



KRIS MAYES  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

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Via Email: [tbuschatzke@azwater.gov](mailto:tbuschatzke@azwater.gov)

Thomas Buschatzke  
Director, Arizona Department of Water Resources  
1110 West Washington Street, Suite 310  
Phoenix, Arizona 85007  
c/o Nicole Klobas, General Counsel

Dear Director Buschatzke,

Thank you for meeting with me recently. I write to follow up on several issues.

First, since 1980, ADWR has had a statutory duty to “periodically review all areas which are not included within an active management area to determine whether such areas meet any of the criteria for active management areas.” A.R.S. § 45-412(C). This statutory requirement recognizes that groundwater conditions in a particular area are dynamic, and groundwater management should adapt to meet those ever-changing circumstances. Unfortunately, while groundwater circumstances have changed greatly since 1980, ADWR appears not to have engaged in the analysis of potential new AMAs necessary to adjust to those changes. I am aware that ADWR has twice studied the Upper San Pedro Basin to determine if it met the statutory definition be designated as an AMA. But two studies of a single basin in a forty-year period does not satisfy the statutory duty to periodically review “all areas which are not included within an active management area,” as A.R.S. § 45-412(C) requires. Please identify any other studies ADWR has performed that relate to ADWR’s obligations under this statutory requirement. If you believe that ADWR has been unable to comply with the statutory requirement, please let me know why ADWR been unable to do so.

Second, in our meeting we discussed the fact that hedge funds (and perhaps other financial firms and speculators) have started purchasing land (and the attendant water rights) in areas near the Colorado River, and are anticipated to seek to transfer those water rights off-river. In September 2020, ADWR recommended that the Department of Interior approve one such transfer, from a farm owned by GSC Farm LLC in the Cibola Valley to Queen Creek. On the same day that recommendation was issued, ADWR also promulgated a new policy, Substantive Policy Statement No. CR 11, “Policy and Procedure for Transferring an Entitlement of Colorado River Water,” to govern future water transfers. These water transfers could have grave

consequences for local on-river communities and the River. Thus, consideration of the foreseeable cumulative effects of these transfers is necessary to comply with ADWR's overarching duty to "[f]ormulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality." A.R.S. § 45-105(A)(1). Yet, when ADWR approved the Queen Creek transfer, it appeared to consider that transfer in isolation, and to ignore the cumulative effect that other anticipated transfers might have. And although you indicated to me that CR11 allows ADWR to consider the cumulative effects of anticipated water transfers, I see nothing in CR11 that would require ADWR to do so. I urge you to revise CR11 to require consideration of foreseeable cumulative effects, and to carefully scrutinize any future water transfer requests to ensure that any recommended approvals are consistent with ADWR's overarching duties.

Third, we discussed well-drilling applications, and have had subsequent follow-up on two applications in La Paz County in particular. Based on our conversation, it appears that improved coordination between the State Land Department and ADWR would be valuable, both to ensure that ADWR does not approve wells on state land that should not be approved, and to improve the water use data available to ADWR (and likely for many other reasons). I understand ADWR is interested in meeting with State Land, and my office will be reaching out to facilitate a meeting between State Land and ADWR to discuss these issues.

I look forward to working with you to safeguard the future of water in Arizona.

Sincerely,



Kris Mayes  
Arizona Attorney General