

September 2, 2020

Director Tom Buschatzke  
Arizona Department of Water Resources  
1110 W. Washington Street, Suite 310  
Phoenix, Arizona 85007

Re: Agricultural Stakeholder Concerns Regarding Management Plan Revisions and Process

Dear Director Buschatzke,

The undersigned organizations, entities, businesses, and individuals represent a wide cross-section of Central Arizona's Agricultural industry. As stakeholders in both the Phoenix and Pinal Active Management Areas, we write to express our concerns with the Department's approach to drafting and adopting the Fourth and Fifth Management Plans in those AMAs.

We respectfully request a meeting with you as soon as possible to discuss how we can correct the course of this process and address the issues that we have listed below.

**Stakeholder Engagement Process**

From the outset, we acknowledge there are already forums designed for stakeholders to provide input on the management plan updates. And, under normal circumstances, those venues would be the appropriate place to voice our concerns, rather than in a letter directly to the Department's Director. Unfortunately, this letter is necessary precisely because those venues have failed to provide a place for meaningful, respectful, and collaborative interaction regarding the management plans.

*Fourth Management Plan*

The statutes that govern writing and promulgating the Management Plans require stakeholder input be incorporated into those plans. The process was not structured so that the Department was the final arbiter of plan language, but rather requires collaboration between public stakeholders, the Groundwater User Advisory Councils (GUACs), and the Department.

But the Fourth Management Plans for the Phoenix and Pinal AMAs were drafted entirely by the Department and presented to stakeholders as inevitable conclusions. While we recognize the time pressure under which the Department was operating in light of the delay in plan adoption, that pressure is no excuse for failing to follow the letter and spirit of the law governing the promulgation process. In every discussion about the Fourth Management Plans, it was evident that the Department came into those meetings with a preconceived outcome and thus far has been unwilling to adjust that course of action despite multiple concerns raised by stakeholders. In the Pinal AMA, even the GUAC, which is statutorily required to provide advice to the Director regarding these plans, was never formally consulted. Instead, individual members of the GUAC had discussions with Department staff about the plans while the body itself never officially voted on recommendations. Not only does this reveal a process that ignores stakeholder input, it also runs afoul of the statutory mandates set forth in A.R.S. § 45-421.

### *Fifth Management Plan*

The apparent disregard for stakeholder input is also readily apparent in the Fifth Management Plan process. Despite participating in each of the numerous meetings to discuss necessary changes to the plans, stakeholders still feel that their concerns have been dismissed, even ignored. While the meetings are branded as work groups, they are run as listening sessions. The Department comes to the meetings with already “finalized” proposals that tend to rely on unhelpful aggregate data and outdated assumptions about consumptive use. The Department appears unwilling to hold technical discussions with stakeholders, and when we express concerns or ask questions about the data or conclusions, we are told that the proposals were developed in an open forum and we have essentially missed our chance to speak up. This is somewhat ironic, considering these are the meetings that are supposed to serve as the open forum and billed as our opportunity to voice concerns.

This process – or lack of process – cannot continue in this manner. We insist that stakeholders be given a meaningful opportunity to provide input and that the Department do their due diligence in considering that input as they work on the management plans.

### **Fundamental Flaws in Fourth Management Plan**

As explained above, we have expressed our concerns about the flaws inherent in the Draft Fourth Management Plans on record in every forum available to us to do so. Accordingly, we will not list them in exhaustive detail here.<sup>1</sup> Nevertheless, given the fact that these concerns have gone almost entirely unaddressed thus far, we believe it is important to reiterate the aspects of the Fourth Management Plans that are so problematic for Arizona agriculture. We believe these plans fail to recognize the unique management goals of each AMA, contain provisions that will place undue burdens on agricultural producers, and give the Department authority far beyond the contemplation of the Groundwater Management Act.

### *BMP Program Comparison to Base Program*

According to the draft plans for the Phoenix and Pinal AMAs, farms enrolled in the BMP Program use 18 and 29 percent more water per acre, respectively, than farms enrolled in the Base Program. The conclusion drawn from this statistic is that the BMP Program is not living up to its intended purpose of conservation equivalency with the Base Program. We profoundly disagree with this conclusion.

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<sup>1</sup> We hereby incorporate those concerns into this letter as they are expressed by the following documents:

- Pinal AMA Fourth Management Plan:
  - Official comments submitted before and during the comment period by Maricopa Stanfield Irrigation and Drainage District
  - Official comments submitted before and during the comment period by Central Arizona Irrigation and Drainage District
  - Official comments submitted by the San Carlos Irrigation and Drainage District
  - Official comments submitted by the Arizona Farm Bureau Federation
  - Official comments submitted by Lonnie Frost
  - Oral comments presented by Scott Riggins on August 20, 2020
- Phoenix AMA Fourth Management Plan:
  - Official comments submitted by the Roosevelt Irrigation District
  - Official comments submitted by the Roosevelt Water Conservation District
  - Official comments submitted by Ron Rayner
  - Official comments submitted by the Arizona Farm Bureau Federation

A direct comparison of per-acre water use fails to recognize that farm operators choose to enroll in the Base or BMP Programs because of the unique characteristics of each individual farm. Soil structure and quality, cropping patterns, and operational differences all play into whether the BMP or Base Program is the best fit for any particular farm unit. This comparison also offers no accounting for the extent to which a BMP farm chose to enroll in that program because of its previous dependency on flexibility credits. A farm that uses a certain number of acre feet under the BMP program could use just as much or more water if that same farm were enrolled in the Base Program because it would purchase and apply flexibility credits to that operation. The appropriate way to compare the water use of these two programs is not “all current BMP farms” versus “all current Base Program farms.” Instead, ADWR should compare (1) total agricultural water use by Base Program and BMP farms to the total use allowed if all farms were regulated by the Base Program, or (2) BMP farm water use to pre-BMP water use or projected use by those same farms under the Base Program. If total agricultural water use is equal to or less than the total use that would be allowed if all IGFRs remained in the Base Program, or if individual BMP farms use water quantities at least equivalent to expected water use on those same farms under the Base Program, the BMP program successfully achieves conservation at least equivalent to the Base Program as required by the Groundwater Code.

Moreover, there seems to be a significant discrepancy in the data presented to support the claims about the BMP Program’s lack of conservation equivalency. For example, in the draft plan for the Pinal AMA, Table 4-1 lists the total agricultural demand for 2017 as 878,911 acre-feet. This is more than 250,000 acre-feet higher than the listed agricultural allotment of 624,366 acre-feet. However, according to Supplement I, the document in which “[t]he irrigation acres, water duty acres, assigned irrigation efficiency, irrigation water duty and maximum annual groundwater allotment for each IGFR in the PAMA are set forth,” the sum total of all IGFR allotments is 898,107 acre-feet.<sup>2</sup> The inconsistent data leads us to question not only the ultimate conclusions of the Department regarding the BMP program, but also the integrity of the data on which those conclusions are based.

Another reason for the imperfect analysis regarding the efficacy of the BMP program stems from the Department’s definition of “conservation.” A.R.S. § 45-567.02(G) requires that the BMP program be designed to achieve “conservation that is at least equivalent to that required by section 45-567, subsection A, paragraph 1.” That section explains that the Department must set maximum annual groundwater allotments and irrigation water duties. Staff has explained that the Department interprets this to mean that conservation only occurs if there is a decrease in the amount of groundwater pumping below those allotments or duties. But this interpretation is not supported by the statutory language. A.R.S. § 45-567(A)(1) does not define a required level of non-use, it defines an allowable level of use. If the statutory framers meant “at least equivalent to the maximum annual groundwater allotment or irrigation water duty,” they would have said so. In fact, in establishing the BMP program, the Third Management Plan expressly differentiates between conservation and allotments and duties when describing the program’s purpose:

The best management practices program shall require the owner of an irrigation grandfathered right and any person using groundwater pursuant to the right to implement specific agricultural conservation practices for water use on the land or farm unit to which the right is appurtenant

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<sup>2</sup> Of note, Supplement I is not attached to the Draft Fourth Management Plan for the Pinal AMA. Co-signers to this letter were able to obtain it only after contacting the Department to ask for it directly. The numbers we reference here are the result of our independent calculation from the data Supplement I contains.

*in lieu of complying with an irrigation water duty and a maximum annual groundwater allotment.*

A.R.S. § 45-566.02(F). We believe the Department's newfound definition of conservation must be corrected in the Fourth (and Fifth) management plans.

#### *BMP Program – Modification of Points Structure*

In both the Phoenix and Pinal plans, the points target and structure for the BMP Program have been modified to both increase the points target and incentivize particular forms of conservation. While we see logic and benefit in this approach, the execution lacks any basis in conservation science or technical analysis.

For example, in both AMAs, BMP Category 2 for "Farm Irrigation Systems" has a modified points structure that increases the points allotted for low pressure sprinkler and trickle irrigation systems from three to four points. The intention of this change is clearly to encourage the investment in systems that are considered higher efficiency as opposed to flood irrigation by increasing the points for sprinkler and drip without a corresponding increase in practices associated with flood irrigation. But the points associated with this incentive are arbitrary and do not reflect realistic efficiency expectations. When compared to a level system, a low-pressure sprinkler system will likely be between five and eight percent more efficient at best.<sup>3</sup> In some cases, low-pressure sprinklers may actually be significantly less efficient if the ground on which they are installed is not properly leveled. Nevertheless, the new points structure awards these systems with 25 percent more points than a level border or furrow system.

Similarly, in BMP Category 3 for "Irrigation Water Management," laser touch-up of fields is awarded only one point, on par with practices like alternate row irrigation and surge irrigation. But laser touch-up of fields drastically improves irrigation efficiency and represents a significant financial investment. Awarding only one point for this practice fails to capture its significance in water conservation strategies.

Modifying the BMP program to make it more effective is a laudable goal. But to do so, the changes made to the program must not be arbitrary and should instead be rooted in observable, reliable conservation data.

#### *Conservation Program Audits*

The final concern we will highlight in this letter appears in both plans as Section 4-808: Audits of Conservation Requirements. According to the new language, the Department may:

elect to conduct audits of reports, records, and/or practices pursuant to the conservation requirements contained in sections 4-801 through 4-807 of this chapter. A Report of Audit must be sent to the audited person or entity pursuant to A.R.S. §§45- 633(D), 880.01(D), 1061(D), and/or A.A.C. R12-15-1102(E).

We believe this language gives the Department far more authority to collect information regarding cropping acreage than the statute contemplates. Such data has the potential to become weaponized

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<sup>3</sup> These numbers are observed rates of efficiency provided by on-farm numbers observed by co-signers of this letter.

against a producer in ways that are unacceptable and incongruous with a strong agricultural economy. Moreover, it puts the burden of proving the efficacy of conservation programs on the producer, rather than on the Department who administers the conservation programs.

### **Conclusion**

Managing Arizona's water supplies is by no means an easy task. By ignoring stakeholder input and dismissing the needs of the regulated community, we believe the Department is making this task even more difficult and less effective. We look forward to meeting with you to discuss these issues in real time, in hopes that it will improve this process to the benefit of all Arizona water users.

Sincerely,

Stefanie Smallhouse, President  
Arizona Farm Bureau Federation

Kevin Rogers, Executive Director  
Arizona Cotton Growers Association

Stephen Q. Miller  
Supervisor, Pinal County District #3

Bruce Heiden, President  
Roosevelt Irrigation District

Bryan Hartman, President  
Maricopa Stanfield Irrigation & Drainage District

Tony Solano, Director  
Maricopa Stanfield Irrigation & Drainage District  
Assistant General Manager ED3

Steve Pierce, President  
Arizona Farm & Ranch Group

Bas Aja, Executive Director  
Arizona Cattle Feeders Association

Scott L. Riggins  
Pinal AMA Independent Groundwater Pumper,  
Farmer, Landowner

Central Arizona Irrigation & Drainage District

New Magma Irrigation & Drainage District

Queen Creek Irrigation District

San Carlos Irrigation & Drainage District

United Dairymen of Arizona

cc:

Chuck Podolak, Office of the Governor, Natural Resources Policy Advisor

Senator Sine Kerr, Water and Ag Committee Chair

Senator Frank Pratt, Natural Resources and Energy Committee Chair

Representative Gail Griffin, Natural Resources, Energy, and Water Committee Chair

Representative Tim Dunn, Land and Ag Committee Chair

David Snider, Chairman: Pinal AMA GUAC

Stephen Cleveland, Chairman: Phoenix AMA GUAC