as part of the formal management plan  
25 adoption process. If anyone has any questions or

1 comments on issues or programs that are outside the  
2 scope of this hearing, you can contact me or one of our  
3 staff after the hearing.

4 The hearing will be conducted in a formal  
5 manner. As I mentioned previously, a court reporter is  
6 recording everything being said. A copy of the  
7 transcript of the hearing will be available for review  
8 at the Department's office and will also be posted on  
9 the Department's website when it is available.

10 At the conclusion of the hearing, I will be  
11 accepting any written comments or documentary evidence  
12 that anyone may wish to submit to the Department  
13 regarding the Proposed Management Plan. The Department  
14 will also accept written comments until 5:00 p.m. today.  
15 Written comments submitted up until 5:00 p.m. today  
16 should be submitted to the Department's Docket  
17 Supervisor, Sharon Scantlebury, by email -- and I will  
18 spell this -- to [sscantlebury@azwater.gov](mailto:sscantlebury@azwater.gov) or fax at  
19 602-771-8686. A copy of the public notice with Sharon's  
20 contact information is posted on the Department's  
21 website, and her business cards are located on the table  
22 near the entrance if you would like one.

23 Within 30 days from today, the Director will  
24 make and file, in the Department, a written summary and  
25 findings with respect to the comments and evidence

1 received at this hearing and prior to 5:00 p.m. today.

2 If, in the findings, the Director decides to  
3 adopt the management plan, the Director will make and  
4 file with the Department an order adopting the plan  
5 pursuant to the findings. Notice of the order will be  
6 sent to all persons who signed the attendance sheet  
7 today and to all persons who submitted comments or  
8 evidence prior to the close of the record. Please make  
9 sure you provide your physical or email address to  
10 receive a copy of the notice.

11 The Director will also publish a summary of  
12 the plan, findings and order of adoption once a week,  
13 for two consecutive weeks, in the Nogales International.  
14 Pursuant to Arizona Revised Statutes sections 45-571 and  
15 45-114, subsection (C), any person may file a request  
16 for rehearing or review of the order of adoption within  
17 30 days after the second publication of the notice. The  
18 last day for filing requests for rehearing or review  
19 will be identified in both the mailed and published  
20 notices of the order of adoption. If no one files a  
21 timely request for rehearing or review, the plan will  
22 become final.

23 If a timely request for rehearing or review  
24 is filed, the Director will have 60 days after receiving  
25 the request to issue a decision on the request. The

1 Director may grant a rehearing, grant review without  
2 rehearing, or deny the request. Any person may seek  
3 judicial review of the Director's decision to adopt the  
4 management plan as provided in Arizona Revised Statutes  
5 section 45-114, subsection (C).

6 Within 30 days after the plan becomes final,  
7 the Department will mail notice of the conservation  
8 requirements contained in the plan to all persons who  
9 are required to comply with the requirements. Any  
10 aggrieved person may request an administrative review of  
11 the conservation requirements within 90 days after  
12 receiving notice of the requirement as provided by  
13 Arizona Revised Statutes section 45-575, subsection (A).

14 A person who requires additional time to  
15 comply with a new conservation requirement may request a  
16 variance within 90 days after receiving notice of the  
17 requirement pursuant to Arizona Revised Statutes section  
18 45-574, subsection (A).

19 I will now turn the hearing over to Natalie  
20 Mast, who will describe the proposed plan in greater  
21 detail.

22 Natalie.

23 MS. MAST: Thank you, John.

24 Oh, no. Sorry. One second here.

25 My name is -- good afternoon. My name is



1 Natalie Mast and I am the AMA Director responsible for  
2 the Management Plans at ADWR. The purpose of this  
3 presentation is to present data in support of the  
4 Proposed Management Plan and to provide a summary of the  
5 comments made by GUAC members. I will also provide a  
6 brief overview of the contents of the proposed plan and  
7 the changes as compared to the Third Management Plan.

8 The initial draft of the Santa Cruz Active  
9 Management Area Fourth Management Plan was published in  
10 June of 2020. From June to August, ADWR accepted  
11 comments and worked to revise the plan in response to  
12 those comments.

13 In August, ADWR published an updated draft  
14 incorporating information about a June settlement with  
15 regard to the Nogales International Wastewater Treatment  
16 Plant and the International Outfall Interceptor. On  
17 August 21st and 28th, a public notice was published in  
18 the Nogales International announcing today's hearing and  
19 opening the formal comment period on this plan, which  
20 closes today at 5:00 p.m.

21 ADWR will publish written findings from  
22 today's hearing within 30 days, and so long as adoption  
23 of the proposed plan occurs within this calendar year,  
24 the conservation programs in the plan will go into  
25 effect on January 1st of 2023.

1 ADWR staff presented information on the  
2 proposed plan to the Santa Cruz AMA GUAC on August 18,  
3 2020, and received a unanimous recommendation from GUAC  
4 members to move forward with the promulgation or legal  
5 adoption process for that plan.

6 I will now provide a brief overview of some  
7 data related to the AMA and a summary of the proposed  
8 plan.

9 The Santa Cruz Active Management Area is the  
10 only subsequent AMA to be created to date, although it  
11 did not change the footprint of the original AMAs  
12 established as part of the 1980 Groundwater Management  
13 Act. The Santa Cruz AMA was split out of the Tucson AMA  
14 in 1994 in recognition of the unique issues of an  
15 international river basin and to allow for coordinated  
16 management of surface water rights and groundwater  
17 rights. It covers 716 square miles in the immediate  
18 vicinity of the United States/Mexico border in the Upper  
19 Santa Cruz River Basin. It is principally concentrated  
20 around a 45-mile reach of the Santa Cruz River from the  
21 international border to the Continental gaging station a  
22 few miles north of the Santa Cruz/Pima County line.

23 This graph shows how the demands of water  
24 pumped from wells have changed over time. The top,  
25 dark-blue line is total statewide groundwater use; the

1 middle green line is total active management area  
2 groundwater use; and the bottom, light-blue line is  
3 Santa Cruz AMA demands of water withdrawn from wells.  
4 On the right-hand side, we've broken out that bottom,  
5 light-blue line so you can see it a little bit easier.  
6 In the Santa Cruz AMA, total water use has been fairly  
7 flat but has been steadily decreasing slowly over time.

8           The graphs on the screen now show how water  
9 use is broken down by sector in the Santa Cruz AMA. The  
10 different colors represent the sectors: dark blue is  
11 agriculture, light blue is municipal, and green is  
12 industrial. On the left, you see a comparison of how  
13 these break down in different geographies. Statewide,  
14 on the far left, is about 73 percent agriculture, and  
15 you can see that the volumes in the Santa Cruz AMA are  
16 small compared to statewide use and compared to total  
17 AMA use. On the right side, we've, again, broken out  
18 the three sectors in the Santa Cruz AMA so you can see  
19 it on a different scale: agricultural is about  
20 57 percent of demands, municipal demands are about  
21 35 percent, and industrial is about 7 percent.

22           In analyzing how those supplies and demands  
23 impact the AMA as a whole, we turn to the goal of the  
24 AMA, which is to maintain a safe-yield condition in the  
25 active management area and to prevent local water tables

1 from experiencing long-term declines.

2           The blue line on this chart show -- sorry.  
3 The black line on this chart -- excuse me -- shows  
4 overdraft in the AMA alongside the colored bars, which  
5 show the total recharge or inflows in blue and the total  
6 demands or outflows in red. There is significant  
7 variation in overdraft from year to year in this AMA,  
8 but you can see that those top, red bars are fairly  
9 consistent, and the variability is driven by the inflows  
10 or by occasional flood recharge years.

11           The management plans are one tool that ADWR  
12 has to help move each AMA toward its goal, and now I'll  
13 provide an overview of the proposed Fourth Management  
14 Plan and the changes from the Third to Fourth Management  
15 Plans.

16           The Santa Cruz AMA was recognized at its  
17 creation to be unique. Rather than focusing on  
18 groundwater, the management plans in the Santa Cruz AMA  
19 are to include conservation programs for all persons  
20 withdrawing or distributing water, other than stored  
21 water, withdrawn from a well. The intent of this  
22 distinction was to recognize the close interconnection  
23 of surface water and groundwater in this AMA and to  
24 allow coordinated management of the two resources.

25           The Proposed Management Plan contains eleven

1 chapters, many containing data, analysis, and background  
2 information. Chapters 4, 5, and 6 also contain the  
3 continuing mandatory conservation programs for  
4 agricultural, municipal, and industrial water users,  
5 respectively. These programs are designed to reduce  
6 water withdrawn from wells and to assist in the  
7 achievement of the management goal.

8           The chapters that contain regulatory  
9 language all have that legally enforceable language  
10 italicized at the end of the appropriate chapter. For  
11 the Santa Cruz AMA, there is regulatory language for the  
12 agricultural, municipal, and industrial conservation  
13 programs in Chapters 4, 5, and 6, respectively. There  
14 is also legal language regarding recharge and recovery  
15 in Chapter 8 and regarding well siting criteria in  
16 Chapter 10. The well siting criteria is unique to the  
17 Santa Cruz AMA, as required by Arizona Revised Statutes  
18 section 45-5638, subsection (B).

19           In order to continue moving the Santa Cruz  
20 AMA toward its goal, the Fourth Management Plan does  
21 include some changes from the Third Management Plan.  
22 Some of the changes have to do with data, data quality,  
23 and the analysis of that data. With additional  
24 reporting requirements, and with some audits to ensure  
25 the quality of the data that is being provided, ADWR can

1 better assess the effectiveness of the conservation  
2 program in the management plans. We want to be  
3 transparent about the use of that data, though, and so  
4 we will be expanding upon an existing report to publish  
5 our analysis of that and other reported data.

6 The Fourth Management Plan also contains  
7 changes to the conservation programs for all three  
8 sectors. These changes are intended to be incremental  
9 adjustments, to increase conservation where we can in  
10 the Fourth Management Plans and begin conversation on  
11 bigger changes to be made in the Fifth Management Plans.  
12 These Fourth Management Plan changes include a  
13 restructuring of the BMB point systems for the  
14 agricultural and municipal sectors and higher points for  
15 targets for these programs, and a change in the turf  
16 application rate for turf facilities.

17 Finally, I would like to acknowledge the  
18 fact that these management plans are very much a team  
19 effort, with an enormous amount of work put in by my  
20 predecessors, by Management Plans and AMA staff, by  
21 other staff from across the Department, and with  
22 significant input from other state agencies, from GUAC  
23 members and from the regulated community. We would not  
24 be here today without the collaborative effort of all of  
25 these people and many more. So thank you to all who

1 contributed in any way.

2 Thank you for your time and attention. With  
3 that, I'll hand it back over to John who will be calling  
4 on speakers.

5 MR. RIGGINS: All right. Thank you,  
6 Natalie.

7 We're moving to public comment. So for  
8 those participating via telephone and not on the  
9 webinar, we are going to unmute you briefly. If you'd  
10 like to make a verbal comment, please state and spell  
11 your name, and we will unmute you when it is your turn  
12 to speak. If you would not like to make a comment,  
13 please simply stay silent. Then we will call on the  
14 telephone participants to speak after the webinar  
15 participants. So we will unmute telephone participants  
16 now.

17 Okay. So please be advised that those  
18 presenting comments at the hearing, whether in person or  
19 virtually, will be subject to a three-minute time limit  
20 to ensure all who wish to speak receive an opportunity  
21 to.

22 I will now begin calling the names of the  
23 persons who filled out speaker cards. Is there anyone  
24 present who would like to speak?

25 Let the record reflect that no one, in

1 person, wishes to speak. And no one, in person, has  
2 filled out a speaker card indicating that they would  
3 like to present comments on the Proposed Management  
4 Plan.

5           So that will bring us to the virtual speaker  
6 cards. We will now begin calling the names of persons  
7 who filled out virtual speaker cards. If you are  
8 participating via the webinar and wish to speak and have  
9 not filled out a virtual speaker card, please submit the  
10 form available through the chat feature or at the web  
11 address you see on the slide. When we call your name,  
12 staff will unmute you. Please state your name, identify  
13 any person or entity that you represent, and then give  
14 you comments. As a reminder, there is a three-minute  
15 time limit.

16           Do we have any persons on the webinar?

17           MS. WELSCH: Hi, John. This is Makenna  
18 Welsch with ADWR. I have received one speaker card  
19 virtually that is for Alexandra Arboleda.

20           And, Alex, you are now unmuted.

21           MS. ARBOLEDA: Thank you. Can everybody  
22 hear me?

23           MR. RIGGINS: We can.

24           MS. ARBOLEDA: You can, okay. I want to  
25 thank you, first, for the opportunity to comment. I am



1 submitting comments on behalf of three entities: Baca  
2 Float #3, Sopori Ranch, and Sopori Domestic Water  
3 Improvement District. We will also be submitting  
4 written comments today.

5 The first comment is I think the good news  
6 is the data shows that in the Santa Cruz AMA we are  
7 maintaining safe-yield and meeting the goal. As Natalie  
8 showed, the variability is really driven by inflows.  
9 The outflows are not -- are not increasing and, in some  
10 areas, are decreasing. So because we are meeting the  
11 goal and maintaining safe-yield, we believe that the  
12 additional conservation requirements in the Fourth  
13 Management Plan are not necessary because the existing  
14 conservation requirements from the Third Management Plan  
15 are working.

16 In addition, we're concerned about, as you  
17 know -- you know, the Santa Cruz AMA was created because  
18 of its unique hydrology and also the fact that it's an  
19 international stream. And at the time it was created,  
20 the legislature expressly stated in the act creating it  
21 that it was not their intent to modify or amend the laws  
22 and rights related to surface water and groundwater,  
23 and, therefore, the Santa Cruz AMA rules and regulations  
24 cannot affect the definition of or rights to surface  
25 water and groundwater.

1           My clients have senior surface water claims.  
2   Many of them are shallow wells pumping subflow, and they  
3   have pre-1919 historic claims that were in existence  
4   prior to Arizona becoming a state. Those have been  
5   doing fine with groundwater rights, but their concern is  
6   especially with respect to the proposed well spacing  
7   requirements.

8           The way those are drafted in Chapter 10, the  
9   concern is that they will affect senior surface water  
10  rights by requiring them to submit a hydrology report  
11  and get approval from the Department when they want to  
12  change a point of diversion and the Department will have  
13  the ability, under that proposed regulation, to deny a  
14  change in the point of diversion based -- if the report  
15  does not prove that -- well, in the report -- the  
16  hydrology report has to prove that they will not  
17  decrease water levels.

18           So we think that these well spacing  
19  requirements should be revised to exclude surface water  
20  rights. We understand that there's a statutory  
21  requirement to adopt well spacing requirements, but  
22  based on the clear intent of the legislature, those  
23  cannot affect surface water rights.

24           Also, we noticed from the data that in the  
25  Santa Cruz AMA, riparian evapotranspiration accounted

1 for 19,712 acre-feet per year, which was an increase of  
2 3,642 acre-feet since 2010. The 3,642 is more than the  
3 City of Nogales, Arizona, pumps in a year. And if you  
4 contrast that, if you add up all the other demands in  
5 2017 -- municipal, industrial, agricultural and exempt  
6 wells -- that accounted for 17,203 acre-feet per year,  
7 which is actually 2,509 acre-feet less than the riparian  
8 evapotranspiration.

9 We all know and value the ecosystem in the  
10 Santa Cruz River, but the concern is that these -- the  
11 well spacing rules -- I'm sorry -- the well spacing  
12 requirements are essentially putting the burden of  
13 conservation on senior surface water rights in order to  
14 support the increasing riparian habitat. And so the  
15 statute that created the AMA requires coordinated  
16 management, and we think that this coordinated  
17 management must take into account all of the demands,  
18 the artificial demands as well as the natural demands.  
19 And that's not reflected in the well spacing  
20 requirements as they're written, so we also think the  
21 plan should be amended to specifically include a  
22 reference to A.R.S. 45-411.04 and state specifically  
23 that these requirements will not affect surface water  
24 claims.

25 Thank you very much for the time and

1 consideration of our comments, and we will be submitting  
2 them in writing by 5:00 p.m. today.

3 MR. RIGGINS: Thank you.

4 Was there anyone else on the webinar who  
5 wished to provide comments?

6 MS. WELSCH: John, this is Makenna again. I  
7 don't see any other online submissions.

8 MR. RIGGINS: Okay. Thank you.

9 So let the record reflect that no one else  
10 on the webinar wishes to speak and provide comments.

11 Was there anybody on the telephone who  
12 wished to provide comments?

13 I don't believe I heard anyone unmute.  
14 Makenna, was there anybody on the line?

15 MS. WELSCH: It looks like everyone is  
16 actually connected to the webinar. We don't have any  
17 people who have just phoned in.

18 MR. RIGGINS: Okay. Well, let the record  
19 reflect that we have no telephone participants wishing  
20 to provide comments.

21 Is there anyone here who wishes to submit  
22 any written comments or evidence that they've brought  
23 with them?

24 Seeing none, let the record reflect that no  
25 one wishes to submit any written comments or evidence.

1           As I mentioned earlier, written comments on  
2 the Proposed Management Plan may be submitted until  
3 5:00 p.m. today. If you would like to submit written  
4 comments after the close of the hearing but no later  
5 than 5:00 p.m. today, please fax or email them to Sharon  
6 Scantlebury, the Department's Docket Supervisor. Her  
7 fax number is 602-771-8686, and her email address is  
8 sscantlebury@azwater.gov. Sharon's business cards with  
9 her contact information are located on the table near  
10 the entrance if you'd like one.

11           This public hearing is now adjourned. Thank  
12 you, all, for attending and providing comments.

13           (WHEREUPON, the public hearing was adjourned  
14 at 1:55 p.m.)


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C E R T I F I C A T E

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I, Nicola Bauman, Certified Court Reporter for the State of Arizona, do hereby certify that the foregoing 21 printed pages constitute a full, true and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

Dated at Phoenix, Arizona, this 5th day of October, 2020.

  
\_\_\_\_\_  
Nicola Bauman, CCR  
Certified Reporter No. 50830  
For the State of Arizona