I. INTRODUCTION

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

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

II. DECISION

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

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

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

Executive Order 2002-9 provides that "[t]he [BMP] Advisory Committee shall meet at the call of the Director of the Department of Water Resources or the Chairperson, or at the request of a majority of the members." Executive Order 2002-9, paragraph 6. ADWR does not interpret the Executive Order as requiring the Director to call for meetings of the BMP Advisory Committee. Instead, it authorizes the Director, the Chairperson or a majority of the committee members to call for a meeting and requires the committee to meet if a meeting is called. A meeting of the BMP Advisory Committee was not called by Director, the Chairperson or a majority of the committee members during the development of the BMP Program for the Fourth
Management Plan. However, the elements of the BMP Program were presented to stakeholders for their review and comment outside the process of the BMP Advisory Committee.

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

B. The Changes to the BMP Program in the Pinal AMA Fourth Management Plan Are Based on Incomplete Analysis Using Inadequate Data and Methodologies.

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

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

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

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

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

CAIDDD contends that ADWR’s reduction of the highest 25 percent of water duties within an area of similar farming conditions is not consistent with the management goal of the Pinal AMA. ADWR is required by statute to design the conservation programs to achieve
reductions in withdrawals of groundwater. The statutory language allowing the director to reduce water duties applies to all AMAs. ADWR believes that the increase of conservation requirements in the 4MP is consistent with the legislative intent of the Groundwater Code and that the increased conservation requirements adequately work to reduce the groundwater withdrawals in accordance with the statutory and management plan goals. Further, to improve transparency and equity, ADWR has made Supplement I available online and will decline to reduce rights for which a previous administrative review caused that right to become eligible for this reduction.

III. ORDER

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

1. CAIDD’s request for rehearing on the Fourth Management Plan is denied.

2. CAIDD’s request for review of the Fourth Management Plan is granted. The relief requested by CAIDD on review is granted or denied as set forth above.

3. This Decision and Order and the Final Order of Adoption adopting the Fourth Management Plan for the Pinal AMA are the final decisions in this case, and any appeal pursuant to A.R.S. § 12-901 through 12-914 shall be of this Decision and Order and the Final Order of Adoption.

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

[Seal]

Thomas Buschatzke, Director
Arizona Department of Water Resources

A copy of the foregoing is sent by certified mail this
14th day of December, 2020, to:

Lee A. Storey & Alexandra Arboleda
TSL Law Group, PLC
8096 N. 85th Street, Suite 105
Scottsdale, Arizona 85258
Attorneys for the Central Arizona
Irrigation & Drainage District

[Signature]