

1 **ARIZONA DEPARTMENT OF WATER RESOURCES**

2 **BEFORE THE DIRECTOR**

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4
5 **IN THE MATTER OF THE**
6 **ADOPTION OF THE MANAGEMENT**
7 **PLAN FOR PINAL ACTIVE**
8 **MANAGEMENT AREAS FOR THE**
9 **FOURTH MANAGEMENT PERIOD.**

DECISION AND ORDER ON REVIEW
IN RESPONSE TO MOTIONS FOR
REVIEW AND REHEARING FILED BY
CENTRAL ARIZONA IRRIGATION
AND DRAINAGE DISTRICT

10 **I. INTRODUCTION**

11 On September 17, 2020, the Director of the Arizona Department of Water Resources
12 ("Director") entered an order adopting the management plan for the Pinal Active Management
13 Area ("AMA") for the fourth management period ("Fourth Management Plan" or "4MP"). The
14 order adopting the Fourth Management Plan ("Order of Adoption") provided that any person
15 could request a rehearing on or a review of the Fourth Management Plan by filing a motion for
16 rehearing or review on or before October 25, 2020 at 5:00 p.m. Because October 25, 2020 fell
17 on a Sunday, the Department extended the deadline to Monday, October 26, 2020 at 5:00 p.m.

18 Central Arizona Irrigation and Drainage District ("CAIDD") filed timely a motion for
19 review and rehearing concerning the Fourth Management Plan, in which it requested certain
20 modifications to the plan. This Decision and the Order that follows set forth the Director's
21 decision and order granting review of the issues raised in CAIDD's motion and denying
22 rehearing.

23 **II. DECISION**

24 CAIDD's Motion requests that the Arizona Department of Water Resources ("ADWR")
25 review and revise the Order of Adoption for the following reasons: (1) ADWR did not seek to
convene or meet with the Agricultural Water Conservation Best Management Practices Advisory

1 Committee (“BMP Advisory Committee) regarding the Agricultural Best Management Practices
2 Program (“BMP”) as required by Executive Order 2002-9; (2) the changes to the BMP are based
3 on incomplete analyses using inadequate data and methodologies; (3) the changes in the 4MP are
4 inconsistent with the unique management goal of the Pinal AMA; and (4) the reduction of the
5 highest 25 percent of the irrigation water duties within an area of similar farming conditions by
6 up to 10 percent is not consistent with the Pinal AMA’s unique management goal. As explained
7 below, the director denies the request for rehearing and responds to the request for review as
8 detailed below. The issues raised in CAIDD’s Motion will be addressed in the order in which
9 they were presented.

10
11 **A. ADWR Did Not Seek to Convene or Meet with the BMP Advisory**
12 **Committee as Required by Executive Order 2002-9.**

13 CAIDD contends that ADWR did not meet with the BMP Advisory Committee during
14 development of the BMP Program in the Fourth Management Plan as required by Executive
15 Order 2002-9. CAIDD requests that ADWR delay final adoption of the BMP Program in the
16 Fourth Management Plan until the BMP Advisory Committee can meet and make
17 recommendations to the Director.

18 Executive Order 2002-9 provides that “[t]he [BMP] Advisory Committee shall meet at
19 the call of the Director of the Department of Water Resources or the Chairperson, or at the
20 request of a majority of the members.” Executive Order 2002-9, paragraph 6. ADWR does not
21 interpret the Executive Order as requiring the Director to call for meetings of the BMP Advisory
22 Committee. Instead, it authorizes the Director, the Chairperson or a majority of the committee
23 members to call for a meeting and requires the committee to meet if a meeting is called. A
24 meeting of the BMP Advisory Committee was not called by Director, the Chairperson or a
25 majority of the committee members during the development of the BMP Program for the Fourth

1 Management Plan. However, the elements of the BMP Program were presented to stakeholders
2 for their review and comment outside the process of the BMP Advisory Committee.

3 Because ADWR provided stakeholders multiple opportunities to provide input on the
4 BMP Program, ADWR denies the request to delay adoption of the 4MP until after the BMP
5 Advisory committee makes recommendations.

6 **B. The Changes to the BMP program in the Pinal AMA Fourth Management**
7 **Plan Are Based on Incomplete Analysis Using Inadequate Data and**
8 **Methodologies.**

9 ADWR made several changes to the BMP Program in the Fourth Management Plan,
10 including increasing the number of points that must be achieved by a person regulated under the
11 from ten to twelve. CAIDD contends that ADWR based the changes to the BMP Program on
12 incomplete analysis using inadequate data and methodologies. Specifically, CAIDD contends
13 that ADWR's comparison of current water usage for Irrigation Grandfathered Rights ("IGFR")
14 in the BMP Program with current water usage for IGFRs that remain in the Base Program is not
15 the proper method of evaluating whether the BMP Program is designed to achieve conservation
16 equivalent to that required under the Base Program.

17 While ADWR believes that its analysis of the BMP Program for the 4MP is appropriate,
18 there are additional justifications for the changes to the BMP Program in the 4MP. The changes
19 are also supported by the statutory requirement to increase conservation over successive
20 management plans and to achieve reductions in withdrawals of groundwater. ADWR will update
21 the text of the 4MP to clarify that the justification for those changes is to comply with the
22 statutory requirement to increase conservation in successive management plans.

23 **C. The Changes to the BMP Program Set Forth in the Pinal AMA Fourth**
24 **Management Plan Are Not Consistent with the Unique Management Goal of**
25 **the Pinal AMA.**

1 CAIDD contends that the changes to the BMP Program in the Fourth Management Plan
2 are not consistent with the management goal for the Pinal AMA because the changes are not
3 designed to “preserve existing agricultural economies in the active management area for as long
4 as feasible, ...” A.R.S. § 45-562(B). CAIDD argues that the changes to the BMP Program may
5 have the result of reducing available supplies of groundwater to agriculture at the same time
6 CAP supplies are reduced or eliminated to meet the requirements of the Drought Contingency
7 Plan, and that this could impact the viability of farms in the Pinal AMA. However, the changes
8 to the BMP Program do not remove the exemption from complying with an irrigation water duty
9 and a maximum annual groundwater allotment as provided in A.R.S. § 45-567.02(G), and
10 ADWR does not believe these changes will negatively affect agricultural economies or prevent
11 farms currently regulated under the BMP Program from remaining in the program.

12 Moreover, the management goal of the Pinal AMA is to “preserve existing agricultural
13 economies in the active management area for as long as feasible, *consistent with the necessity to*
14 *preserve future water supplies for non-irrigation uses.*” A.R.S. § 45-562(B) (emphasis added).
15 Increasing conservation and reducing groundwater withdrawals contribute to both parts of the
16 AMA’s management goal by allowing existing agricultural economies to exist for as long as
17 feasible, while preserving future water supplies for non-irrigation uses. The increased
18 conservation requirements in the BMP Program adequately work to reduce the groundwater
19 withdrawals in accordance with the statutory and management plan goals, and this increase in
20 conservation is incremental, reasonable, and appropriate to comply with statutory requirements.

21 **D. Reduction of the Highest 25% of Water Duties in the Base Program by up to**
22 **10% Is Not Consistent with the Unique Management Goal of the Pinal AMA.**

23 CAIDD contends that ADWR’s reduction of the highest 25 percent of water duties
24 within an area of similar farming conditions is not consistent with the management goal of the
25 Pinal AMA. ADWR is required by statute to design the conservation programs to achieve

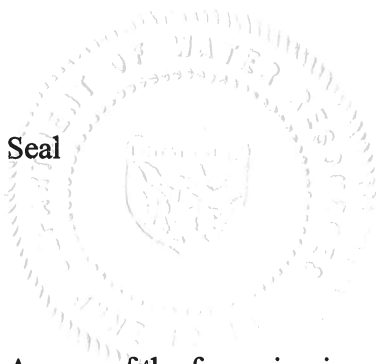
1 reductions in withdrawals of groundwater. The statutory language allowing the director to
2 reduce water duties applies to all AMAs. ADWR believes that the increase of conservation
3 requirements in the 4MP is consistent with the legislative intent of the Groundwater Code and
4 that the increased conservation requirements adequately work to reduce the groundwater
5 withdrawals in accordance with the statutory and management plan goals. Further, to improve
6 transparency and equity, ADWR has made Supplement I available online and will decline to
7 reduce rights for which a previous administrative review caused that right to become eligible
8 for this reduction.

9 **III. ORDER**

10 Based on the record, and the foregoing decision, IT IS ORDERED AS FOLLOWS:


- 11 1. CAIDD's request for rehearing on the Fourth Management Plan is denied.
- 12 2. CAIDD's request for review of the Fourth Management Plan is granted. The
13 relief requested by CAIDD on review is granted or denied as set forth above.
- 14 3. This Decision and Order and the Final Order of Adoption adopting the Fourth
15 Management Plan for the Pinal AMA are the final decisions in this case, and any appeal
16 pursuant to A.R.S. § 12-901 through 12-914 shall be of this Decision and Order and the Final
17 Order of Adoption.

18 GIVEN, under my hand and the Official Seal of the Arizona Department of Water
19 Resources, this 14th day of December, 2020.



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A handwritten signature in black ink, appearing to read "Thomas Buschätzke", is written over a horizontal line.

25 Thomas Buschätzke, Director
Arizona Department of Water Resources

A copy of the foregoing is
sent by certified mail this

1 16th day of December, 2020, to:

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