

Irrigation Non-Expansion Area FAQs

Please note that the following is offered for informational purposes only and should not be construed as providing legal advice.

Questions about Irrigation Non-Expansion Areas

What is an INA?

An INA is an "Irrigation Non-Expansion Area". A new INA can be formed using the boundaries of either a groundwater basin or one or more sub-basins. Within an INA there are limits on the expansion of irrigated lands.

I have never heard of INAs. Is this a new law?

No. The statutes governing INAs were included in the 1980 Groundwater Management Act. The following link will take you to the INA statutes. <http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=45>

What is the purpose of an INA?

INAs may be created when the Director of the Arizona Department of Water Resources (ADWR) determines that "There is insufficient groundwater to provide a reasonably safe supply for irrigation of the cultivated lands in the area at the current rates of withdrawal" and that the establishment of an active management area (AMA) is unnecessary. An INA's purpose is to preserve the existing irrigation of cultivated lands.

What changes occur when a basin or sub-basin becomes an INA?

- The irrigation of new acres is prohibited. Only acres that have been irrigated within the five years preceding the initiation of the procedures to designate an INA may be irrigated after the INA is formed. This prohibition does not impact fields up to two acres in size or lands where a "substantial capital investment" was made to bring the land into cultivation during the five years preceding the initiation of the procedures to designate an INA.
- Most non-exempt wells (equipped to pump over 35 gallons per minute) will require metering.
- Owners withdrawing groundwater from non-exempt wells are required to file annual water use reports.

What is considered a "substantial capital investment"?

The INA statutes state that land which was not irrigated during the five years preceding the date of the Department's Notice of Initiation of Designation Procedures "is deemed to have been in irrigation if the director finds that substantial capital investment has been made for the subjugation of such land for an irrigation use including on-site irrigation distribution facilities and a well or wells the drilling and construction of which were substantially commenced before the date of the notice of the initiation of designation procedures."

<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/45/00437.htm&Title=45&DocType=ARS>

Substantial capital investment (SCI) must have been made in the five years preceding the Notice of Initiation of Designation Procedures. If an INA is created, property owners who believe they qualify for consideration of SCI may apply to ADWR and ADWR will evaluate each application on a case-by-case basis. Note that SCI can include more than wells and distribution facilities. The property purchase price and payment of property taxes are not included in the calculation of substantial capital investment.

Examples of documentation used by ADWR to make determinations on applications for the consideration of SCI in granting a Notice of Groundwater Authority in an INA or Certificate of Grandfathered Groundwater Right in an AMA can be viewed here: <http://www.azwater.gov/azdwr/SanSimonValley.htm>

SCI applications will only be accepted and considered if an INA is designated. ADWR cannot make SCI findings or provide SCI interpretations prior to the designation of an INA.

What is the difference between an exempt well and a non-exempt well?

Generally speaking, an exempt well is a non-irrigation well with a pump of capacity of 35 gallons per minute or less. Non-exempt wells are those wells that produce more than 35 gallons per minute.

Do all well owners have to buy meters?

No. Only non-exempt wells supplying irrigation uses and non-exempt wells pumping more than 10 acre-feet per year for a non-irrigation use require meters. There is also an exemption from the metering requirement for withdrawals which are both (1) used only to irrigate 10 or fewer contiguous acres of land at the place of use and (2) not used on land that is part of an integrated farming operation.

Who has to prepare annual reports?

In general, owners of metered wells are required to file annual reports if groundwater is withdrawn. Those owners of non-exempt wells that pump fewer than 10 acre-feet per year for non-irrigation uses, and thus do not require meters, must also file annual reports, but may estimate their usage. As with metering, there is an exemption from reporting requirements for withdrawals which are both (1) used only to irrigate 10 or fewer contiguous acres of land at the place of use and (2) not used on land that is part of an integrated farming operation.

Will I have to pay the State for the groundwater I pump?

No.

Is it true that no new wells can be drilled in an INA once it is established?

No. Both exempt and non-exempt wells may be drilled in an INA. However, water pumped from those wells cannot be used to irrigate new lands two or more acres in size.

Is it true that I can irrigate up to two new acres of land for a garden, orchard, or vineyard?

Yes.

Don't I own all the water beneath my land and get to do whatever I want with it?

Property owners have certain rights to withdraw groundwater as permitted by the Groundwater Code, but in Arizona, property owners do not "own" the groundwater beneath their property.

The Arizona Supreme Court stated in *Town of Chino Valley vs City of Prescott*, "In the absolute sense, there can be no ownership in seeping and percolating waters until they are reduced to actual possession and control by the person claiming them because of their migratory character. Like wild animals free to roam as they please, they are the property of no one."

In some ways, the withdrawal of groundwater is like fishing from a boat in a lake. A fisherman does not "own" the fish beneath his boat. The groundwater, like the fish, is a public resource, and the state can regulate its "capture."

Questions about the formation of an INA

How are INA designation procedures started?

The INA designation process can be initiated by the ADWR Director, by a petition of voters, or by a petition of irrigation users of groundwater. When the Director decides to initiate the INA process, or when he determines that a valid petition has been received, he then publishes a Notice of Initiation of Designation Procedures/Notice of Public Hearing.

What is important about the date of the Notice of Initiation of Designation Procedures?

The Date of the Notice of Initiation of Designation Procedures is the date of the first publication of the Notice of Initiation of Designation Procedures/Notice of Public Hearing and is the date that a temporary prohibition on the irrigation of new acres within the proposed INA becomes effective. Until the Director makes a decision on the proposed INA, only those lands irrigated in the five years preceding the date of the Notice may be irrigated after the date of the Notice.

If an INA is later designated, then the temporary prohibition will become permanent, except for lands upon which ADWR determines substantial capital investments were made in the five years prior to the Date of the Notice of Initiation of Designation Procedures.

Can I make a comment or provide evidence either for or against the designation of an INA?

Yes. The Department will hold a Public Hearing with a court reporter where oral or written comments and evidence may be presented. The comment period generally remains open for a period of time after the Public Hearing to receive additional written comments.

Please see the San Simon Valley Sub-basin section below for information on filing written comments.

How is it determined which lands can be irrigated after an INA is formed?

ADWR will make available a "Record of Irrigation History" form, to be submitted by landowners who claim to have irrigated land in the five-year period prior to designation of an INA. ADWR will verify historical irrigation using data sources including aerial photography and satellite imagery, and may also conduct site inspections. ADWR will also examine claims of Substantial Capital Investment (SCI). A determination will be made for each property claimed to have been historically irrigated or claimed under SCI. Each owner will be notified of his/her verified acreage.

The San Simon Valley Sub-basin

What is the "Date of the Notice of Initiation of Designation Procedures" for the San Simon Valley Sub-basin proposed INA?

March 18, 2015

Which way is the ADWR Director leaning on designating the San Simon Valley Sub-basin INA?

By law, the Director must "give full consideration to public comment and to recommendations made by local political subdivisions." The Director therefore is reserving all judgment until after he has considered all relevant information.

Can I make a public comment?

Yes, and you are encouraged to do so. Members of the public may submit written comments to the ADWR docket supervisor. Public comments are currently being accepted until 5 PM July 17, 2015. Written comments may be submitted via mail, fax, or e-mail to the ADWR Docket Supervisor at:

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

Fax: 602-771-8686

E-mail: Sharon Scantlebury sscantlebury@azwater.gov

Comments submitted via US mail must be postmarked no later than July 17, 2015.

More information about the Public Hearing is available at this link: <http://www.azwater.gov/azdwr/documents/INANotice.pdf>

Will there be only one public hearing?

The statutes only require a single public hearing. However, circumstances could arise where the hearing could be recessed and potentially resumed at a later date.

Is ADWR building a groundwater model of the San Simon Valley Sub-basin?

ADWR is constructing a computer groundwater flow model of the San Simon Valley Sub-basin using the widely accepted US Geological Survey (USGS) MODFLOW computer program.