

1 **ARIZONA DEPARTMENT OF WATER RESOURCES**

2 **BEFORE THE DIRECTOR**

3
4 **IN THE MATTER OF THE**
5 **MANAGEMENT PLAN FOR THE**
6 **PINAL ACTIVE MANAGEMENT AREA**
7 **FOR THE FOURTH MANAGEMENT**
8 **PERIOD**

9 **SUMMARY OF HEARING AND**
10 **FINDINGS**

11 **I. Procedural Background**

12 Pursuant to the requirements prescribed in A.R.S. §§ 45-567, 45-567.01, 45-567.02, 45-
13 570, and 45-571, the Director of the Arizona Department of Water Resources (“Director”),
14 issued the proposed management plan for the Pinal Active Management Area (“PAMA”) for
15 the fourth management period (“Fourth Management Plan” or “4MP”) on July 14, 2020. A
16 public hearing on the proposed plan was held on August 20, 2020 in Florence, Arizona and via
17 webinar.

18 The hearing officer for the hearing was John Riggins, Chief Compliance Officer and
19 Ombudsman at the Arizona Department of Water Resources (“Department” or “ADWR”). At
20 the hearing, Natalie Mast, Program Manager for Active Management Area Management Plans
21 presented data in support of the proposed 4MP, as well as the Groundwater Users Advisory
22 Council’s (“GUAC”) comments on the proposed plan. The hearing officer also received oral
23 and documentary evidence concerning the proposed plan. The comment period remained open
24 until August 20, 2020 at 5:00 p.m.

25 As provided in A.R.S. § 45-571(A), the Director is required to file a written summary
and findings with respect to matters considered during the hearing record. As a result of
additional review by the Director, the Director has determined that no substantive changes to
the proposed plan are necessary. However, the Director has determined that several non-

1 substantive modifications are necessary to make typographical and technical corrections.
2 Pursuant to A.R.S. § 45-571(B), the Director has made the necessary modifications and is filing
3 in the Department an order adopting the plan as modified simultaneously with this Summary
4 and Findings. After reviewing the comments and evidence submitted during the hearing record
5 period, the Director makes the following written summary and findings with respect to matters
6 considered during the hearing record period.

8 **II. Summary of Hearing and Findings**

9 Two people presented oral comments at the public hearing and three people presented
10 comments through the webinar. The Director received seven written comments during the
11 hearing record period. The comments are categorized and summarized below, along with the
12 Director's responses to the comments:

13 *1. The management goal for the Pinal Active Management Area*

14 Comment: Several commenters stated that the management plan goal for the Pinal
15 Active Management Area is unclear and requested clarification on ADWR's
16 interpretation of the goal, particularly with regard to preserving agricultural
17 economies.

18 Response: The Pinal AMA Management Goal is defined in A.R.S § 45-562(B) as
19 follows: "*To allow development of non-irrigation uses... and to preserve existing*
20 *agricultural economies in the active management area for as long as feasible,*
21 *consistent with the necessity to preserve future water supplies for non-irrigation*
22 *uses."* The Department recognizes divergent views on the balance and prioritization
23 laid out in this goal. Balancing municipal growth with the agricultural economy
24 appears to be an issue that could be addressed in the Pinal Stakeholder Group, which
25 is working to find solutions to move municipal growth forward in the Pinal AMA.

2. Phrasing, terminology, and potential data discrepancies

1 Comment: Several commenters made note of potential data discrepancies and made
2 phrasing or terminology suggestions.

3 Response: Several comments had been submitted to the Department previously; data
4 issues and phrasing suggestions were evaluated and were incorporated or corrected
5 as appropriate at that time, prior to beginning the promulgation process.

6 3. *Concern regarding conversion of agricultural land to solar panels*

7 Comment: A commenter expressed concerns over the conversion of agricultural land
8 to non-agricultural use, such as solar energy, industry and other infrastructure, and
9 would like clarity on what happens to the groundwater rights associated with that
10 land.

11 Response: When a property associated with an IGFR is developed, the right may be
12 affected in a variety of ways, including being listed by ADWR as “Inactive,” being
13 retired to a Type I Non-Irrigation Right, or being extinguished for extinguishment
14 credits. Of these, the “Inactive” listing may be reversed and, in some limited cases,
15 conversion to a Type I may be reversed, and that IGFR could then be used for
16 irrigation in the future. Since the precise answer to this question can be case-specific,
17 the Department encourages stakeholders to contact the AMA Customer Service line
18 at 602-771-8585 with any questions about specific locations.

19 4. *Public process*

20 Comment: Several commenters expressed concern about the public process in which
21 the 4MP was developed. Commenters stated that the Department's process was not
22 collaborative with the regulated community.

23 Response: The Director disagrees with these comments. A.R.S. § 45-563 indicates
24 that “the director shall develop [the management plans].” While stakeholder
25 collaboration is sought and encouraged throughout the development of management

1 plans, the final authority on the content lies with the Director. The 4MP was
2 developed over many years, with extensive stakeholder involvement, and with final
3 edits occurring in early 2020. The Department communicated proposed changes to
4 the regulated community over a series of public meetings and made adjustments to
5 the original proposals in response to comments from and discussions with
6 stakeholders.

7 Comment: Several commenters expressed concern that the Department did not fulfill
8 its statutory obligations with regard to GUAC comments.

9 Response: The Director disagrees with these comments. A.R.S. § 45-421(1) states
10 that the GUAC shall “comment to the area director and to the director on draft
11 management plans for the active management area before they are promulgated by
12 the director.” At a GUAC meeting on May 27, 2020, ADWR staff requested
13 comment from the council pursuant to this statute. Several comments were provided
14 in that meeting and additional comments were provided in writing afterward. A
15 formal recommendation from the council is not required under the statute.
16 Additionally, although it is not required, on September 17, 2017 the GUAC voted to
17 recommend a draft 4MP and sent a letter dated November 8, 2017 supporting the
18 promulgation of that draft 4MP. That draft was later updated with additional data,
19 to correctly reference current events and issues, to make small, incremental changes
20 to the conservation programs, and to combine and condense the final two chapters.

21 5. *Agricultural Conservation Program*

22 Comment: Two commenters recommended that the Department consider the
23 purchase and retirement of IGFRs as a useful tool.

24 Response: In the process that yielded the Arizona Drought Contingency Plan (DCP)
25 Implementation Plan, the Department received substantial input regarding the

1 importance of agriculture to Pinal County. As a result, an agricultural mitigation
2 plan, that included state legislation, was part of the Arizona DCP Implementation
3 Plan. Due to a lack of stakeholder support and a lack of adequate funding, the
4 Department has elected not to implement this provision in the 4MP.

5 Comment: A commenter stated that the Department does not have authority to
6 manage Irrigation Grandfathered Right (IGFR) water usage, except in establishing
7 irrigation water duties and alternative conservation programs.

8 Response: All conservation requirements for IGFRs in the 4MP are authorized in
9 statute. Pursuant to A.R.S. § 45-465, an IGFR holder has the right to use
10 groundwater to irrigate the irrigation acres associated with that IGFR. Pursuant to
11 A.R.S. § 45-567(A)(1), the Director shall include in each 4MP irrigation water duties
12 calculated pursuant to A.R.S. § 45-566(A)(1) and may reduce the top 25 per cent of
13 those water duties by up to ten percent.

14 Comment: Several commenters stated that the reduction of highest water duties
15 pursuant to A.R.S. § 45-567(A)(1) could limit a farmer's ability to leach and would
16 result in depleted soil quality and production capability.

17 Response: Unique circumstances, including requests for a leaching allowance, may
18 be addressed through the administrative review process set forth in A.R.S. § 45-575.
19 See section 10.3.2 of the 4MP for more information on administrative reviews and
20 section 4.7.1.2 of the 4MP for more information on the leaching allowance.

21 Comment: Several commenters expressed concern about the points target in the
22 Agricultural Best Management Practices (BMP) program being increased from 10
23 to 12 points, stating that it is an arbitrary target. Commenters disagreed with the
24 Department's analysis that the current BMP Program is not equivalent to the Base
25 Program.

1 Response: The Department has analyzed a variety of different datasets using
2 multiple methods, with extensive stakeholder input. Each of those analyses
3 supported the conclusion that the Agricultural BMP Program is not currently
4 achieving conservation at least equivalent to the Base Program, as required by
5 A.R.S. § 45-567.02(G). Those analyses were described in a 5th Management Plans
6 (5MPs) Agricultural Subgroup meeting on May 18, 2020, which can be viewed at
7 <https://new.azwater.gov/5MP/meetings>. Although the analyses were performed as
8 part of the 5MP process, the same conclusion applies to the 4MP. Therefore, the
9 Department chose to increase the points target in the BMP program in the 4MP in
10 order to begin to move the program closer to equivalency with the Base Program.

11 Comment: A commenter stated that the point values for drip systems and low-
12 pressure sprinklers in the BMP program should not be higher than those associated
13 with level-basin flood irrigation.

14 Response: While level-basin flood irrigation can be a relatively efficient irrigation
15 method, drip and low-pressure sprinklers are able to achieve greater efficiencies than
16 any type of flood irrigation. These higher efficiency irrigation methods are more
17 expensive and labor intensive to implement. The higher point value for drip and low-
18 pressure sprinkler both acknowledges their efficiency potential and provides some
19 incentive for their use to acknowledge the cost and labor associated with them.

20 Comment: A commenter stated that requiring irrigation districts to line canals may
21 pose a significant financial burden on smaller irrigation districts.

22 Response: In the 4MP, irrigation districts are required to either line canals or operate
23 and maintain its irrigation distribution system so that the total quantity of lost and
24 unaccounted for water is 10 percent or less. Unique circumstances may be addressed
25

1 through the administrative review process set forth in A.R.S. § 45-575. See section
2 10.3.2 of the 4MP for additional information on administrative reviews.

3 6. *Miscellaneous*

4 Comment: Several comments were received regarding the Arizona Water Banking
5 Authority, Assured Water Supply and physical availability issues, and Storage and
6 Recovery. Additional recommendations were made for the 5MPs.

7 Response: These comments are outside of the scope of the 4MP and are not
8 addressed here. Suggestions related to the 5MPs will be considered as a part of the
9 development process for those plans.

10
11 **III. Conclusion**

12 The Director has determined it is appropriate to adopt the proposed plan, with several
13 non-substantive modifications, as the Fourth Management Plan as described in the Order of
14 Adoption issued simultaneously with this Summary of Hearing and Findings.

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16 Dated this 17th day of September, 2020.

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19 Thomas Buschatzke
20 Director, Arizona Department of Water Resources
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