

To: Sharon Scantlebury, ADWR office

Pursuant to ARS §45-114(C), a motion for review of the adoption of the Management Goal for the Douglas AMA is hereby made.

The ADWR Director has adopted the following management goal for the Douglas AMA:

“The management goal of the Douglas AMA is to support the general economy and welfare of water users in the basin by reducing the rate of aquifer depletion by an amount established in the first management plan and by additional reductions established in each subsequent management plan every 10 years thereafter.”

The following amended goals are proposed:

“The management goal of the Douglas AMA is to stop local water tables from experiencing 15-year-average declines by [2050-2075] and thereafter by reducing the rate of aquifer depletion by an amount established in the first [5-10]-year management plan and by additional reductions established in each subsequent management plan every [5-10] years thereafter.”

OR

“The management goal of the Douglas AMA is to stop local water tables from experiencing 15-year-average declines by [2050-2075] and thereafter.”

The following justifications for the amendments are presented:

**1. The language “support the general economy and welfare of water users in the basin” has been removed.**

This language is unnecessary and creates opportunities for conflicting interests in the design and adoption of management plans. If a plan must “support” all “water users in the basin,” this can create conflicts with statute §45-401 (bold mine):

“A. The legislature finds that the people of Arizona are dependent in whole or in part upon groundwater basins for their water supply and that in many basins and sub-basins **withdrawal of groundwater is greatly in excess of the safe annual yield and that this is threatening to destroy the economy of certain areas of this state and is threatening to do substantial injury to the general economy and welfare of this state and its citizens.** The legislature further finds that it is in the best interest of the general economy and welfare of this state and its citizens that the legislature evoke its

police power to prescribe which uses of groundwater are most beneficial and economically effective.

B. It is therefore declared to be the public policy of this state that **in the interest of protecting and stabilizing the general economy and welfare of this state and its citizens** it is necessary to conserve, protect and allocate the use of groundwater resources of the state and to provide a framework for the comprehensive management and regulation of the withdrawal, transportation, use, conservation and conveyance of rights to use the groundwater in this state.”

If it is seen that any stipulations within a management plan would “support water users” (including non-citizens) while not “protecting this state and its citizens,” or vice versa, a conflict is created between upholding the management goal and upholding the law.

In response to public comment about this issue, the ADWR presents the following in their SUMMARY OF HEARING AND FINDINGS:

*“Comment: Several commenters stated the words “water users” includes non-local entities (people who are not citizens of Arizona), inconsistent with the language of “protecting and stabilizing the general economy of its citizens”.*

*Response: The Department opted to use the words “water users” to be inclusive of those who rely on AMA water supplies and who would be subject to AMA requirements.”*

Rather than create a dilemma in which “inclusivity” is defined differently by the law and by the goal, we can remove that adopted language and rely on the law in making determinations about how inclusive a management plan policy should be.

The same considerations must be made about the word “support” (in the adopted goal) which can create a conflict with the statutory mandate to “protect and stabilize.”

Further, the intended reasonable inclusiveness of whom subsequent AMA policies should serve is made clear by statute 45-415 which states that only (bold mine) “...*registered voters residing within the boundaries of the proposed active management area*” can establish a subsequent AMA. It is not provided that all water users should have such authority. Similarly, an entity’s use of AMA water supplies does not qualify them as a party who must be protected by AMA policies. This proposition is in keeping with our Groundwater Code’s Declaration of Policy.

Further still, this language in the adopted goal creates unnecessary ambiguities. Because “*support the general economy and welfare of water users in the basin*” is followed by the word “by” (“...*reducing the rate of aquifer depletion*”), this language supersedes the rest of the goal language and makes it difficult if not impossible to measure or evaluate progress made toward the goal, even when there are measurable reductions in aquifer depletion. This ambiguity could fundamentally undermine the project of conserving water in the Douglas Basin.

2. The language “stop local water tables from experiencing 15-year-average declines” has been added.

The ADWR presented the following slide during the DAMA Goal Public Hearing:

The screenshot shows a video player interface. The main content is a slide with a blue header and a white body. The header contains the title "Management Goal: Principles" in white text. The body contains a bulleted list of six principles. The video player controls at the bottom show a timestamp of 15:53 / 1:09:20, the date June 28, 2023, and various icons for volume, play/pause, closed captions, settings, HD, and a small inset video window in the top right corner showing a person in a meeting room. The Arizona Department of Water Resources logo is visible in the bottom right corner of the slide.

## Management Goal: Principles

- Should move the AMA toward long-term water sustainability
  - Criteria regarding water resource management
  - Decrease outflows/increase inflows
- Should be measurable or contain evaluation criteria
- Must provide a timeline in which to achieve the goal
- Must be achievable and appropriate for the Douglas AMA
- Must be legal, reasonable, and defensible

One of the ADWR’s proposed “management goal principles” is that an AMA goal “*should be measurable or contain evaluation criteria.*”

This is an understandable principle, because without a measurable or reasonably qualifiable goal, it would be impossible to determine whether or not a goal has been achieved within the established “number of years” that a goal is required to have.

[§45-569. Management goals and management plans for subsequent active management areas](#)

*A. Within thirty days of the designation of a subsequent active management area pursuant to article 2 of this chapter, the director shall establish a management goal for the active management area **and the number of years in which the goal is to be achieved.***

When considering what kind of criteria to use in a goal, the most obviously reasonable criteria is the rate of groundwater decline. Our law (§45-401) says that the “...*withdrawal of groundwater*

*is greatly in excess of the safe annual yield...*” threatens to do “...*substantial injury to our state and its citizens*” because overdraft leads to groundwater decline which, in turn, impacts the accessibility and quality of groundwater, among other issues. This is not a controversial or contested understanding, though there are other factors to be considered in an assessment of injuries.

Stakeholders in the Santa Cruz AMA Goal came to understand that it is not sufficient to merely prevent withdrawals in excess of “safe yield” (per the statutory definition of safe yield) because such prevention can still allow for declines of certain water tables within a basin. They subsequently and necessarily included in their management goal: “...**and to prevent local water tables from experiencing long-term declines.**” This goal illustrates the common sense that water table declines are the most appropriate measure of groundwater sustainability and the protection of citizens’ wellbeing.

The idea of “long-term” declines creates flexibility for short-term fluctuations in water levels. However, this language may create its own ambiguities as there is no definition of what constitutes a long-term decline exactly. The language of “15-year-average declines” is proposed as a measurable criteria for the general stabilization of water tables.

If our goal does not aspire to stabilize local water tables, it does not aspire to mitigate and prevent the “*substantial injury*” which the GMA was created to address. Anything less than such stabilization is neither reasonable nor defensible.

Achieving such stabilization in the Douglas basin will require at least a 55% reduction of current water use. These reductions are less severe than those which many other basins would require, and are not unachievable. In fact, they are inevitable as declining water levels would eventually make it uneconomical to continue current rates of withdrawal. With a well designed management goal and plan, we can preemptively reduce our water use and prevent much of the injury we would otherwise face. These injuries extend beyond the loss of agricultural business. The wellbeing and heritage of the greater basin community is at risk if dry wells, ruined farms, earth fissures, and modern suburban sprawl are not proactively mitigated or avoided.

Our goal must be measurable, reasonable, defensible, appropriate, and achievable. The adopted goal language does not qualify. Our proposed amended goal language (“stop local water tables from experiencing **15-year-average** declines”) may be the only language which is fully qualified.

### **3. The language “by [2050-2075]” has been added to the goal.**

The adopted goal does not give a timeline by which to achieve its goal. Although it provides for “*additional reductions established in each subsequent management plan every 10 years thereafter,*” there is no establishment of how long the first management goal will last. So long as

this remains undefined, the “number of years” by which to achieve the goal are definitively innumerable, which renders the goal illegal.

By putting the goal of stabilized water tables into the future 25-50 years (after the adoption of the management plan), and accounting for estimated current basin overdrafts of 220%-330%, basin-wide reductions in water use would need to be between 55%-70% with average annual reductions of 1.1%-2.8% (from the current water use rates). The reductions do not need to be linear, and the first years of cutbacks can be much less, affording time for low-water use solutions to be established before higher cutback rates are implemented.

This would be in keeping with §45-563:

*“The [management] plans shall include a continuing mandatory conservation program for all persons withdrawing, distributing or receiving groundwater designed to achieve reductions in withdrawals of groundwater.”*

And as referenced in Initial AMA management plans:

*“The [Groundwater Management] Code requires that the maximum annual groundwater allotment be reduced over time with increasingly stringent conservation requirements.”*  
*Second Management Plans 1990-2000*

#### **4. The language “the first 10-year management plan” has been added to one of the proposed goals.**

Similar to the previous amendment, this change aligns the goal with the “number of years” mandate found in §45-569.

As written, the adopted goal does not specify how many years the first management goal will last, rendering the number of qualifying years to be innumerable, and the goal illegal.

#### **In conclusion:**

The above amendments align the DAMA Goal with Arizona’s revised statutes and with the ADWR’s stated management goal principles:

- It moves the DAMA toward long-term sustainability
- It is measurable
- It provides a timeline in which to achieve the goal
- It is achievable and appropriate for the Douglas AMA
- It is legal, reasonable, and defensible

It is believed that the adopted goal does not well align with any of these principles.

It is hoped that after reviewing these stakeholder considerations, the ADWR will amend the adopted goal accordingly.

If such request for review does not lead to desirable outcomes (which would not necessarily be of the exact proposed amendments to the goal, but would be in keeping with their general shape and intent), a motion for judicial review will be filed with the Cochise County Superior Court to determine whether the adoption of such undesirable goal is supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion. A motion will be made for an evidentiary hearing, with jury, and with the superior court making findings of fact and stating conclusions of law on which its judgment is based.

It should be noted that, per statute, *"the court shall decide all questions of fact without deference to any previous determination that may have been made on the question by the agency."*

In addition to the arguments made in the above request for review, and further arguments, it will also be argued that the published SUMMARY OF HEARING AND FINDINGS does not offer legal, reasonable, and defensible justifications for the adopted goal in multiple regards.

The only ADWR party of record named in the appeal shall be ADWR Director Thomas Buschatzke.

The motion would be filed on September 22nd.

Christian Sawyer