

1 **ARIZONA DEPARTMENT OF WATER RESOURCES**

2 **BEFORE THE DIRECTOR**

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5 **IN THE MATTER OF THE ADOPTION**
6 **OF THE MANAGEMENT PLAN FOR**
7 **SANTA CRUZ 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
SOPORI 12,500 INVESTORS LLC AND
SOPORI DOMESTIC WATER
IMPROVEMENT DISTRICT

10 **I. INTRODUCTION**

11 On October 20, 2020, the Director of the Arizona Department of Water Resources
12 ("director") entered an order adopting the management plan for the Santa Cruz Active
13 Management Area ("SCAMA") for the fourth management period ("4MP"). The order adopting
14 the 4MP ("Order of Adoption") provided that any person could request a rehearing on or a
15 review of the 4MP by filing a motion for rehearing or review on or before November 26, 2020 at
16 5:00 p.m. Because November 26, 2020 fell on a holiday, the Arizona Department of
17 Water Resources ("ADWR") extended the deadline to Friday, November 27, 2020 at 5:00p.m.

18 Sopori 12,500 Investors LLC and the Sopori Domestic Water Improvement District
19 ("Sopori") filed a timely motion for rehearing or review concerning the 4MP ("Motion") in
20 which it requested certain modifications to the plan. This Decision and the Order that follows set
21 forth the Director's decision and order granting review of the issues raised in Sopori's Motion
22 and denying rehearing.
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1 **II. DECISION**

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3 Sopori's Motion states that the 4MP does not expressly recognize that it will not limit or
4 affect senior surface water rights, and that well spacing criteria and riparian transpiration
5 demands cannot be given preference over senior surface water rights. Sopori also argues that the
6 SCAMA is currently maintaining safe-yield and therefore no additional conservation
7 requirements are necessary for the 4MP.

8 The issues raised in Sopori's Motion will be addressed in the order in which they were
9 presented.

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

12 Sopori maintains that ADWR's approach to the management of surface and groundwater
13 rights under the SCAMA 4MP will affect the continuing use of its senior surface water rights.

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

20 Baca Float requests that the 4MP expressly state that the plan will not affect surface water
21 rights or limit surface water rights as provided in A.R.S. 45-411.04. However, A.R.S. § 45-
22 411.04 speaks for itself, and since there is no statutory requirement that the 4MP include a
23 reference to A.R.S. § 45-411.04, the Department does not believe it is necessary to do so.

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

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

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

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

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

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

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

7 The language in A.R.S. § 45-451(C) makes it clear that the legislature intended that wells
8 withdrawing appropriable surface water in SCAMA be subject to conservation requirements and
9 well location requirements adopted by ADWR. For that reason, ADWR will not change the
10 4MP to include the language requested by Sopori.

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

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

13 Sopori argues that transpiration demands are increasing and exceed all other demands in the
14 SCAMA and are given preference over other water demands in the 4MP. ADWR disagrees
15 with Sopori's argument.

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

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

1 appropriate surface water. Therefore, ADWR has authority to deny a surface water user the
2 ability to change its point of division to a new well if the location of the proposed new well does
3 not comply with the well spacing requirements.

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

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

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

15 **III. ORDER**

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

- 18 1. Sopori's request for rehearing on the 4MP is denied.
19 2. Sopori's request for review of the 4MP is granted. The relief requested by Sopori
20 is denied as set forth above.

21 3. This Decision and Order and the Final Order of Adoption adopting the 4MP are
22 the final decisions in this case, and any appeal pursuant to A.R.S. § 12-901 through 12-914 shall
23 be of this Decision and Order and Final Order of Adoption.

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

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Seal

A copy of the foregoing is
sent by certified mail this
16th day of December, 2020, to:

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