

1 **ARIZONA DEPARTMENT OF WATER RESOURCES**  
2 **BEFORE THE DIRECTOR**

3 **IN THE MATTER OF THE PROPOSED )**  
4 **DESIGNATION OF A SUBSEQUENT )**  
5 **IRRIGATION NON-EXPANSION AREA ) DECISION AND ORDER DENYING**  
6 **IN THE SAN SIMON VALLEY SUB- ) FICO'S MOTION FOR**  
7 **BASIN OF THE SAFFORD ) REHEARING OR REVIEW**  
8 **GROUNDWATER BASIN )**  
9 \_\_\_\_\_ )

10 On August 12, 2015, after holding a public hearing and considering public comment, the  
11 Director of the Arizona Department of Water Resources (“Director”) issued his Findings, Decision,  
12 and Order (“Decision”) determining that the San Simon Valley Sub-basin of the Safford  
13 Groundwater Basin (“San Simon Valley Sub-basin”) shall not be designated as a subsequent  
14 irrigation non-expansion area (“INA”). On September 25, 2015, Farmer’s Investment Co. (“FICO”)  
15 filed a Motion for Rehearing and Review (“Motion”) introducing new evidence and asserting that  
16 certain determinations made by the Director were arbitrary, capricious, and an abuse of discretion.  
17 The Director hereby denies FICO’s Motion for the reasons set forth below.

18 **I. BACKGROUND**

19 On March 6, 2015, the Arizona Department of Water Resources (“Department”) received a  
20 complete petition for the designation of the San Simon Valley Sub-basin as a subsequent INA  
21 pursuant to A.R.S. § 45-433(A)(1). FICO was one of the signatories to the petition. As required by  
22 A.R.S. § 45-435, the Department held a public hearing in Bowie, Arizona, on May 16, 2015, for  
23 the purpose of presenting factual data in the Department’s possession regarding the proposed  
24 designation and accepting evidence and public comment on the proposed designation. The  
25 Department extended the public comment period until July 17, 2015, so that the Department could  
26 present and the public could comment on finalized water level data, as well as the Department’s  
numerical groundwater model used to project groundwater level changes and groundwater flow

1 behavior in the sub-basin in response to 100 years of future groundwater pumping at current rates  
2 of withdrawal. Using its model the Department projected that after 100 years of groundwater  
3 pumping at current rates of withdrawal, for the sub-basin's four major areas of agricultural  
4 pumping, the average depth to water in the sub-basin's lower aquifer would be approximately 352  
5 feet below land surface.

6 FICO's President, Dick Walden, was present and spoke in favor of designation of an INA  
7 at the public hearing held on May 16, 2015. May 16 Hearing Transcript, 97:3 – 98:21. FICO also  
8 submitted written comments to the Department during the public comment period. On July 17,  
9 2015, FICO submitted written comments which were accompanied by a report prepared by Leonard  
10 Rice Engineers, Inc. ("Leonard Rice") entitled "Evaluation of the San Simon Sub-basin as an  
11 Irrigation Non-expansion Area" ("Leonard Rice Initial Report"). The Leonard Rice Initial Report  
12 alleged that, based on Leonard Rice's analysis, groundwater levels in the irrigation pumping centers  
13 within the sub-basin would reach a weighted average depth to water of 370 feet below land surface  
14 by 2075 and that costs of lifting groundwater at that time would render irrigation within the sub-  
15 basin economically infeasible "for most farms." Leonard Rice Initial Report at 22. The Leonard  
16 Rice Initial Report further predicted that the weighted average depth to water for the irrigation  
17 pumping centers in the sub-basin would reach 430 feet below land surface in 2115. Id. at 13.

18 In the Leonard Rice Initial Report, Leonard Rice stated that in making its projections it used  
19 the Department's groundwater flow model, which Leonard Rice said, "is the best tool available to  
20 assess regional-scale drawdown in the San Simon Sub-basin and ... is suitable for this purpose."  
21 Leonard Rice Initial Report at 13. Leonard Rice explained that it projected lower groundwater levels  
22 than did the Department because it "increase[d] the annual pumping for [sic] approximately 50,000  
23 acre feet after beginning in 2015 to approximately 66,500 af/yr in 2020 ...." Id. Leonard Rice stated  
24 that this increased pumping was justified by expected future increased demand due to maturing  
25 orchards and that information related to the increased irrigation demand of mature orchards was  
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1 provided by FICO’s farm manager, Brian Driscoll. Id. at 11.

2 In arriving at its calculation of economic viability, Leonard Rice evaluated “nine profit-loss  
3 scenarios where current profit was either is [sic] 15, 10, or 5 percent and the current cost of water  
4 was either 10, 20, or 30 percent of farm expenses.” Id. at 18. Leonard Rice did not describe the data  
5 it relied upon in assuming a profit range of 5 to 15 percent. In support of its assumptions related to  
6 the cost of water as a percentage of farm expenses, Leonard Rice attached to its report two 1998  
7 crop budget surveys for corn and one 1998 crop budget for alfalfa for Pinal and Cochise Counties.  
8 Id. at 19-21. Leonard Rice calculated current groundwater pumping costs with reference to its  
9 calculation of current total dynamic head, a pump efficiency of 70 percent, and an estimate of  
10 electrical power costs based on FICO’s alleged power costs. Leonard Rice projected future  
11 pumping costs by applying a water cost multiplier based on projected declining groundwater levels.  
12 Id. at 9, 18. Leonard Rice concluded that irrigation will be economically infeasible in the sub-basin  
13 in approximately 2075, when, according to Leonard Rice, irrigators in more than half of its nine  
14 profit-loss categories will experience a net loss as a result of increased water pumping costs  
15 assuming revenues and all other farm costs are held constant. Id. at 22.

16 After considering all public comments, including those submitted by FICO, the Director  
17 issued his Decision that the San Simon Valley Sub-basin shall not be designated as a subsequent  
18 INA. In his Decision, the Director found that there is sufficient groundwater in the San Simon Sub-  
19 basin to provide a reasonably safe supply for irrigation of the cultivated lands at current rates of  
20 withdrawal for at least 100 years. In drawing this conclusion, the Director found, among other  
21 things, that:

22 25. Within the major areas of agricultural pumping, current depth to water  
23 levels are at an average of 257 feet below land surface and are not greater than  
approximately 560 feet below land surface in the lower system.

24 26. The average decline rate of all of the wells in the sub-basin that had depth  
25 to water measurements taken by the Department in both 2007 and 2015 and which  
demonstrated water level declines was only 1.7 feet per year for the time-period

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1           between 2007 and 2015.

2           ...

3           35.     Assuming that groundwater continues to be withdrawn at the current rates,  
4           the Department's groundwater model projects that after 100 years, the average  
5           depth to water in the lower system will be 352 feet below land surface, and the  
6           depth to water in the lower system will not exceed 700 feet below land surface in  
7           the major areas of current agricultural pumping.

8           36.     Assuming that groundwater continues to be withdrawn at the current rates,  
9           the Department's model projects that after 100 years, saturated thickness in the  
10          lower system will not be less than 400 feet in any major area of current agricultural  
11          pumping.

12          37.     The groundwater model's projections for depth to water and saturated  
13          thickness levels described above indicate that, if pumping continues at current rates  
14          of withdrawal, a significant supply of groundwater will be accessible for irrigation  
15          purposes in the sub-basin for at least 100 years.

16          The Director also found that the Leonard Rice Initial Report's conclusions were inapposite because  
17          they incorrectly projected groundwater level declines relying on projected "full future irrigation  
18          demands" of maturing orchards and not current rates of withdrawal, and because Leonard Rice  
19          failed to establish that its economic profitability analysis was appropriate. Decision, Finding No.  
20          39. With respect to the latter point, the Director questioned Leonard Rice's assumption that farm  
21          income and expenses remain nearly a constant percentage relative to one another and noted that it  
22          was unclear whether Leonard Rice considered the profitability of orchards, which make up more  
23          than 60 percent of the cropped acres in the sub-basin. Id.

24          On September 25, 2015, FICO submitted its Motion accompanied by a new report by  
25          Leonard Rice entitled "Response Report Regarding the ADWR Director's San Simon Sub-basin  
26          INA Decision" ("Leonard Rice Response Report"). In the Leonard Rice Response Report, Leonard

1 Rice now alleges that the Department's groundwater model is unreliable and should not be used in  
2 connection with making projections related to future groundwater levels. Leonard Rice appears to  
3 advocate that, in making projections about future groundwater levels, the Department should rely  
4 only upon a linear projection of the average groundwater level decline rate subtracted from existing  
5 groundwater levels for a certain number of years into the future. Leonard Rice alleges that, based  
6 on this linear approach, irrigation in the sub-basin will be rendered economically infeasible in 30-  
7 40 years, rather than 50-60 years as found in the Leonard Rice Initial Report, presumably because  
8 Leonard Rice now predicts that groundwater levels in the sub-basin in the irrigation pumping  
9 centers will reach a weighted average depth to water of 370 feet below land surface in 30-40 years.  
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11 With its Motion, FICO also submitted an affidavit of a professor and extension economist  
12 for the Texas A&M AgriLife Extension Service, David P. Anderson, in an effort to bolster its  
13 conclusions regarding the economic feasibility of pumping for irrigation at depths below 370 feet.  
14 Additionally, FICO reiterates its objections to the Department's use of current rates of withdrawal  
15 for currently young orchards, rather than the future projected needs of fully mature orchards, and  
16 raises newly alleged concerns about the reliability of the Department's calculations of groundwater  
17 level decline rates and the reliability of the USGS estimates of current pumping in the sub-basin.  
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19 **II. FICO'S MOTION FOR REHEARING OR REVIEW SHOULD BE DENIED.**

20 **A. The Director has not Been Presented with Sufficient Evidence That Irrigation in the**  
21 **Sub-basin will be Economically Infeasible in the Next 100 Years.**

22 The Department has not been presented with sufficient, credible evidence that pumping  
23 within the sub-basin will become economically infeasible for irrigation of the cultivated lands  
24 within 30-40 years, 50-60 years, or even 100 years, at current rates of withdrawal. The Director  
25

1 does not find Leonard Rice's new analysis of projected groundwater level declines persuasive for  
2 a number of reasons discussed more fully at Part B below. However, even assuming Leonard Rice's  
3 most recently advocated approach is appropriate, the projected average depth to groundwater in the  
4 major areas of agricultural pumping in the sub-basin would only be approximately 460 feet below  
5 land surface in 100 years. As noted by the Director in his Decision, pumping for irrigation is  
6 currently occurring, and has occurred, throughout this state at depths in excess to 400 feet,  
7 indicating that it is economically feasible to do so.<sup>1</sup> FICO's evidence to the contrary is not  
8 convincing.  
9

10 As discussed above, in the Leonard Rice Initial Report, Leonard Rice purports to consider  
11 projected impacts to nine categories of irrigation users, but does not describe the data it used to  
12 arrive at its profit margin range in creating its nine profit-loss categories and does not attempt to  
13 establish what percentage of irrigators (within the San Simon sub-basin or otherwise) currently fall  
14 into any of those categories. Therefore, it is not clear how this analysis predicts that farming will  
15 become uneconomical for "most farms." Moreover, Leonard Rice concedes that its economic  
16 analysis did not consider data on profit margins for orchards, which make up more than 60 percent  
17 of the cropped acreage in the sub-basin.<sup>2</sup>  
18

19 In an effort to bolster its claims, FICO now submits the affidavit of Dr. David Anderson,  
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22 <sup>1</sup> Even within the San Simon Valley Sub-basin, as evidenced by public comments filed with the  
23 Department in this matter, there are irrigators who have recently planted or are planting new  
24 orchards or expanding orchards in locations where depths to water exceed 440 feet, suggesting that  
25 profitability for orchards in the sub-basin is sufficiently high to support pumping at such depths and  
26 beyond.

<sup>2</sup> Leonard Rice states that it does not have information on orchard profitability but that it believes  
its analysis fairly captured orchard profit margins based on an unsupported statement about general  
business profits. Leonard Rice Response Report at 3.

1 which asserts, among other things, that “the rates of return, or profit, used in the Leonard Rice  
2 Reports are consistent with the [United States Department of Agriculture, Economic Research  
3 Service (“USDA ERS”)] report of operating profit measures across agriculture in the United States”  
4 and that “using ...costs and returns over a 30 year orchard production horizon indicated an annual  
5 average long term return over costs of 12.8 percent.” Dr. Anderson’s claims are not persuasive.  
6

7 Dr. Anderson asserts that the range of returns over costs used in the Leonard Rice Initial  
8 Report of 5 to 15 percent is consistent with a 2007 Family Farm Report published by USDA ERS  
9 reflecting an operating profit margin ranging from 10.8 to 18.3 percent for large and very large  
10 family farms and a 3 percent profit margin for all farms. Notably, the average percentage for “all  
11 farms” in the USDA summary includes large numbers of what the summary terms  
12 “residential/lifestyle” or “off-farm occupation” farms, which the study notes are farms whose  
13 “operators report a major occupation other than farming” and who are “unlikely to depend on the  
14 farm for their livelihood.”<sup>3</sup> Dr. Anderson does not explain how these nation-wide statistics relate  
15 to the San Simon Sub-basin. However, even assuming they do, a more recent version of the same  
16 report, published in 2010, reflected average operating profit margins ranging from 16.3 to 25.7  
17 percent for large and very large farms and 11 percent for all farms.<sup>4</sup> And an even more recent  
18 summary, published in 2014, reflects median operating profit margins ranging from 23.8 to 24.1  
19 percent for large and very large family farms and 18.1 percent for midsize family farms.<sup>5</sup> These  
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22 <sup>3</sup> See [http://ers.usda.gov/media/201475/eib24\\_1\\_.pdf](http://ers.usda.gov/media/201475/eib24_1_.pdf). The study also notes that higher profitability  
23 is reflected for small farms where net farm income is considered rather than “operating profit  
24 margin” as the latter term makes deductions for unpaid labor and management to reflect their  
opportunity cost.

25 <sup>4</sup> See [http://www.ers.usda.gov/media/184479/eib66\\_1\\_.pdf](http://www.ers.usda.gov/media/184479/eib66_1_.pdf)

26 <sup>5</sup> See <http://www.ers.usda.gov/media/1728096/eib-132.pdf> The USDA ERS uses medians rather

1 more recent summaries suggest that Leonard Rice's range of profit margins likely does not extend  
2 high enough.

3           With respect to the question of the profitability of orchards, Dr. Anderson suggests that he  
4 calculated for orchards "an annual long term return over costs of 12.8%" over a 30 year production  
5 horizon, but it is not clear how that figure was derived. It was perhaps calculated in part using  
6 expense numbers for pecans in certain regions of Texas and California discussed in paragraphs 9  
7 and 10 of Dr. Anderson's affidavit. However, other than the statement that due to "[d]ifferent  
8 irrigation technology, capital costs, and land costs," production costs are "likely" higher in Arizona  
9 than in West Texas, there is no explanation for why these figures are relevant for comparison with  
10 the San Simon Valley Sub-basin. Additionally, the Department cannot determine how Dr. Anderson  
11 calculated returns.<sup>6</sup> In sum, even considering the new information submitted through Dr.  
12 Anderson's affidavit, the Department still has not been provided with sufficient, credible evidence  
13 that pumping within the sub-basin will be rendered economically infeasible within the next 100  
14 years.  
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17           FICO's claim that most of the agricultural wells in the state that are pumping below 400  
18 feet are located within an active management area ("AMA") or INA does not refute the Director's  
19 finding that the presence of pumping at such depths indicates that it is economically feasible to do  
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23 than averages as the indicator of typical profitability ratios for the 2014 edition on the ground that  
24 medians are "affected less by individual cases with extreme values than means." However, the  
25 report calculated the aggregate mean operating profit margin (the indicator relied upon by Dr.  
26 Anderson) for "all farms" at 10 percent.

<sup>6</sup> It is also not clear why Dr. Anderson considered a production horizon of only 30 years. Even  
assuming that average groundwater levels will approach 370 feet below land surface in 30 years as  
FICO predicts, FICO has not addressed whether currently cropped orchards will remain profitable  
at that time.

1 so. It is also important to note that while pumping is occurring at depths greater than 400 feet in  
2 AMAs and INAs today, the Department's model does not project that average depths to  
3 groundwater in the major areas of agricultural pumping in the San Simon Valley Sub-basin will  
4 reach those levels during the next 100 years. Again, even if FICO's decline rate of 2.0 feet per year  
5 were used, the average depth to water in the major areas of agricultural pumping would reach only  
6 approximately 460 feet below land surface in 100 years. Given that pumping is currently occurring  
7 for irrigation at such depths today, the Director maintains that there is sufficient groundwater to  
8 provide a "reasonably safe supply" for irrigation of the currently cultivated lands in the sub-basin,  
9 even assuming FICO's decline rate.  
10

11 Contrary to FICO's suggestion, the Department is not required to conduct its own  
12 comprehensive analysis of the economic feasibility of pumping for irrigation at particular depths in  
13 the sub-basin prior to reaching a decision with respect to a proposed INA. First and foremost, the  
14 applicable statutes nowhere set forth such an affirmative requirement, but instead require only that  
15 the Director present to the public "the factual data in his possession" relevant to a proposed  
16 designation. Additionally, A.R.S. § 45-432(A)(1) requires that the Director assess whether the  
17 groundwater supply in the sub-basin is "reasonably safe" for irrigation of the cultivated lands at  
18 current rates of withdrawal. The legislature did not use more exacting standards of groundwater  
19 availability like "assured" or even "adequate," as is used elsewhere in the Groundwater Code. *See*  
20 A.R.S. §§ 45-108(I) & 45-576(J). The "reasonably safe" standard stands in contrast to, for instance,  
21 the language in A.R.S. § 45-562, articulating the management goal for the Pinal AMA as one, in  
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1 part, to “preserve agricultural economies in the active management areas for as long as possible.”<sup>7</sup>

2           Additionally, the legislature could not have intended that the Director be required to  
3 complete a comprehensive analysis of the economic feasibility of pumping for irrigation at  
4 particular depths in the sub-basin before reaching a decision, given the statutory time-frame under  
5 which the Director is required to act. By statute, the Director is to hold a public hearing no later  
6 than sixty days after the first publication of the notice of designation procedures. A.R.S. § 45-  
7 435(C). The legislature could not have contemplated that, upon receiving a petition from irrigation  
8 users within the sub-basin, unaccompanied by any technical report or study in support of  
9 designation (as in this case) the Department would be capable of performing a comprehensive  
10 economic analysis of the sub-basin within such a limited time-frame.  
11

12           B. Leonard Rice’s New Analysis of Projected Groundwater Declines is Unreliable.

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14           The Leonard Rice Response Report makes a number of new claims challenging the  
15 credibility of the Department’s projections of groundwater declines in the sub-basin. However,  
16 many of these claims are incorrect or unsupported. For instance, Leonard Rice claims that the  
17 Department’s “1.7 feet per year calculated decline rate for the period 2007 to 2015” is based only  
18 on 32 measurements of depth to water from GWSI index wells spread across the sub-basin. In fact,  
19 this decline rate was calculated based upon the 282 GWSI “sweep” wells in the sub-basin, which  
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23 <sup>7</sup> Notably, for the Pinal AMA’s third management plan, the Department, in consultation with the  
24 Pinal AMA Groundwater Users Advisory Council, enunciated a goal of securing groundwater  
25 supplies above 1,000 feet for irrigation use in keeping with the AMA’s management goal. *See* Third  
26 Management Plan for Pinal AMA, Chapter 4, page ii, available at:  
<http://www.azwater.gov/azdwr/WaterManagement/AMAs/documents/ch4-pinal.pdf>.

1 had water level measurements in both 2007 and 2015.<sup>8</sup> The Department found that the average  
2 water level decline for wells that showed declines (236 wells) was -1.7 feet per year and the average  
3 water level rise for wells reflecting a rise (46 wells) was 1.3 feet per year.  
4

5         Though Leonard Rice acknowledged in the Leonard Rice Initial Report that the  
6 Department's model "is the best tool available to assess regional-scale drawdown in the San Simon  
7 Sub-basin," Leonard Rice raises a number of new challenges to the Department's groundwater  
8 model in its Response Report and claims that it is "unreliable." However, these new claims do not  
9 impact the Director's Decision. First, it is impossible for the Department to evaluate the validity of  
10 some of Leonard Rice's claims regarding the model because Leonard Rice has not provided a  
11 sufficient description of the specific data used or its method of analysis in reaching some of its  
12 conclusions.<sup>9</sup>Second, Leonard Rice has raised objections that are inconsistent with industry  
13 standard practices for groundwater modeling.<sup>10</sup> Third, Leonard Rice overstates or overestimates the  
14 degree of change to model results that would accompany certain proposed changes to model  
15 inputs.<sup>11</sup> Additionally, and perhaps most fundamentally, Leonard Rice misconstrues the purpose of  
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18 <sup>8</sup>See

19 [http://www.azwater.gov/azdwr/documents/ComparisonofPreliminaryandFinalizedWaterLevelDat  
a.pdf](http://www.azwater.gov/azdwr/documents/ComparisonofPreliminaryandFinalizedWaterLevelData.pdf) at page 2.

20 <sup>9</sup> For example, the Department cannot evaluate Leonard Rice's assertion that the scatterplot on page  
21 9 of the Response Report, which shows observed versus simulated well drawdowns, demonstrates  
22 that the model is unreliable because the specific wells used in the analysis were not identified.

23 <sup>10</sup> Leonard Rice asserts that model statistics provided on page 15 of the Leonard Rice Response  
24 Report "confirm that the model is insufficiently calibrated and that its predictions are unreliable."  
25 Leonard Rice does not supply the derivation of the provided statistics, which do not agree with the  
26 Department's statistics. Further, the normalized root mean square error ("RMSE") provided by  
Leonard Rice (5.8%) conforms to the commonly accepted industry standard that the normalized  
RMSE should be a small percentage of the total head loss in the system, *see* Anderson, M.P. and  
Woessner W.W. *Applied Groundwater Modeling: Simulation of Flow and Advective Transport*.

<sup>11</sup> Leonard Rice asserts that irrigation pumping is underestimated because irrigation efficiencies are

1 the model. The model is intended to project groundwater flow behavior within the sub-basin after  
2 100 years of pumping. The model's projections in combination with the other hydrogeologic data  
3 presented by the Department, including water level change data, support the Director's conclusion  
4 that there is sufficient groundwater in the sub-basin to provide a reasonably safe supply for  
5 irrigation at current rates of withdrawal.  
6

7 Finally, while the Director does not find FICO's new claims criticizing the Department's  
8 groundwater level decline projections persuasive, even if they were so, the Director still would find  
9 that there is sufficient groundwater in the sub-basin to provide a reasonably safe supply for  
10 irrigation at current rates of withdrawal. As previously stated, even assuming that FICO's  
11 groundwater decline rate of 2.0 feet per year is accurate, there would still be groundwater accessible  
12 in the lower aquifer for irrigation after 100 years in the major areas of agricultural pumping in the  
13 sub-basin at an average depth to groundwater of 457 feet. In view of the fact that these depths will  
14 not be reached for 100 years and the presence of wells in the state pumping water at these depths  
15 for irrigation at the present time, the Director maintains that there would be sufficient groundwater  
16 in the sub-basin to provide a "reasonably safe" supply for irrigation of the cultivated lands at the  
17 current rates of withdrawal, even assuming FICO's groundwater decline rate.  
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24 overestimated. Leonard Rice states that "the model is even less reliable than explained above  
25 because it includes too little groundwater pumping...." Leonard Rice Response Report at 18.  
26 However, Leonard Rice does not account for any increases in incidental recharge to the aquifer that  
would occur as the result of a more inefficient application of pumped irrigation water.

1 C. The Director's Consideration of Current Rates of Withdrawal is Consistent with the  
2 Clear Language of A.R.S. § 45-432(A)(1).

3 FICO maintains that the Director erred in failing to make groundwater level decline projections  
4 based upon a withdrawal rate that includes projected future irrigation needs of maturing orchards.  
5 However, the Director is bound by the clear and unambiguous language of A.R.S. § 45-432(A)(1)  
6 to consider only current rates of withdrawal in analyzing whether there is insufficient groundwater  
7 to provide a reasonably safe supply for irrigation of the cultivated lands in the sub-basin. If the  
8 legislature had intended the Director to use a withdrawal rate which considered projected increased  
9 future irrigation needs of currently cropped acres, this result could have been achieved by simply  
10 leaving off the language "at the current rates of withdrawal." However, the legislature chose to  
11 include this language, and the Director may not simply disregard it. *See Farris v. Advantage Capital*  
12 *Corp.*, 217 Ariz. 1, 2 ¶ 7, 170 P.3d 250, 251 (2006) ("A statute's plain language is the best indicator  
13 of legislative intent..."). FICO's reading of the statute would render the phrase "at the current rates  
14 of withdrawal" meaningless or mere surplusage. Such a reading violates clear rules of statutory  
15 construction. *See Simpson v. Simpson*, 224 Ariz. 224, 225 ¶ 6, 229 P.3d 236, 237 (App. 2010)  
16 (stating that statutes should not be read "so as to render any of its language mere surplusage" but  
17 should be read instead to "give meaning to each word, phrase, clause, and sentence so that no part  
18 of the statute will be void, inert, redundant, or trivial") (internal citation and quotations omitted).  
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21 Contrary to FICO's claims, application of the statute's plain language does not yield an  
22 absurd result. Nothing in the statute precludes the Director from analyzing the sub-basin in another  
23 five to ten years after currently young orchards reach maturity, at the then-current rates of  
24 withdrawal, to assess whether withdrawal rates have increased as FICO predicts. However, there is  
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no mechanism in the statute which permits the Director to remove a designation if, in fact, current withdrawal rates remain constant or decrease for any reason. Therefore, it is reasonable to assume that the legislature desired that the Director rely upon more concrete data in the form of withdrawal rates occurring at the time of designation, and not predictions of future increased withdrawal rates.

**ORDER**

Based on the foregoing the Director denies FICO's Motion for Rehearing or Review. Effective October 9, 2015, the Director's August 12, 2015 Decision that the San Simon Valley Sub-basin shall not be designated as an INA is final and the temporary prohibition on the irrigation of new acres within the sub-basin pursuant to A.R.S. § 45-434 is lifted.

  
Thomas Buschatzke  
Director

1 COPY of the forgoing  
2 sent via certified mail this  
3 9<sup>th</sup> day of October, 2015 to:

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