

1 ARIZONA DEPARTMENT OF WATER RESOURCES
2 BEFORE THE DIRECTOR
3

4 IN THE MATTER OF THE ADOPTION
5 OF THE MANAGEMENT PLAN FOR
6 SANTA CRUZ ACTIVE MANAGEMENT
7 AREAS FOR THE FOURTH
8 MANAGEMENT PERIOD.

9 DECISION AND ORDER ON REVIEW
10 IN RESPONSE TO MOTIONS FOR
11 REVIEW AND REHEARING FILED BY
12 BACA FLOAT #3 LLC

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I. INTRODUCTION

On October 20, 2020, the Director of the Arizona Department of Water Resources ("director") entered an order adopting the management plan for the Santa Cruz Active Management Area ("SCAMA") for the fourth management period ("4MP"). The order adopting the 4MP ("Order of Adoption") provided that any person could request a rehearing on or a review of the 4MP by filing a motion for rehearing or review on or before November 26, 2020 at 5:00 p.m. Because November 26, 2020 fell on a holiday, the Arizona Department of Water Resources ("ADWR") extended the deadline to Friday, November 27, 2020 at 5:00 p.m.

Baca Float #3 LLC ("Baca Float") filed a timely motion for rehearing or review concerning the 4MP ("Motion") 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 Baca Float's Motion and denying rehearing.

II. DECISION

Baca Float's Motion states that the 4MP does not expressly recognize that it will not limit or affect senior surface water rights, and that well spacing criteria and riparian transpiration demands cannot be given preference over senior surface water rights. Baca Float also argues that

1 the SCAMA is currently maintaining safe-yield and therefore no additional conservation
2 requirements are necessary for the 4MP.

3 The issues raised in Baca Float's Motion will be addressed in the order in which they
4 were presented.

5 **A. ADWR Does Not Expressly Recognize that the 4MP Will Not Affect or Limit Senior**
6 **Surface Water Rights as required by A.R.S. § 45-411.04.**

7 Baca Float maintains that ADWR's approach to the management of surface and groundwater
8 rights under the SCAMA 4MP will affect the continuing use of its senior surface water rights.

9 Although the current statutory provision is for "coordinated management" of groundwater
10 and surface water in the SCAMA, Section 11.2.5 of the 4MP references "conjunctive resource
11 management." The "conjunctive resource management" in the 4MP is simply acknowledged in
12 Section 11.2.5 as a potential future tool for reaching the goal of the AMA. ADWR's reference to
13 this tool will not impede Baca Float's ability to continue to litigate its claim for surface water
14 rights. *See in Re Gila River System*, 198 Ariz. 330 (Ariz. 2000).

15 Baca Float requests that the 4MP expressly state that the plan will not affect surface water
16 rights or limit surface water rights as provided in A.R.S. 45-411.04. However, A.R.S. § 45-
17 411.04 speaks for itself, and since there is no statutory requirement that the 4MP include a
18 reference to A.R.S. § 45-411.04, the Department does not believe it is necessary to do so.

19 **B. ADWR Cannot Impose Well Spacing Criteria or Requirements in the SCAMA that**
20 **Affect or Limit Senior Surface Water Rights Pursuant to A.R.S. § 45-411.04.**

21 Baca Float maintains ADWR cannot adopt well spacing criteria or requirements that modify or
22 amend laws relating to surface water nor affect or limit senior surface water rights pursuant to
23 A.R.S. § 45-411.04. Baca Float requests that ADWR clarify in the 4MP that the well spacing
24 requirements in Section 10-901 are not applicable to appropriable surface water rights, including
25 wells withdrawing subflow of the Santa Cruz River.

1 ADWR disagrees with Baca Float’s argument that the legislature did not intend that the
2 well spacing requirements in the 4MP be applied to wells withdrawing surface water. Pursuant
3 to A.R.S. § 45-563(B) management plans for the SCAMA are required to include “criteria for the
4 location of new wells and replacement wells in new location consistent with the management
5 goal of the active management area.” A.R.S. § 45-567(A)(9) provides that ADWR “[s]hall
6 include in the plan for the Santa Cruz active management area criteria for the location of new
7 wells and replacement wells in new locations consistent with the management goal of the active
8 management area.” A.R.S. § 45-599(C) provides that the director of ADWR shall approve an
9 application for a permit to drill a new well or a replacement well in a new location if the
10 proposed well complies with ADWR’s well spacing rules and “if the proposed well is in the
11 Santa Cruz active management area, if the location of the proposed well is consistent with the
12 management plan for the active management area.” None of these statutory provisions contain
13 an exception for wells withdrawing appropriable surface water, and it would be contrary to the
14 management goal of SCAMA to exclude such wells from the well spacing requirements.

15 Moreover, A.R.S. § 45-451(B) provides that the Groundwater Code “shall not be
16 construed to affect decreed and appropriative water rights. Nothing in [the Groundwater Code]
17 shall be construed to affect the definition of surface water in section 45-101 and the definition of
18 water subject to appropriation in section 45-141 or the provisions of article 9 of chapter 1 of this
19 title.” However, A.R.S. § 45-451(C) provides as follows:

20 C. Notwithstanding subsection B of this section, solely in the Santa Cruz active
21 management area:

22 1. The withdrawal of water, other than stored water, from a well and the
23 distribution and use of water, other than stored water, withdrawn from a well shall be
24 subject to any applicable conservation requirements established by the director in the
25 management plans for the active management area pursuant to article 9 of this chapter.

2. The withdrawal of water from a well shall be subject to any applicable well
location requirements contained in article 10 of this chapter.

1 The language in A.R.S. § 45-451(C) makes it clear that the legislature intended that wells
2 withdrawing appropriable surface water in SCAMA be subject to conservation requirements and
3 well location requirements adopted by ADWR. For that reason, ADWR will not change the
4 4MP to include the language requested by Baca Float.

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6 **C. Riparian Transpiration Cannot Be Given Preference Over Senior Surface Water**

7 **Rights under the Coordinated Management Approach Required by A.R.S. § 45-411.04.**

8 Baca Float argues that transpiration demands are increasing and exceed all other demands in
9 SCAMA and are given preference over other water demands in the 4MP. ADWR disagrees
10 with Baca Float's argument.

11 The 4MP calculates riparian transpiration as a component of net natural recharge in
12 ADWR's regional groundwater models. Doing so does not assign riparian transpiration a
13 preference over all other water demands, but rather allows to account for various aquifer inflows
14 and outflows.

15 Baca Float requests that ADWR acknowledge that coordinated management of wells in
16 SCAMA does not give ADWR the authority to deny senior surface water users the right to
17 change points of diversion in order to protect increasing downstream riparian demands. ADWR
18 declines to include such an acknowledgement in the 4MP. The management goal of SCAMA is
19 to maintain a safe-yield condition in the AMA and to prevent local water tables from
20 experiencing long-term declines. A.R.S. § 45-562(C). The well spacing requirements in the
21 4MP are designed to be consistent with that management goal, as required by A.R.S. §§ 45-
22 563(B) and 45-567(A)(9). As explained in the previous section, the well spacing requirements
23 apply to wells withdrawing appropriable surface water. Therefore, ADWR has authority to deny
24 a surface water user the ability to change its point of division to a new well if the location of the
25 proposed new well does not comply with the well spacing requirements.

1 **D. SCAMA is Currently Maintaining Safe-Yield, so No Additional Conversation**
2 **Requirements Are Necessary in the 4MP.**

3 Baca Float argues that SCAMA is maintaining safe-yield, so no additional conservation
4 requirements are necessary in the 4MP. ADWR disagrees with this argument.

5 Baca Float's analysis and suggestion that conservation requirements are unnecessary fail to
6 address the ongoing drought and changing conditions of the area. As noted in Section 3.3 of the
7 4MP, "ongoing drought may be driving SCAMA out of a safe-yield condition." Increasing
8 conservation requirements in successive management plans is consistent with statutory
9 requirements and can assist the SCAMA with achieving its management goal as required by
10 A.R.S. § 45-563(B). For that reason, ADWR will not make any changes to the 4MP in response
11 to Baca Float's argument.

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13 **III. ORDER**

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

- 16 1. Baca Float's request for rehearing on the 4MP is denied.
- 17 2. Baca Float's request for review of the 4MP is granted. The relief requested by
18 Baca Float is denied as set forth above.
- 19 3. This Decision and Order and the Final Order of Adoption adopting the 4MP are
20 the final decisions in this case, and any appeal pursuant to A.R.S. § 12-901 through 12-914 shall
21 be of this Decision and Order and Final Order of Adoption.

22 GIVEN, under my hand and the Official Seal of the Arizona Department of Water
23 Resources, this 16th day of December, 2020.

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Seal


Thomas Buschatzke, Director
Arizona Department of Water Resources

A copy of the foregoing is sent by certified mail this 16th 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 Baca Float #3 LLC

Certified No. 7016 1370 0000 5545 5261

