

1 **ARIZONA DEPARTMENT OF WATER RESOURCES**

2 **BEFORE THE DIRECTOR**

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

**DECISION AND ORDER ON REVIEW**  
**IN RESPONSE TO MOTIONS FOR**  
**REVIEW AND REHEARING FILED BY**  
**ARIZONA FARM AND RANCH**  
**GROUP**

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 Arizona Farm and Ranch Group ("AFRG") filed timely a Motion for Rehearing or  
19 Review concerning the Fourth Management Plan ("Motion"), 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 AFRG's motion and denying  
22 rehearing.

23  
24 **II. DECISION**

25 AFRG'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

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

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

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

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

1 meeting of the BMP Advisory Committee was not called by Director, the Chairperson or a  
2 majority of the committee members during the development of the BMP Program for the Fourth  
3 Management Plan. However, the elements of the BMP Program were presented to stakeholders  
4 for their review and comment outside the process of the BMP Advisory Committee.

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

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

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

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

24 **C. The Changes Set Forth in the Fourth Management Plan are Not Consistent with**  
25 **the Unique Management Goal of the Pinal AMA.**

1 AFRG 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). AFRG argues that changes to the BMP Program may have  
5 the result of reducing available supplies of groundwater to agriculture at the same time that CAP  
6 supplies are reduced or eliminated to meet the requirements of the Drought Contingency Plan,  
7 and that this could impact the viability of the farms in Pinal AMA. However, the changes to the  
8 BMP Program do not remove the exemption from complying with an irrigation water duty and a  
9 maximum annual groundwater allotment as provided under A.R.S. § 45-567.02(G), and ADWR  
10 does not believe these changes will negatively affect agricultural economies or prevent farms  
11 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. ADWR Fails to Justify its Reduction of Water Duties in the Pinal AMA Fourth**  
22 **Management Plan.**

23 AFRG contends that ADWR’s reduction of the highest 25 percent of water duties within  
24 an area of similar farming conditions is not justified and may lead to inequitable results for  
25 affected rightholders. ADWR is required by statute to design the conservation programs in the

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

9 **III. ORDER**

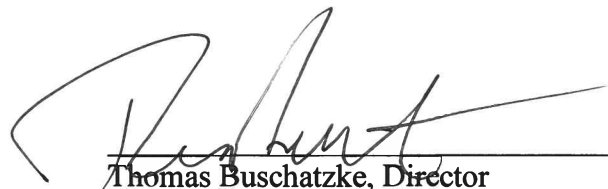
10 Based on the record, and the foregoing decision, IT IS ORDERED AS FOLLOWS:

- 11 1. AFRG's request for rehearing on the Fourth Management Plan is denied.
- 12 2. AFRG's request for review of the Fourth Management Plan is granted. The relief  
13 requested by AFRG 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 pursuant  
16 to A.R.S. § 12-901 through 12-914 shall be of this Decision and Order and the Final Order of  
17 Adoption.

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

20  
21  
22  
23 Seal



24   
Thomas Buschatzke, Director  
Arizona Department of Water Resources

1 A copy of the foregoing is  
sent by certified mail this  
2 16<sup>th</sup> day of December, 2020, to:

3  
4 Arizona Farm and Ranch Group  
5 916 W. Adams Street  
6 Phoenix, Arizona 85007

Certified No. 70161370 0000 5545 5247

7 Sharon Scantlebury  
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