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**To:** [Sharon Scantlebury](#)  
**Cc:** [Robert S. Lynch](#)  
**Subject:** Proposed designation of the San Simon Valley Sub-basin as an Irrigation Non-expansion Area (INA)  
**Date:** Wednesday, July 15, 2015 4:52:06 PM  
**Attachments:** [San Simon INA comments 071515.doc](#)

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Please see attached comments of the Arizona Wine Growers Association.

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July 15, 2015

Sharon Scantlebury  
Docket Supervisor  
Arizona Department of Water Resources  
3550 North Central Avenue  
Phoenix, Arizona 85012

Re: Proposed designation of the San Simon Valley Sub-basin as an Irrigation Non-expansion Area (INA)

Dear Ms. Scantlebury:

We are submitting these comments on behalf of the Arizona Wine Growers Association (AWGA). As you know, we appeared and testified at the hearing in Bowie on May 16, 2015. We will not repeat our comments we made there but merely incorporate them by reference for purposes of this response.

Since this hearing, the Department has extended the comment period until 5:00 p.m. on July 17, 2015 and provided the final Technical Memorandum concerning groundwater in the San Simon Valley Sub-basin. We appreciate that the Department has taken this extra step to ensure that people are informed and have an opportunity to review documents that the Director will use in making his decision on the petition.

As a threshold matter, we note that the various maps and charts designate what appears to be the surface water drainage associated with the San Simon Valley, not merely the groundwater sub-basin. We further note that A.R.S. §§ 45-432 and 433 refer to groundwater basins and sub-basins. By contrast, the statutes otherwise refer to other terminology such as "drainage watersheds" in A.R.S. § 45-109 and "river system and source" in A.R.S. § 45-251, the latter having to do with surface water adjudications. Under these circumstances, we believe that your maps can adequately demonstrate and do demonstrate where the groundwater sub-basin actually occurs within the San Simon Valley. We believe that the statutes require you designate, if you decide to designate, a groundwater sub-basin, not the surface water drainage.

We also note that a portion of this sub-basin, as defined in the Technical Memorandum and other documents, is in New Mexico. The statutes applicable to this proceeding assume that the sub-basin in question is within the State of Arizona. The situation where a sub-basin is partially outside the State of Arizona is not addressed. Obviously, the portion of the sub-basin in New Mexico is outside the jurisdiction of the Department. We believe this leaves the Department with two questions it must answer. First, would designating the sub-basin as an INA unfairly restrict the activities of Arizonans while leaving New Mexico residents of the sub-basin unrestricted? Second, may the Department make this designation at all when only a portion of the sub-basin can be designated, an apparent violation of or conflict with A.R.S. § 45-432.B.?

We note that A.R.S. § 45-432.A.1. allows the designation of an INA if there is insufficient ground-water for a “reasonably safe supply” for irrigation. The Department has indicated that it has analyzed a time period of 100 years going forward to make its determination about the INA. In our view, the Department has interpreted the term “reasonably safe supply” to encompass 100 years, a term of years otherwise utilized under various provisions in Title 45. We believe that the Department should affirmatively state that that is its interpretation of the statute.

In its Notice of May 29, 2015 extending the public hearing period, the Department notes that “the Director intends to use the model in making his decision on the proposed INA when the model is completed.” (Memorandum, p. 2.) The Notice does not say what other resources the Director may use in making his decision, if any. Since the Director is required to make and file written findings whether he designates the INA or does not (A.R.S. § 45-436.A.), we suggest that he should also specify any other documents beyond the model and the Technical Memorandum on which he relied.

Thank you for providing the additional time and finalized Technical Memorandum for public review before the end of the comment period.

In summary, we urge you to:

1. Declare that the San Simon Sub-basin is the area depicted in the Layer 1 and Layer 2 maps rather than the surface water drainage;
2. Address the questions we posed concerning the fact that the Sub-basin is partly in New Mexico; and
3. List all resources relied upon in the findings required by A.R.S. § 45-436.A.

To the best of our knowledge, this is the first petition-driven INA process under the statutes. Addressing issues and clarifying process here will be the precursor for other such proceedings and be helpful to the Department and to the public.

Sharon Scantlebury  
July 15, 2015  
Page 3

Thank you for the opportunity to comment on this very important proceeding.

Sincerely,  
ROBERT S. LYNCH & ASSOCIATES

/s/

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Counsel  
Arizona Wine Growers Association

RSL:psr

cc: Rod Keeling, President, Arizona Wine Growers Association  
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