SUMMARY OF HEARING AND FINDINGS

IN THE MATTER OF THE MANAGEMENT PLAN FOR THE PINAL ACTIVE MANAGEMENT AREA FOR THE FOURTH MANAGEMENT PERIOD

I. Procedural Background

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

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

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

II. Summary of Hearing and Findings

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

1. The management goal for the Pinal Active Management Area
   
   **Comment:** Several commenters stated that the management plan goal for the Pinal Active Management Area is unclear and requested clarification on ADWR’s interpretation of the goal, particularly with regard to preserving agricultural economies.

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

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

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

3. Concern regarding conversion of agricultural land to solar panels

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

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

4. Public process

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

Response: The Director disagrees with these comments. A.R.S. § 45-563 indicates that “the director shall develop [the management plans].” While stakeholder collaboration is sought and encouraged throughout the development of management
plans, the final authority on the content lies with the Director. The 4MP was
developed over many years, with extensive stakeholder involvement, and with final
edits occurring in early 2020. The Department communicated proposed changes to
the regulated community over a series of public meetings and made adjustments to
the original proposals in response to comments from and discussions with
stakeholders.

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

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

5. Agricultural Conservation Program

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

Response: In the process that yielded the Arizona Drought Contingency Plan (DCP)
Implementation Plan, the Department received substantial input regarding the
importance of agriculture to Pinal County. As a result, an agricultural mitigation plan, that included state legislation, was part of the Arizona DCP Implementation Plan. Due to a lack of stakeholder support and a lack of adequate funding, the Department has elected not to implement this provision in the 4MP.

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

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

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

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

Comment: Several commenters expressed concern about the points target in the Agricultural Best Management Practices (BMP) program being increased from 10 to 12 points, stating that it is an arbitrary target. Commenters disagreed with the Department’s analysis that the current BMP Program is not equivalent to the Base Program.
Response: The Department has analyzed a variety of different datasets using multiple methods, with extensive stakeholder input. Each of those analyses supported the conclusion that the Agricultural BMP Program is not currently achieving conservation at least equivalent to the Base Program, as required by A.R.S. § 45-567.02(G). Those analyses were described in a 5th Management Plans (5MPs) Agricultural Subgroup meeting on May 18, 2020, which can be viewed at https://new.azwater.gov/5MP/meetings. Although the analyses were performed as part of the 5MP process, the same conclusion applies to the 4MP. Therefore, the Department chose to increase the points target in the BMP program in the 4MP in order to begin to move the program closer to equivalency with the Base Program.

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

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

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

Response: In the 4MP, irrigation districts are required to either line canals or operate and maintain its irrigation distribution system so that the total quantity of lost and unaccounted for water is 10 percent or less. Unique circumstances may be addressed
through the administrative review process set forth in A.R.S. § 45-575. See section 10.3.2 of the 4MP for additional information on administrative reviews.

6. Miscellaneous

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

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

III. Conclusion

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

Dated this 17th day of September, 2020.

Thomas Buschatzke
Director, Arizona Department of Water Resources