ARIZONA DEPARTMENT OF WATER RESOURCES

BEFORE THE DIRECTOR

IN THE MATTER OF THE MODIFICATION OF CHAPTER 5 OF THE MANAGEMENT PLANS FOR THE PHOENIX, PINAL, PRESCOTT, SANTA CRUZ AND TUCSON ACTIVE MANAGEMENT AREAS FOR THE THIRD MANAGEMENT PERIOD, 2000-1010, FOR THE PURPOSE OF ADDING A MODIFIED NON-PER CAPITA CONSERVATION PROGRAM	**SUMMARY OF HEARINGS AND FINDINGS WITH RESPECT TO MATTERS CONSIDERED DURING THE HEARINGS**

I. INTRODUCTION

On January 9, 2008, the director of water resources ("Director") issued orders promulgating proposed modifications to Chapter 5 of the management plans for the Phoenix, Pinal, Prescott, Santa Cruz and Tucson active management areas for the third management period, 2000-2010 ("Third Management Plans"). The modifications are for the purpose of adding a modified Non-Per Capita Conservation Program ("NPCCP") to the Third Management Plans as required by A.R.S. § 45-566.01.

Public hearings were held on the proposed modifications as follows:

Phoenix AMA – A public hearing was held on the proposed modifications to the Third Management Plan for the Phoenix AMA on March 4, 2008 at 2:00 p.m. in Phoenix, Arizona. The hearing record remained open for the submittal of written comments until March 5, 2008 at 5:00 p.m.

Pinal AMA – A public hearing was held on the proposed modifications to the Third Management Plan for the Pinal AMA on March 4, 2008 at 10:00 a.m. in Casa Grande, Arizona. The hearing record remained open for the submittal of written comments until March 5, 2008 at 5:00 p.m.

Prescott AMA – A public hearing was held on the proposed modifications to the Third Management Plan for the Prescott AMA on March 5, 2008 at 10:00 a.m. in Prescott, Arizona.

The hearing record remained open for the submittal of written comments until March 5, 2008 at 5:00 p.m.

Tucson AMA – A public hearing was held on the proposed modifications to the Third Management Plan for the Tucson AMA on March 3, 2008 at 2:00 p.m. in Tucson, Arizona. The hearing record remained open for the submittal of written comments until March 5, 2008 at 5:00 p.m.

Santa Cruz AMA – A public hearing was held on the proposed modifications to the Third Management Plan for the Santa Cruz AMA on March 7, 2008 at 10:00 a.m. in Nogales, Arizona. The hearing record remained open for the submittal of written comments until March 7, 2008 at 5:00 p.m.

The Director is required by A.R.S. § 45-571(A) to make and file in the Department a written summary and findings with respect to the matters considered during the hearings. Section II below contains the summary of each public hearing. Section III below contains the Director's findings with respect to the matters considered during the hearings. The findings indicate one change to the proposed modifications is appropriate. Pursuant to A.R.S. § 45-571(B), the Director will make that change and then issue separate orders adopting the proposed modifications as changed.

II. Summary of Hearings

A. Summary of Public Attendance at Hearings

Phoenix AMA – Scott Miller, Area Director for the Phoenix AMA, served as the hearing officer at the public hearing on the proposed modifications to the Third Management Plan for the Phoenix AMA. Four members of the public attended the hearing. Mr. Miller began the hearing by explaining the purpose of the hearing, the procedures to be followed at the hearing and the process the Department will follow after the hearing. Joe Singleton, Assistant Area Director for the Pinal AMA, then described the proposed modifications. Following Mr. Singleton's presentation, Mr. Miller opened the hearing up for any comments from the public. The only

member of the public to give oral comments was Steve Olson, Executive Director of the Arizona Municipal Water Users Association ("AMWUA"). No members of the public submitted written comments during the hearing or thereafter.

Pinal AMA – Randy Edmond, Area Director for the Pinal AMA, served as the hearing officer at the public hearing on the proposed modifications to the Third Management Plan for the Pinal AMA. One member of the public attended the hearing. Mr. Edmond began the hearing by explaining the purpose of the hearing, the procedures to be followed at the hearing and the process the Department will follow after the hearing. Joe Singleton, Assistant Area Director for the Pinal AMA, then described the proposed modifications. Following Mr. Singleton's presentation, Mr. Edmond opened the hearing up for any comments from the public. No members of the public wished to present oral comments at the hearing. No members of the public submitted written comments during the hearing or thereafter.

Prescott AMA – Gerry Wildeman, Area Director for the Prescott AMA, served as the hearing officer at the public hearing on the proposed modifications to the Third Management Plan for the Prescott AMA. Three members of the public attended the hearing. Ms. Wildeman began the hearing by explaining the purpose of the hearing, the procedures to be followed at the hearing and the process the Department will follow after the hearing. Joe Singleton, Assistant Area Director for the Pinal AMA, then described the proposed modifications. Following Mr. Singleton's presentation, Ms. Wildeman opened the hearing up for any comments from the public. The only member of the public to give oral comments was John Munderloh, Water Resources Manager for the Town of Prescott Valley. Mr. Munderloh also submitted his comments in writing. No other members of the public submitted written comments during the hearing or thereafter.

Santa Cruz AMA – Alejandro Barcenas, Area Director for the Santa Cruz AMA, served as the hearing officer at the public hearing on the proposed modifications to the Third Management Plan for the Santa Cruz AMA. No members of the public attended the hearing. No

members of the public submitted written comments after the hearing.

Tucson AMA – Kenneth Seasholes, Area Director for the Tucson AMA, served as the hearing officer at the public hearing on the proposed modifications to the Third Management Plan for the Tucson AMA. Two members of the public attended the hearing. Mr. Seasholes began the hearing by explaining the purpose of the hearing, the procedures to be followed at the hearing and the process the Department will follow after the hearing. Joe Singleton, Assistant Area Director for the Pinal AMA, then described the proposed modifications. Following Mr. Singleton's presentation, Mr. Seasholes opened the hearing up for any comments from the public. No members of the public wished to present oral comments at the hearing. No members of the public submitted written comments during the hearing or thereafter.

B. Summary of Public Comments and Director's Responses

The following is a summary of the oral and written comments received during the hearings and the Director's responses to the comments:

1. Comment: Section 5.7.1.5.7 of the proposed modifications states that the legislation requiring the Director to add a modified NPCCP to the Third Management Plan also requires the Director to periodically review the effectiveness of the modified NPCCP, including the list of water conservation measures approved by the Director, and authorizes the Director to establish an advisory committee to assist in the evaluation. It would be appropriate to recognize in the Third Management Plan the creation of an advisory committee. (Steve Olson, Executive Director of AMWUA).

Response: The Director agrees with this comment. Language will be added to the Third Management Plans stating the Department will establish an advisory committee consisting of stakeholders to assist the Director in evaluating the effectiveness of the modified NPCCP.

2. Comment: The Department should clearly state that the point of compliance for the modified NPCCP is the number of conservation programs implemented by the municipal provider and not a specified volume of water use. (John Munderloh, Water Resources Manager, Town of

Prescott Valley).

Response: A.R.S § 45-566.01(D) provides that the Director shall design the modified Non-Per Capita Conservation Program to achieve a water use efficiency equivalent to the efficiency that was assumed in the Total Gallons Per-Capita Per Day program requirements. However, there is no statutory requirement that the modified NPCCP include a volumetric groundwater cap. The Director therefore agrees that a specified volume of water use is not a compliance point in the modified NPCCP. Instead, for a large municipal provider required to be regulated under the modified NPCCP, compliance will be based on the following: (1) the timely filing of a provider profile that is subsequently approved the Department; (2) the implementation of at least the minimum number of conservation measures required for the provider's system; and (3) the timely annual filing of a complete conservation efforts report. The Director believes that this is clear in the language of the proposed modifications. For that reason, no changes will be made in response to this comment.

3. Comment: The Third Management Plan should include a provision allowing the water conservation measures in Appendix 5H to be modified or deleted. (John Munderloh, Water Resources Manager, Town of Prescott Valley).

Response: While a specific water conservation measure may be ineffective for a particular service area, it may be effective for a different service area with different service area characteristics. Therefore, before any water conservation measures on the list of approved measures is modified or deleted, a public hearing should be held to receive comments from interested municipal providers and members of the public. The Director believes that the formal modification process authorized by A.R.S. § 45-572, which requires a public hearing prior to modifying a conservation requirement, is the most appropriate for modifying or deleting a water conservation measure on the list of approved measures. Because that process is provided by statute, it is not necessary to add a provision to the Third Management Plan allowing the Director to modify or delete a water conservation measure. Any person who believes that a water

conservation measure should be modified or deleted may make such a request to the Director. If the Director agrees, the Director will commence a formal modification proceeding pursuant to A.R.S. § 45-572 and hold a public hearing to receive comments on the proposed modification. For that reason, no changes will be made in response to this comment.

4. Comment: Inverted or tiered water rate structures should be added to the list of approved water conservation measures in Appendix 5H. (John Munderloh, Water Resources Manager, Town of Prescott Valley).

Response: During the stakeholder meetings held by the Department to develop the modified NPCCP, the concept of including inverted or tiered water rate structures on the list of approved water conservation measures was explored. At that time, it was concluded that the Department does not currently have the resources to determine appropriate rate structures for encouraging water conservation. For that reason, no changes will be made in response to this comment. However, the Department may re-examine this issue during the development of the Fourth Management Plan.

5. Comment: In Appendix 5H, Category 1, the subcategory entitled "Market Surveys to Identify Information Needs/Assess Success of Messages" should be expanded to allow market surveys to identify the gambit of water conservation programs most needed or most acceptable for the service area. ADWR should also expand allowable conservation programs from categories 1 through 7, not just categories 1 through 2. (John Munderloh, Water Resources Manager, Town of Prescott Valley).

Response: The Director agrees that a provider that implements the conservation measure in Category 1 entitled "Market Surveys to Identify Information Needs/Assess Success of Messages" should be allowed to replace the measure with another conservation measure in Categories 1 through 7, provided that the replacement conservation measure is appropriate for the provider's service area as reflected in the provider's approved provider profile. The same applies to the conservation measure in Category 2 entitled "Distribution Plan for Water Conservation

Materials." The Department will change the language describing these conservation measures accordingly.

III. Findings

Based on the record of the public hearings, the Director finds as follows:

1. That it is appropriate to make the following changes to the proposed modifications:

a. In the section entitled "Review of NPCCP," add language stating the Department will establish an advisory committee consisting of stakeholders to assist the Director in evaluating the effectiveness of the modified NPCCP.

b. In the appendix containing approved water conservation measures, change the language describing the measures entitled "Market Surveys to Identify Information Needs/Assess Success of Messages" and "Distribution Plan for Water Conservation Materials" to allow a provider implementing one of those measures to replace the measure with another measure in Categories 1 through 7, provided that the replacement measure is appropriate for the provider's service area as reflected in the provider's approved provider profile.

2. That the proposed modifications with the changes described in paragraph 1 above will be adopted by the Director in separate orders of adoption. Notice of the orders of adoption will be given in the manner required by A.R.S. § 45-571(C) and will be subject to rehearing or review and judicial review as provided in A.R.S. § 45-114(C).

GIVEN under my hand and the Official Seal of the Arizona Department of Water Resources this 1ST day of April, 2008.

Herbert R. Guenther
Director
Arizona Department of Water Resources

(SEAL)