HB 2206

Introduced by
Representative Cano

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

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

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

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

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

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

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

2. If a motion for rehearing or review is not filed by any party, the director's decision is final for the purposes of judicial review by any party.
Sec. 2. Section 45-432, Arizona Revised Statutes, is amended to read:

45-432. Subsequent irrigation non-expansion areas;
designation; review
A. The director may designate an area which is not included
within an active management area as a subsequent irrigation non-expansion
area if the director determines that both of the following apply:
1. There is insufficient groundwater to provide a reasonably safe
supply for irrigation of the cultivated lands in the area at the current
REASONABLE PROJECTED rates of withdrawal. IN MAKING THE DETERMINATION,
the director may consider credible evidence that indicates likely future
CHANGES TO RATES OF WITHDRAWAL. FOR THE PURPOSES OF THIS PARAGRAPH,
"REASONABLY SAFE SUPPLY FOR IRRIGATION" MEANS A RELIABLE SOURCE OF
GROUNDWATER FOR IRRIGATION FOR ONE HUNDRED YEARS.
2. The establishment of an active management area pursuant to
section 45-412 is not necessary.
B. An irrigation non-expansion area established pursuant to this
section may include more than one groundwater sub-basin but shall
not be smaller than a groundwater sub-basin or include only a
portion of a groundwater sub-basin.

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

45-433. Local initiation for designation; procedures
A. The designation of a subsequent irrigation non-expansion area
may be initiated by the director or by petition to the director signed by
either:
1. Not less than twenty-five irrigation users of groundwater, or
one-fourth of the irrigation users of groundwater within the boundaries of
the groundwater basin or sub-basin specified in the petition.
FOR THE PURPOSES OF THIS PARAGRAPH, AN IRRIGATION USER OF GROUNDWATER IS
ELIGIBLE TO SIGN A PETITION IF THE USER:
(a) IS THE OWNER OF THE IRRIGATED LAND. A LESSEE OR OTHER PERSON
APPLYING WATER ON BEHALF OF THE OWNER IS NOT ELIGIBLE TO SIGN A PETITION.
(b) WITHIN THE FIVE YEARS PRECEDING THE DATE OF THE SUBMISSION OF
THE PETITION, HAS IRRIGATED TWO OR MORE ACRES OF LAND WITHIN THE BASIN OR
SUBBASIN PRESCRIBED IN THE PETITION.
(c) IS CAPABLE OF IRRIGATING THE LAND IN THE FUTURE.
2. Ten per cent of the registered voters residing within
the boundaries of the groundwater basin or sub-basin specified in
the petition as of the most recent report compiled by the county recorder
in compliance with section 16-168, subsection G. The form of the
petition shall be the same as for an initiative petition and the applicant
for such petition shall comply with the provisions of section 19-111. If
a groundwater basin or sub-basin is located in two or more
counties, the number of registered voters required to sign the petition

- 2 -
shall be ten percent of the registered voters residing within the boundaries of the groundwater basin or sub-basin, as of the most recent report compiled by the county recorder in compliance with section 16-168, subsection G, within the county in which the plurality of the registered voters in the groundwater basin or sub-basin resides, and that county recorder shall provide the form for the voter petition.

B. A petition pursuant to subsection A of this section shall be submitted to the director within one year after the date the petition form is issued to the petitioners by the county recorder. The petition shall be accompanied by a numeric groundwater flow model and a hydrologic report using a method of analysis that is approved by the director and that is signed and sealed by a professional geologist or engineer who is registered with the board of technical registration pursuant to Title 32, Chapter 1. Before submitting the petition, one or more of the petitioners shall consult with the department regarding the groundwater flow model and hydrologic report. The director may deny the petition if the director determines that the accompanying flow model or hydrologic report is deficient after providing the petitioners a reasonable opportunity to correct any deficiencies in the submitted flow model and hydrologic report.

C. Upon receipt of a petition pursuant to subsection A, paragraph 2 of this section, the director shall transmit the petition to the county recorder of each county in which the groundwater basin or sub-basin is located for verification of signatures. In addition, the director shall transmit a map of the groundwater basin or sub-basin to the county recorder of each such county included. The map shall be on a scale adequate to show with substantial accuracy where the boundaries of the groundwater basin or sub-basin cross the boundaries of county voting precincts. The director shall also transmit to the county recorder all other factual data concerning the boundaries of the groundwater basin or sub-basin that may aid the county recorder in determining which registered voters of the county are residents of the groundwater basin or sub-basin.

D. The director shall determine whether a petition complies with subsections A and B of this section and the following apply:

1. The director is not required to hold a hearing on the sufficiency of the petition.

2. A decision of the director that a petition complies is not subject to judicial review.

3. A decision of the director that a petition does not comply is an appealable agency action under Title 41, Chapter 6, Article 10.
Sec. 4. Section 45-434, Arizona Revised Statutes, is amended to read:

45-434. Limitation on number of irrigated acres

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

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

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

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

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

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

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

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

C. The hearing shall be held at a location in the county in which the major portion of the proposed irrigation non-expansion area is located NOT less than thirty days but NOT more than sixty days after the first publication of the notice of the hearing. THE DIRECTOR MAY CONTINUE THE HEARING FOR GOOD CAUSE. At the hearing, the director shall present the factual data in THE DIRECTOR'S possession in support of or in opposition to the proposed action. Any person may appear at the hearing, either in person or by representative, and submit oral or documentary evidence for or against the proposed action. In making THE determination, the director shall give full consideration to public comment and to recommendations made by local political subdivisions.
Sec. 6. Section 45-436, Arizona Revised Statutes, is amended to read:

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

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

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

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

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

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

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