

1 **ARIZONA DEPARTMENT OF WATER RESOURCES**

2 **BEFORE THE DIRECTOR**

3
4 **IN THE MATTER OF THE**
5 **ADOPTION OF THE MANAGEMENT**
6 **PLAN FOR THE PINAL ACTIVE**
7 **MANAGEMENT AREA FOR THE**
8 **FOURTH MANAGEMENT PERIOD**

MOTION FOR REHEARING OR
REVIEW

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ADWR

9 Pursuant to A.R.S. § 45-114(C), Arizona Farm and Ranch Group (AFRG) hereby
10 files this Motion for Rehearing or Review of the Order of Adoption of the Management
11 Plan for the Pinal Active Management Area for the Fourth Management Period (“Motion
12 for Rehearing or Review”). Arizona Farm and Ranch Group is a non-profit corporation
13 formed to unite farmers and ranchers throughout Arizona and address the challenges
14 faced by the agricultural industry at large. AFRG members include farmers, ranchers, and
15 irrigation districts, as well as the many thousands of individuals and businesses involved
16 in agriculture. AFRG provides a forum to remain informed and advocate for Arizona
17 agriculture at the local, state, and federal levels. Among other things, AFRG meets with
18 legislators and agencies, comments on legislation and agency rules, and, when necessary,
19 participates in litigation in federal and state courts. AFRG respectfully requests that the
20 Director of the Arizona Department of Water Resources (“ADWR”) review and revise
21 the Order of Adoption of the Management Plan for the Pinal Active Management Area
22 for the Fourth Management Period (“Order of Adoption”) for the following reasons: (1)
23 ADWR did not seek to convene or meet with the Agricultural Water Conservation Best
24 Management Practices Advisory Committee (“BMP Advisory Committee”) as required
25 by Executive Order 2002-9, *Arizona Administrative Register*, Vol. 8, p. 12 (June 30,
26 2002). Consequently, the BMP Advisory Committee failed to make recommendations to
27 the Director of ADWR regarding the Agricultural Best Management Practices Program
28 (“BMP Program”) for the management plans for the fourth management period, (2) the

1 changes to the BMP Program are based on incomplete analysis using inadequate data and
2 methodologies, (3) the changes set forth in the Management Plan for the Pinal Active
3 Management Area for the Fourth Management Period (“Pinal Fourth Management Plan”)
4 are inconsistent with the unique management goal of the Pinal Active Management Area
5 (“Pinal AMA”), and (4) ADWR has failed to provide sufficient justification to reduce
6 irrigation water duties for particular water rights in the Pinal Fourth Management Plan,
7 which will harm affected water users more than it will benefit groundwater management
8 in the Pinal AMA.

9 **I. ADWR did not seek to convene or meet with the BMP Advisory Committee;**
10 **so the BMP Advisory Committee Failed to Make Recommendations to the**
11 **Director Regarding the Agricultural BMP Program for the Management**
12 **Plans for the Fourth Management Period, as Required by Executive Order**
13 **2002-9.**

14 On June 30, 2002, Governor Jane Dee Hull established the BMP Advisory
15 Committee “for the purpose of advising the Director of [ADWR] on ... the development
16 of a [BMP Program] ...for consideration by the Director for inclusion in the [third],
17 fourth, and fifth management plans.” Executive Order 2002-9, *Arizona Administrative*
18 *Register*, Vol. 8, p. 13. In fulfilling this responsibility, Governor Hull ordered the BMP
19 Advisory Committee to do the following things:

- 20 1. Recommend, in consultation with the agricultural community and ADWR, a BMP
21 program that can be applied to the majority of farm units with the AMAs.
- 22 2. Recommend detailed criteria for evaluating agricultural water management
23 practices including any best management practices as they pertain to the
24 development of an Agricultural BMP Program.
- 25 3. Review and evaluate research projects, both in Arizona and elsewhere if
26 appropriate, undertaken to evaluate current management practices and any
27 comprehensive best management practices programs.
- 28 4. Evaluate the relationship between the Agricultural BMP Program and the Base
Agricultural Conservation Program required by A.R.S. §§ 45-567 and 45-568.
5. Review and evaluate proposed best management practices, recommend any

1 changes in and BMP Program included in the management plans, consider what
2 research or educational resources are necessary to develop new best management
3 practices, and make recommendations on any new best management practices to
4 be developed and implemented.

- 5
- 6 6. Make recommendations to develop an educational program concerning adoption
7 of best management practices and participation in a BMP program.

8 Governor Hull also mandated that the BMP Advisory Committee consist of the following
9 members, to be appointed by her or her successor:

- 10 1. The Director of ADWR or the Director's designee,
- 11 2. The Director of the Department of Agriculture or the Director's designee,
- 12 3. The Director of the United States Department of Agriculture, Water Conservation
13 Laboratory, or the Director's designee,
- 14 4. Four persons actively engaged in agricultural production in an active management
15 area, of which two have expressed an interest in participating in or are currently
16 participants in a best management practices program,
- 17 5. Two persons representing irrigation districts established pursuant to Title 48,
18 Chapter 19, Arizona Revised Statutes, in an active management area.
- 19 6. A representative of an agricultural improvement district established pursuant to
20 Title 48, Chapter 17, Arizona Revised Statutes.
- 21 7. A representative of a municipality in an active management area.

22 The purpose of the BMP Advisory Committee is to include members of the agricultural
23 community in the development and implementation of a BMP program so that the
24 program is based on criteria agreed upon by members of the agricultural community as
25 well as the best data, research, and technology available regarding agricultural
26 management practices, and it can actually be applied on the majority of farms in the
27 AMAs. Although ADWR has engaged in significant public outreach over the last year or
28 so, members of the agricultural community were not actively involved in the
development of the BMP Program. Because the BMP Program was developed without
sufficient input from the agricultural community, AFRG requests that ADWR delay final

1 adoption of the BMP Program for the fourth management period until the BMP Advisory
2 Committee can meet and make recommendations to the Director.

3 **II. The Changes to the BMP Program in the Pinal Fourth Management Plan Are**
4 **Based on Incomplete Analysis Using Inadequate Data and Methodologies.**

5 ADWR's analysis of the effectiveness of the BMP Program is incomplete, and the
6 data and methodologies used to compare the BMP Program with the Base Program are
7 inadequate. ADWR's direct comparison of current water usage for Irrigation
8 Grandfathered Rights ("IGFR") in the BMP Program with current water usage for IGFRs
9 that remain in the Base Program is not the proper method of evaluating whether the BMP
10 Program was effectively designed to achieve conservation equivalent to the Base
11 Program, as required by A.R.S. § 45-567.02(G). Such a comparison does not account for
12 important differences among the farms at issue and the reasons underlying decisions to
13 enroll certain IGFRs in the BMP Program. For example, comparing total water use per
14 irrigation acre does not account for the augmentation in water supplies in a given year
15 due to the availability of Central Arizona Project water, effluent, and underground
16 storage credits, nor does it consider changes based on market considerations such as the
17 cost of water or crops and seasonal variations based on crop changes. Furthermore,
18 because many BMP farms formerly relied on flexibility credits to support their
19 operations, it is not clear that those farms actually would use less groundwater if they
20 were regulated under the Base Program instead.

21
22 To evaluate whether the BMP Program is designed to achieve conservation
23 equivalent to the Base Program, ADWR should analyze: (1) whether current BMP farms
24 would use less water if the same IGFRs were regulated instead under the Base Program;
25 or (2) whether overall groundwater conservation for all BMP and Base Program farms is
26 at least equivalent to conservation that would be required if all IGFRs instead were
27 regulated by the Base Program. If the total groundwater use of all Base Program and
28 BMP farms is less than the combined total groundwater allotment if all IGFRs remained

1 in the Base Program, ADWR does not need to modify the BMP Program for the fourth
2 management period. Because ADWR's analysis of the effectiveness of the BMP
3 Program is incomplete and the data and methodologies used to compare the BMP
4 Program to the Base Program are inadequate, AFRG requests that ADWR delay final
5 adoption of the BMP Program for the fourth management period until the BMP Advisory
6 Committee can meet and make recommendations to the Director.

7 **III. The Changes Set Forth in the Pinal Fourth Management Plan are Not**
8 **Consistent with the Unique Management Goal of the Pinal AMA.**

9 The management goal of the Pinal AMA is unique. Rather than adopting "safe-
10 yield" as the management goal, like it did in most of the other AMAs, the Arizona
11 Legislature defined the management goal of the Pinal AMA "to allow the development of
12 non-irrigation uses as provided in [the Groundwater Code] and to preserve existing
13 agricultural economies in the [AMA] for as long as feasible consistent with the necessity
14 to preserve future water supplies for non-irrigation uses." A.R.S. § 45-562(B). The
15 changes to the BMP Program in the Pinal Fourth Management Plan are not consistent
16 with the unique management goal of the Pinal AMA because they are not designed to
17 'preserve existing agricultural economies in the AMA for as long as feasible.' While
18 AFRG recognizes that it is also important to 'preserve future water supplies for non-
19 irrigation uses,' ADWR has not demonstrated how the changes to the Pinal Fourth
20 Management Plan will 'preserve existing agricultural economies in the AMA for as long
21 as feasible.' To the contrary, the changes may have the opposite result of reducing
22 available supplies of groundwater to agriculture at the same time that Central Arizona
23 Project water supplies are reduced or eliminated to meet the requirements of the Drought
24 Contingency Plan. Rather than preserving agricultural economies, reducing the available
25 supply of groundwater through conservation requirements that are based on incomplete
26 analysis using inadequate data and methodologies will significantly impact the viability
27 of farms in the Pinal AMA. Because the changes to the Pinal Fourth Management Plan
28

1 are not consistent with the unique management goal of the Pinal AMA, AFRG requests
2 that ADWR delay final adoption of the Pinal Fourth Management Plan and revise the
3 Plan to be consistent with the unique management goal of the Pinal AMA.

4 **IV. ADWR Fails to Justify Its Reduction of Water Duties in the Pinal Fourth**
5 **Management Plan.**

6
7 Although A.R.S. § 45-567(A)(1) grants ADWR discretion to reduce the highest
8 twenty-five percent of final irrigation water duties within an area of similar farming
9 conditions (subject to limitations), it does not require ADWR to do so. In the Pinal
10 Fourth Management Plan, ADWR states that exercising that discretion would reduce the
11 sum total of Base Program allotments by approximately 2,985 acre-feet, and represents “a
12 small but concrete tool in reducing groundwater withdrawals.” Pinal Fourth Management
13 Plan, at 4-6.

14
15 While a 2,985 acre-foot reduction may be small in comparison to the total of all
16 Base Program allotments in the Pinal AMA, ADWR does not address whether or to what
17 extent exercising this discretionary authority to reduce water duties may significantly
18 impact the particular water users whose IGFRs are subject to reduction. Indeed,
19 ADWR’s only response to such concerns is that “unique circumstances . . . may be
20 addressed through the administrative review process set forth in A.R.S. § 45-575.”
21 Summary of Hearing and Findings, at 5. The Pinal Fourth Management Plan describes
22 the total number of rights that could be subject to reduction, but neither identifies the
23 particular IGFRs nor describes their locations. Thus, from the face of the Pinal Fourth
24 Management Plan, it is impossible for water users to determine whether ADWR’s water
25 duty reductions under A.R.S. § 45-567(A)(1) affect their particular IGFRs and evaluate
26 whether they must prepare to seek relief through the administrative review process. Even
27 worse, given the expedited timeframe with which ADWR drafted and adopted the Pinal
28 Fourth Management Plan, many individual IGFR holders in the Pinal AMA likely are not

1 aware that ADWR has decided to implement additional water duty reductions in the Pinal
2 Fourth Management Plan under A.R.S. § 45-567(A)(1). On balance, ADWR's reduction
3 of water duties under A.R.S. § 45-597(A)(1) carries significant risk of inequitable result
4 for affected IGFR holders, which outweighs the admittedly marginal impact that
5 ADWR's water duty reduction will have on overall Pinal AMA groundwater demand.
6 Therefore, under the circumstances presented here, ADWR should grant this motion and
7 decline to exercise the water duty reduction provisions of A.R.S. § 45-567(A)(1).

8 **IV. Conclusion.**

9
10 In sum, AFRG requests that ADWR convene the Agricultural BMP Committee as
11 soon as possible so that it can make recommendations to the Director regarding the BMP
12 Program, as required by Executive Order 2002-9. Furthermore, AFRG requests that
13 ADWR delay final adoption of the BMP Program for the fourth management period
14 because the Agricultural BMP Committee did not meet and make recommendations,
15 ADWR's analysis of the effectiveness of the BMP Program is incomplete, and the data
16 and methodologies used to compare the BMP Program to the Base Program are
17 inadequate. Finally, AFRG requests that ADWR delay final adoption of the Pinal Fourth
18 Management Plan and revise the Plan to be consistent with the unique management goal
19 of the Pinal AMA.

20 DATED this 26th day of October 2020.

21 ARIZONA FARM AND RANCH GROUP

22 By: 
Patrick Bray

23 **CERTIFICATE OF SERVICE**

24 ORIGINAL of the foregoing mailed this 26th
25 day of October 2020 for filing with:
26 Docket Supervisor
27 Arizona Department of Water Resources
28 1110 W. Washington Street, Suite 310
Phoenix, Arizona 85007