

REFERENCE TITLE: subsequent irrigation non-expansion areas; procedures

State of Arizona  
Senate  
Fifty-fourth Legislature  
Second Regular Session  
2020

## **SB 1635**

Introduced by  
Senators Otondo: Alston, Bowie, Bradley, Contreras, Dalessandro, Gonzales,  
Mendez, Navarrete, Peshlakai, Quezada, Rios, Steele; Representatives  
Fernandez, Gabaldón, Peten

AN ACT

AMENDING SECTIONS 45-114, 45-432, 45-433, 45-434, 45-435 AND 45-436,  
ARIZONA REVISED STATUTES; RELATING TO THE GROUNDWATER CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 45-114, Arizona Revised Statutes, is amended to  
3 read:

4 45-114. Administrative proceedings; rehearing or review;  
5 judicial review

6 A. Administrative proceedings under this title are subject to title  
7 41, chapter 6, article 10, except for administrative proceedings under  
8 section 45-476.01. If an administrative hearing is held before the  
9 director's decision, the administrative proceeding is a contested case  
10 under title 41, chapter 6, article 10. If an administrative hearing is  
11 not held before the director's decision, the director's decision is an  
12 appealable agency action under title 41, chapter 6, article 10. This  
13 subsection does not apply to a public hearing conducted under this title  
14 or to a decision of the director that is entered after a public hearing  
15 conducted under this title.

16 B. Except for a decision of the director under section 45-476.01,  
17 after service of a final decision of the director under this title, a  
18 party may file a motion for rehearing or review under section 41-1092.09  
19 and may seek judicial review under title 12, chapter 7, article 6, except  
20 as provided in section 41-1092.08, subsection H. This subsection does not  
21 apply to a decision of the director that is entered after a public hearing  
22 conducted under this title.

23 C. EXCEPT FOR A DECISION OF THE DIRECTOR UNDER SECTION 45-436, a  
24 decision of the director that is entered after a public hearing conducted  
25 under this title is subject to rehearing or review and judicial review as  
26 provided in this subsection. A party is not required to file a motion for  
27 rehearing or review in order to exhaust administrative remedies and may  
28 seek judicial review of the director's final decision under title 12,  
29 chapter 7, article 6 as follows:

30 1. If a party files a motion for rehearing or review, the  
31 director's decision is not final for the purposes of judicial review until  
32 the director denies the motion or the director issues a decision after  
33 rehearing or review. A party shall file a motion for rehearing or review  
34 within thirty days after the publication or issuance of the director's  
35 findings and order as provided in sections 45-404, 45-414, ~~45-436~~, 45-571  
36 and 45-576.03 or by rule. The director shall issue an order either  
37 granting or denying the motion within sixty days after the filing of the  
38 motion. The director's decision after rehearing or review is the  
39 director's final decision for the purposes of judicial review by the party  
40 who filed the motion for rehearing or review or by any other party.

41 2. If a motion for rehearing or review is not filed by any party,  
42 the director's decision is final for the purposes of judicial review by  
43 any party.

1           Sec. 2. Section 45-432, Arizona Revised Statutes, is amended to  
2 read:

3           45-432. Subsequent irrigation non-expansion areas;  
4                           designation; review

5           A. The director may designate an area ~~which~~ THAT is not included  
6 within an active management area as a subsequent irrigation non-expansion  
7 area if the director determines that both of the following apply:

8           1. There is insufficient groundwater to provide a reasonably safe  
9 supply for irrigation of the cultivated lands in the area at ~~the current~~  
10 REASONABLE PROJECTED rates of withdrawal. IN MAKING THE DETERMINATION,  
11 THE DIRECTOR MAY CONSIDER CREDIBLE EVIDENCE THAT INDICATES LIKELY FUTURE  
12 CHANGES TO RATES OF WITHDRAWAL. FOR THE PURPOSES OF THIS PARAGRAPH,  
13 "REASONABLY SAFE SUPPLY FOR IRRIGATION" MEANS A RELIABLE SOURCE OF  
14 GROUNDWATER FOR IRRIGATION FOR ONE HUNDRED YEARS.

15           2. The establishment of an active management area pursuant to  
16 section 45-412 is not necessary.

17           B. An irrigation non-expansion area established pursuant to this  
18 section may include more than one groundwater ~~sub-basin~~ SUBBASIN but shall  
19 not be smaller than a groundwater ~~sub-basin~~ SUBBASIN or include only a  
20 portion of a groundwater ~~sub-basin~~ SUBBASIN.

21           Sec. 3. Section 45-433, Arizona Revised Statutes, is amended to  
22 read:

23           45-433. Local initiation for designation; procedures

24           A. The designation of a subsequent irrigation non-expansion area  
25 may be initiated by the director or by petition to the director signed by  
26 either:

27           1. Not less than twenty-five irrigation users of groundwater, or  
28 one-fourth of the irrigation users of groundwater within the boundaries of  
29 the groundwater basin or ~~sub-basin~~ SUBBASIN specified in the petition.  
30 FOR THE PURPOSES OF THIS PARAGRAPH, AN IRRIGATION USER OF GROUNDWATER IS  
31 ELIGIBLE TO SIGN A PETITION IF THE USER:

32           (a) IS THE OWNER OF THE IRRIGATED LAND. A LESSEE OR OTHER PERSON  
33 APPLYING WATER ON BEHALF OF THE OWNER IS NOT ELIGIBLE TO SIGN A PETITION.

34           (b) WITHIN THE FIVE YEARS PRECEDING THE DATE OF THE SUBMISSION OF  
35 THE PETITION, HAS IRRIGATED TWO OR MORE ACRES OF LAND WITHIN THE BASIN OR  
36 SUBBASIN PRESCRIBED IN THE PETITION.

37           (c) IS CAPABLE OF IRRIGATING THE LAND IN THE FUTURE.

38           2. Ten ~~per cent~~ PERCENT of the registered voters residing within  
39 the boundaries of the groundwater basin or ~~sub-basin~~ SUBBASIN specified in  
40 the petition as of the most recent report compiled by the county recorder  
41 in compliance with section 16-168, subsection ~~G~~ H. ~~The form of the~~  
42 ~~petition shall be the same as for an initiative petition and the applicant~~  
43 ~~for such petition shall comply with the provisions of section 19-111.~~ If  
44 a groundwater basin or ~~sub-basin~~ SUBBASIN is located in two or more  
45 counties, the number of registered voters required to sign the petition

1 shall be ten ~~per cent~~ PERCENT of the registered voters residing within the  
2 boundaries of the groundwater basin or ~~sub-basin~~ SUBBASIN, as of the most  
3 recent report compiled by the county recorder in compliance with section  
4 16-168, subsection ~~G~~ H, within the county in which the plurality of the  
5 registered voters in the groundwater basin or ~~sub-basin~~ SUBBASIN resides,  
6 AND THAT COUNTY RECORDER SHALL PROVIDE THE FORM FOR THE VOTER PETITION.

7 B. A PETITION PURSUANT TO SUBSECTION A OF THIS SECTION SHALL BE  
8 SUBMITTED TO THE DIRECTOR WITHIN ONE YEAR AFTER THE DATE THE PETITION FORM  
9 IS ISSUED TO THE PETITIONERS BY THE COUNTY RECORDER. THE PETITION SHALL  
10 BE ACCOMPANIED BY A NUMERIC GROUNDWATER FLOW MODEL AND A HYDROLOGIC REPORT  
11 USING A METHOD OF ANALYSIS THAT IS APPROVED BY THE DIRECTOR AND THAT IS  
12 SIGNED AND SEALED BY A PROFESSIONAL GEOLOGIST OR ENGINEER WHO IS  
13 REGISTERED WITH THE BOARD OF TECHNICAL REGISTRATION PURSUANT TO TITLE 32,  
14 CHAPTER 1. BEFORE SUBMITTING THE PETITION, ONE OR MORE OF THE PETITIONERS  
15 SHALL CONSULT WITH THE DEPARTMENT REGARDING THE GROUNDWATER FLOW MODEL AND  
16 HYDROLOGIC REPORT. THE DIRECTOR MAY DENY THE PETITION IF THE DIRECTOR  
17 DETERMINES THAT THE ACCOMPANYING FLOW MODEL OR HYDROLOGIC REPORT IS  
18 DEFICIENT AFTER PROVIDING THE PETITIONERS A REASONABLE OPPORTUNITY TO  
19 CORRECT ANY DEFICIENCIES IN THE SUBMITTED FLOW MODEL AND HYDROLOGIC  
20 REPORT.

21 ~~B.~~ C. ~~Upon~~ ON receipt of a petition pursuant to subsection A,  
22 paragraph 2 of this section, the director shall transmit the petition to  
23 the county recorder of each county in which the groundwater basin or  
24 ~~sub-basin~~ SUBBASIN is located for verification of signatures. In  
25 addition, the director shall transmit a map of the groundwater basin or  
26 ~~sub-basin~~ SUBBASIN to the county recorder of each such county included.  
27 The map shall be on a scale adequate to show with substantial accuracy  
28 where the boundaries of the groundwater basin or ~~sub-basin~~ SUBBASIN cross  
29 the boundaries of county voting precincts. The director shall also  
30 transmit to the county recorder all other factual data concerning the  
31 boundaries of the groundwater basin or ~~sub-basin~~ SUBBASIN that may aid the  
32 county recorder in ~~the determination of~~ DETERMINING which registered  
33 voters of the county are residents of the groundwater basin or ~~sub-basin~~  
34 SUBBASIN.

35 D. THE DIRECTOR SHALL DETERMINE WHETHER A PETITION COMPLIES WITH  
36 SUBSECTIONS A AND B OF THIS SECTION AND THE FOLLOWING APPLY:

37 1. THE DIRECTOR IS NOT REQUIRED TO HOLD A HEARING ON THE  
38 SUFFICIENCY OF THE PETITION.

39 2. A DECISION OF THE DIRECTOR THAT A PETITION COMPLIES IS NOT  
40 SUBJECT TO JUDICIAL REVIEW.

41 3. A DECISION OF THE DIRECTOR THAT A PETITION DOES NOT COMPLY IS AN  
42 APPEALABLE AGENCY ACTION UNDER TITLE 41, CHAPTER 6, ARTICLE 10.

1           Sec. 4. Section 45-434, Arizona Revised Statutes, is amended to  
2 read:

3           45-434. Limitation on number of irrigated acres

4           A. If procedures are initiated, whether by the director or by  
5 SUBMISSION OF A VALID petition WITH AN APPROVED GROUNDWATER FLOW MODEL AND  
6 HYDROLOGIC REPORT, for designating an irrigation non-expansion area, an  
7 irrigation user may irrigate within the proposed irrigation non-expansion  
8 area only acres of land ~~which~~ THAT were irrigated at any time during the  
9 five years preceding the FIRST date of PUBLICATION OF the notice of ~~the~~  
10 ~~initiation of designation procedures~~ HEARING PRESCRIBED BY SECTION 45-435.

11           B. The limitation on the acres ~~which~~ THAT may be irrigated shall  
12 continue in effect until the director makes a final determination pursuant  
13 to section 45-436.

14           Sec. 5. Section 45-435, Arizona Revised Statutes, is amended to  
15 read:

16           45-435. Hearing on designation of subsequent irrigation  
17 non-expansion areas and boundaries; notice;  
18 procedures

19           A. If the director finds that an area ~~which~~ THAT is not included  
20 within an active management area meets the criteria specified in section  
21 45-432, ~~AND COMPLIES WITH~~ or a VALID petition is filed pursuant to  
22 section 45-433, the director shall hold a public hearing to consider:

23           1. Whether to issue an order declaring the area an irrigation  
24 non-expansion area.

25           2. The boundaries of the proposed irrigation non-expansion area.

26           B. The director shall give reasonable notice of the hearing under  
27 the circumstances which shall include the publication once each week for  
28 two consecutive weeks in a newspaper of general circulation in each county  
29 in which the proposed irrigation non-expansion area is located. Any  
30 notice shall contain the time and place of the hearing, ~~the legal~~  
31 ~~description and~~ a map clearly identifying and describing all lands to be  
32 included in the proposed irrigation non-expansion area and any other  
33 information the director deems necessary.

34           C. The hearing shall be held at a location in the county in which  
35 the major portion of the proposed irrigation non-expansion area is located  
36 ~~no~~ NOT less than thirty days but ~~no~~ NOT more than sixty days after the  
37 first publication of the notice of the hearing. THE DIRECTOR MAY CONTINUE  
38 THE HEARING FOR GOOD CAUSE. At the hearing, the director shall present  
39 the factual data in ~~his~~ THE DIRECTOR'S possession in support of or in  
40 opposition to the proposed action. Any person may appear at the hearing,  
41 either in person or by representative, and submit oral or documentary  
42 evidence for or against the proposed action. In making ~~his~~ THE  
43 determination, the director shall give full consideration to public  
44 comment and to recommendations made by local political subdivisions.

1           Sec. 6. Section 45-436, Arizona Revised Statutes, is amended to  
2 read:

3           45-436. Findings on hearing; order for irrigation  
4                   non-expansion area; publication; review

5           A. Within thirty days after the hearing, the director shall make  
6 and file in the director's office written findings with respect to matters  
7 considered during the hearing. If the director decides to declare an area  
8 an irrigation non-expansion area, the director shall make and file an  
9 order designating the irrigation non-expansion area.

10          B. The DIRECTOR'S SUMMARY OF findings and THE order shall be  
11 published in the manner and for the length of time prescribed BY SECTION  
12 45-435 for the publication of notice of the public hearing, and the order  
13 is effective when published for the final time. All factual data compiled  
14 by the director, a transcript of the hearing, a copy of the findings and a  
15 map identifying the lands included in the irrigation non-expansion area  
16 are public records of the department and shall be available for  
17 examination by the public during regular business hours. The findings and  
18 order of the director are A FINAL DETERMINATION FOR PURPOSES OF THE  
19 LIMITATION ON IRRIGATED ACRES PRESCRIBED BY SECTION 45-434, ARE NOT AN  
20 APPEALABLE AGENCY ACTION AND ARE subject to ~~rehearing or review and to~~  
21 judicial review ~~as provided in section 45-114, subsection C~~ ON THE  
22 THIRTY-FIRST DAY AFTER THE LAST DATE OF PUBLICATION OF THE DIRECTOR'S  
23 SUMMARY OF THE FINDINGS AND ORDER. ONLY THOSE PERSONS WHO ARE PETITIONERS  
24 AND THOSE PERSONS WHO SUBMITTED ORAL OR DOCUMENTARY EVIDENCE AT THE PUBLIC  
25 HEARING HELD PURSUANT TO SECTION 45-435 MAY FILE AN ACTION FOR JUDICIAL  
26 REVIEW OF THE DIRECTOR'S ORDER, AND THE GROUNDS FOR REVIEW ARE LIMITED TO  
27 THOSE ISSUES RAISED IN THE PETITION OR IN THE EVIDENCE THE PERSON  
28 SUBMITTED AT THE PUBLIC HEARING.

29          C. IF THE DIRECTOR DECLINES TO DESIGNATE A SUBSEQUENT IRRIGATION  
30 NON-EXPANSION AREA PURSUANT TO THIS SECTION:

31           1. IF THE DIRECTOR'S DECISION IS REVERSED ON JUDICIAL REVIEW, ANY  
32 ACRES IN THE AREA PROPOSED FOR DESIGNATION THAT WERE IRRIGATED AFTER THE  
33 DIRECTOR'S DECISION AND BEFORE THE DECISION WAS REVERSED MAY CONTINUE TO  
34 BE IRRIGATED AFTER THE IRRIGATION NON-EXPANSION AREA IS FINALLY  
35 DESIGNATED.

36           2. A PERSON SHALL NOT FILE A SUBSEQUENT PETITION TO DESIGNATE THAT  
37 AREA AS AN IRRIGATION NON-EXPANSION AREA UNTIL THREE YEARS AFTER THE  
38 DIRECTOR'S REFUSAL TO DESIGNATE BECOMES FINAL.

39          ~~C.~~ D. The director shall file a true copy of the map in the office  
40 of the county recorder of the county or counties in which the irrigation  
41 non-expansion area is located.