From: Brnovich, Mark
To: Bailey, Michael
Subject: FW: 2015-2016 Presidential Reception | Charleston, SC | Nov. 30
Date: Tuesday, October 06, 2015 12:57:35 PM

From: Jim McPherson [mailto:announcements@naag.org]
Sent: Tuesday, October 06, 2015 12:14 PM
To: Brnovich, Mark
Subject: 2015-2016 Presidential Reception | Charleston, SC | Nov. 30

2015-2016 Presidential Reception

James McPherson, National Association of Attorneys General (NAAG) Executive Director, cordially invites you to attend the Presidential Reception with 2015-2016 NAAG President & South Dakota Attorney General Marty Jackley. The reception will take place at the Belmond Charleston Place Hotel in The Palmetto Cafe at 6:00 p.m. on Monday, Nov. 30, 2015.

By invitation only. Invitations are non-transferable.

RSVP to Megan Beresford by Nov. 6, 2015.

RSVP Now

If you would prefer not to receive emails from us, go here.

Please send any comments about this email to announcements@naag.org

From: Brnovich, Mark
To: Pierce, Amilyn; Anderson, Ryan; Medina, Rick
Subject: FW: An Unholy Alliance
Date: Monday, November 02, 2015 8:47:14 AM
Attachments: Let"s put an end to the smoke-in-your-face.pdf

From: Louis Carabillo [mailto:[redacted]@gmail.com]
Sent: Monday, November 02, 2015 8:45 AM
To: dennis.wagner@arizonarepublic.com
Cc: PHILIP J CARPENTER; david_schapira@tempe.gov; cara.christ@azdhs.gov; Eric Thomas; stephen.tullos@yavapai.us; harmony.duport@azdhs.gov; brigitte.dufour@azdhs.gov; smortenson@lungs.org; alyss.jensby@cancer.org; eableser@azleg.gov; kyee@azleg.gov; hcarter@azleg.gov; ahale@azleg.gov; jmendez@azleg.gov; jnorgaard@azleg.gov; brobson@azleg.gov; asherwood@azleg.gov; sallen@azleg.gov; bbarton@azleg.gov; kfrench@azsos.gov; dscarpinato@az.gov; Brnovich, Mark; Arizona Ombudsman; randy.lovely@arizonarepublic.com; nicole.carroll@arizonarepublic.com; Cherrill Crosby; Sayers, Justin; Annie Meredith; jharris@azasthma.org; jspitz@tucson.com; kevin.dale@asu.edu; susan.gerard@mihs.org; Joanna Allhands; Char Day; cynthia.hallett@no-smoke.org
Subject: An Unholy Alliance

TO: Dennis Wagner, Reporter, Arizona Republic Watchdog News

Dear Mr. Wagner:

Something doesn't add up (doesn't pass my Smell Test) at the Arizona Department of Health Services Smoke-Free Arizona, and I submit, with all due respect to your busyness, our Arizona Family needs a Dennis Wagner "nose" to investigate the matter.

Some background on a issue that typically flies under the radar, yet affects thousands around our State, adversely, every day:

A.R.S. 36-601.01(A)(3), *". . . Enclosed area includes a reasonable distance from any entrances, windows and ventilation systems so that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and so that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means."* A "reasonable distance" has been established as 20 feet, in Arizona --- (http://tucsoncitizen.com/morgue/2007/04/05/47225-az-smoking-ban-kicks-in-at-20-feet/);

The Smoke-Free Arizona Act Annual Report - 2015, *"The Law went into effect on May 1, 2007, prohibiting smoking inside and within 20 feet of entrances . . . If a proprietor of an establishment does not correct violations as requested, demonstrates willful violations, or exhibits a pattern of noncompliance with the Act, (s)he is subject to enforcement action. The proprietor may receive a Notice of Violation (NOV) or an assessment of civil penalty fines between $100 and $500 for each violation. If injunctive relief is requested, the Superior Court may impose appropriate injunctive relief and civil penalty fines up to $5,000 per violation. . . . Between May 1, 2014 and April 30, 2015, a total of 25,471 educational visits, consultations, and on-site visits were conducted. . . . During the eighth year after the Law went into effect, between May 1, 2014 and April 30, 2015, a total of 1,278 complaints alleging violations of the Smoke-Free Arizona Act were filed statewide. Most of the complaints were regarding people smoking outside within twenty feet of an entrance . . . A total of ten NOVs were issued*

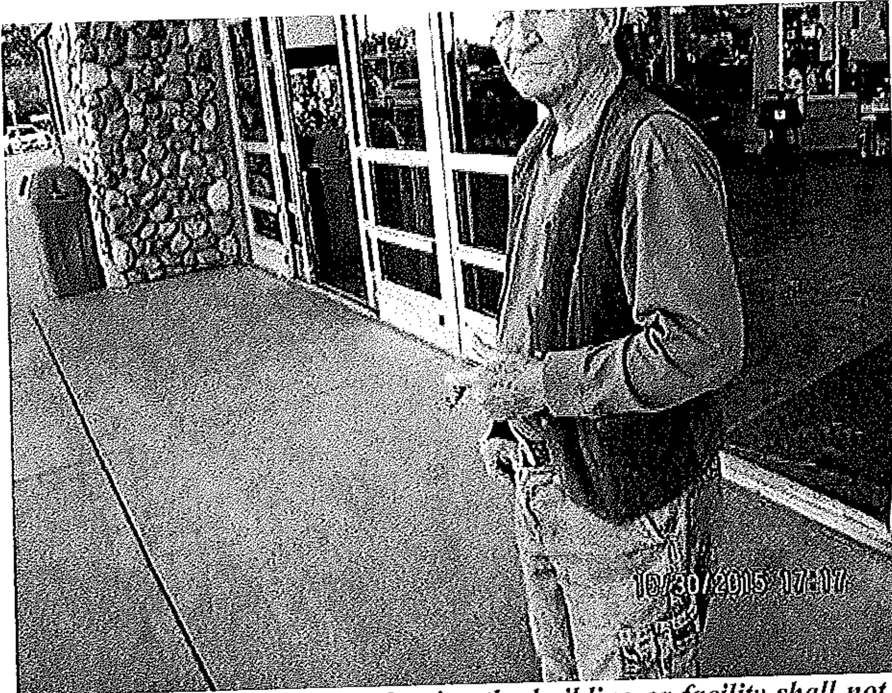
statewide between May 1, 2014 and April 30, 2015. . . . The proprietors that were issued these NOVs faced a total of $6,100 in civil penalty fines. These NOVs were issued to proprietors that permitted employers, customers, or visitors to smoke inside enclosed public places and places of employment. . . . Secondhand smoke is a mixture of 4,000 chemical compounds that are released into the air as gases and particles. Of these 4,000 compounds, 69 have been identified as carcinogens or cancer-causing agents, 11 of which have been specifically identified as human carcinogens. . . . In 2006, the U.S. Surgeon General's report stated that there is no risk-free level of exposure to secondhand smoke. Breathing even a little secondhand smoke can be harmful to your health. . . . Under the Act, the proprietor of a public place or a place of employment is responsible for: Prohibiting anyone, such as employees, vendors, visitors, and customers from smoking within 20 feet of all entrances . . . and inside the establishment. . . . The provisions of the Act assign implementation and enforcement of the Law to ADHS. . . . The Smoke-Free Arizona Act includes a two-cent tax that is imposed on each pack of cigarettes purchased. The money collected from this tax is deposited into the Smoke-Free Arizona Fund and used to enforce the Act. . . . The total revenue for the Smoke-Free Arizona Fund from May 1, 2014 to April 30, 2015 was $2,348,465.74. . . . The ADHS Smoke-Free Arizona Program continues to encourage members of the public to report violations of the Act by filling out a complaint form online, by calling the toll-free complaint line, by sending an email, or filing a complaint through a smart phone application. . . . Nine of the ten NOV's were issued to proprietors that permitted employees, customers, or visitors to smoke inside enclosed public places and places of employment. One NOV was issued to a proprietor repeatedly allowing smoking within 20 feet of his main front entrance. . . . Most of the complaints, as in years past, were regarding people smoking outside, but within 20 feet of an entrance. . . . Enforcement took place only when educational efforts did not result in timely compliance." ---
(http://www.azdhs.gov/documents/preparedness/epidemiology-disease-control/smoke-free-arizona/reports/sfa-annual-report-2015.pdf).

Summing-up: *"Between May 1, 2014 and April 30, 2015, a total of 25,471 educational visits . . . a total of 1,278 complaints . . . Most of the complaints were regarding people smoking outside within twenty feet of an entrance . . . One NOV was issued to a proprietor repeatedly allowing smoking within 20 feet of his main front entrance."*

And, re the statement, *"Enforcement took place only when educational efforts did not result in timely compliance,"* please see the attached PDF file, ***Let's put an end to the smoke-in-your face experiences at our State's business entrances.***

Mr. Wagner, I think it's fair to state that, upon a close review of the Arizona Department of Health Services Smoke-Free Arizona annual "progress" reports, one might easily conclude that, while the enforcement action imposed against those proprietors failing to prohibit smoking inside their businesses quite properly follows the Law, the utter lack of enforcement action in the majority of the complaints filed --- persons smoking within 20 feet of an entrance --- suggests that the Arizona Department of Health Services Smoke-Free Arizona has decided to limit this category of Violation of the 2007 Smoke-Free Arizona Act to educational visits, only. The result: An Unholy Alliance; an insult to our Arizona Family --- and a story worthy of an Arizona Republic Watchdog News in-depth investigation.

"Enclosed area includes a reasonable distance from any entrances, windows and ventilation systems . . . " ---



"so that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke [close encounters with human carcinogens] and so that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means." ---

Your consideration in this matter of concern is appreciated. Thank you.

Respectfully,

Louis T. Carabillo, Jr.

Louis Carabillo <[redacted]@gmail.com>

Let's put an end to the smoke-in-your-face experiences at our State's business entrances

Louis Carabillo <[redacted]@gmail.com> Thu, Oct 15, 2015 at 10:40 PM
To: Eric Thomas <eric.thomas@azdhs.gov>
Cc: PHILIP J CARPENTER <pcarperter04@msn.com>, david_schapira@tempe.gov, cara.christ@azdhs.gov, harmony.duport@azdhs.gov, brigitte.dufour@azdhs.gov, smortenson@lungs.org, alyss.jensby@cancer.org, eableser@azleg.gov, kyee@azleg.gov, hcarter@azleg.gov, ahale@azleg.gov, jmendez@azleg.gov, jnorgaard@azleg.gov, brobson@azleg.gov, asherwood@azleg.gov, sallen@azleg.gov, bbarton@azleg.gov, randy.lovely@arizonarepublic.com, nicole.carroll@arizonarepublic.com, Cherrill Crosby <cherrill.crosby@arizonarepublic.com>, "Sayers, Justin" <jsayers@arizonarepublic.com>, dscarpinato@az.gov, ombuds@azoca.gov, kevin.dale@asu.edu, Annie Meredith <annie.meredith@mohavecounty.us>, barbburk5@msn.com, jharris@azasthma.org, jspitz@tucson.com, kfrench@azsos.gov, Char Day <char.day@no-smoke.org>, cynthia.hallett@no-smoke.org

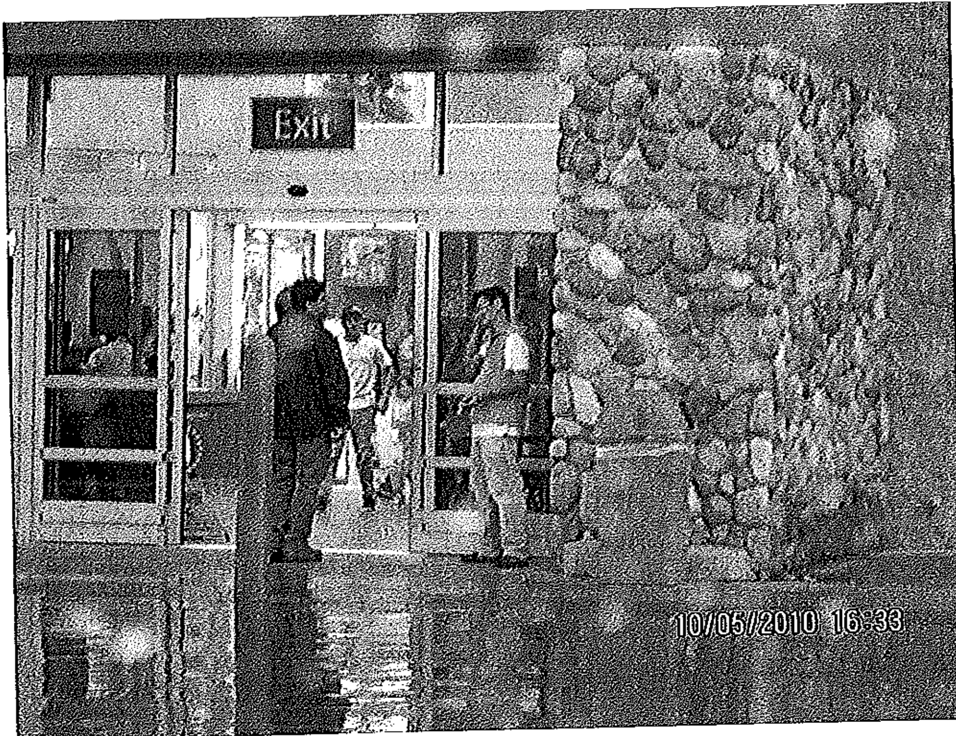
TO: Eric Thomas, Program Manager, Smoke-Free Arizona

Dear Mr. Thomas:

In my August 28, 2015 email-appeal to the Smoke-Free Arizona Program Manager (Please see PDF file, below, ***A call for equal enforcement (read: protection), as provided under A.R.S 36-601.01***), I cited an excellent example of proper enforcement of the Smoke-Free Arizona Act, along with clarification of "Enclosed Area" to include a 20-feet no-smoking envelope outside business entrances. Indeed, in ***The Smoke-Free Arizona Act Annual Report - 2015*** (http://www.azdhs.gov/documents/preparedness/epidemiology-disease-control/smoke-free-arizona/reports/sfa-annual-report-2015.pdf), prepared, undersigned by the Smoke-Free Arizona Program Manager, it states, "*Under the Act, the Proprietor of a public place or a place of employment is responsible for: Prohibiting anyone . . . from smoking within 20 feet of all entrances . . . They [the Proprietor] may receive a Notice of Violation (NOV) or an assessment of civil penalty fines between $100 and $500 for each violation. . . . Enforcement actions take place when educational efforts fail to result in compliance with the Smoke-Free Arizona Act in a timely manner. . . .During the eighth year after the Law went into effect [May 1, 2014 thru April 30, 2015], a total of* ***1,278 complaints*** *alleging violations of the Smoke-Free Arizona Act were filed statewide.* ***Most of the complaints were regarding people smoking outside within 20 feet of an entrance. . . . One NOV was issued to a proprietor repeatedly allowing smoking within 20 feet of his main front entrance."***

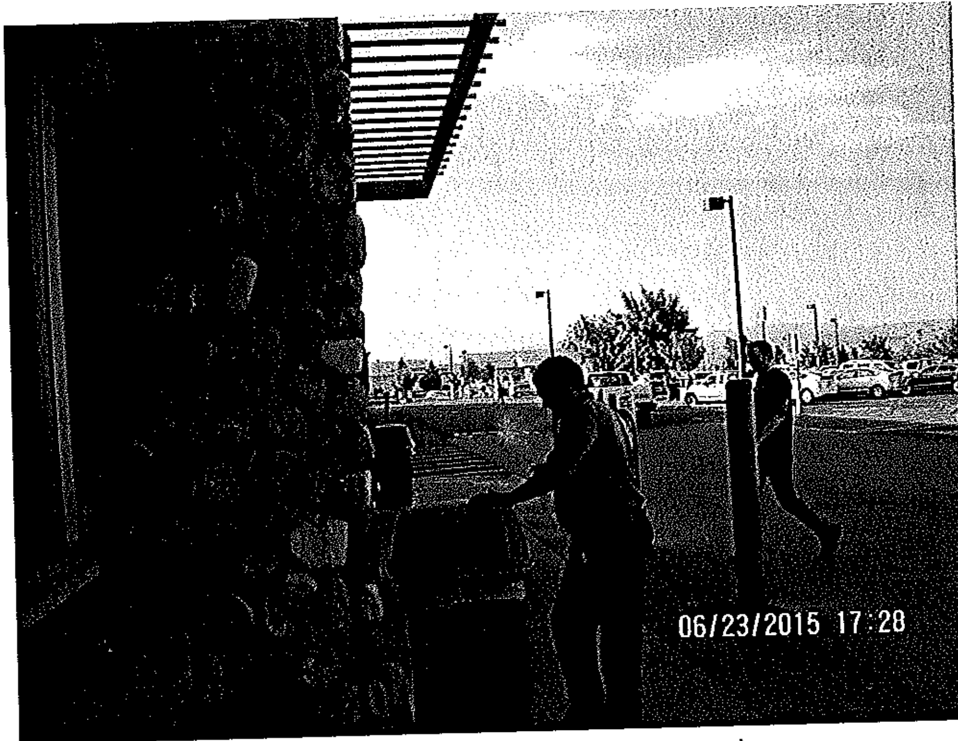
Re the statement, ***"Enforcement actions take place when educational efforts fail to result in compliance with the Smoke-Free Arizona Act in a timely manner."***

Consider the following situation documented, shared with Smoke-Free Arizona, for the past five (5) years —



(Cottonwood Wal-Mart Supercenter south Main Entranceway)

(Cottonwood Wal-Mart Supercenter north Main Entranceway)



(Cottonwood Wal-Mart Supercenter, south Main Entranceway)

(Cottonwood Wal-Mart Supercenter south Main Entranceway)

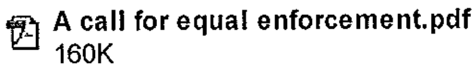
(Cottonwood Wal-Mart Supercenter north Main Entranceway)

As noted in these Pages, The Arizona Department of Health Services - Office of Administrative Counsel and Rules reports that there have been no Notices of Violations (NOVs), nor any assessments of civil penalty fines filed against the Cottonwood Wal-Mart Supercenter, from August, 2010 thru September 30, 2015.

Mr. Thomas, I'm very concerned. In this void of enforcement action, apathy is taking hold across our State — we're back to 2007. I urge the Smoke-Free Arizona Program Manager get on with the important job of enforcement — and not leave it for his successor. Thank you.

Respectfully,

Louis T. Carabillo, Jr.


A call for equal enforcement.pdf
160K

From:	Brnovich, Mark
To:	Bailey, Michael; Anderson, Ryan; Medina, Rick
Subject:	FW: ATTORNEY GENERAL DELEGATION TO ISRAEL
Date:	Monday, November 02, 2015 8:48:17 AM

From: James McPherson [mailto:jmcpherson@NAAG.ORG]
Sent: Monday, November 02, 2015 7:32 AM
To: James McPherson
Cc: Chris Toth; Albert Lama; Jeffrey Hunter; Abrams, Robert; William Behrer <wbehrer@aifl.org> (wbehrer@aifl.org)
Subject: ATTORNEY GENERAL DELEGATION TO ISRAEL

THIS IS BEING SENT TO ALL ATTORNEYS GENERAL AND THEIR EXECUTIVE ASSISTANTS

Generals,

NAAG is pleased to announce that the America-Israel Friendship League (AIFL) and the Government of Israel are sponsoring a delegation of Attorneys General to visit Israel on 25 May – 1 June 2016. (Departure will be from Newark Liberty International Airport on Wednesday afternoon, 25 May and return to Newark Liberty early Wednesday morning, 1 June.) The delegation will meet with a variety of Israeli political leaders, and take advantage of Israel's rich cultural history. Past delegations have met with such officials as the Prime Minister, various cabinet ministers, Judges of the Israel Judicial Authority, the Israeli Attorney General, and the U.S. Ambassador to Israel and have visited sites in places such as Jerusalem, Galilee, Tel Aviv, and Masada.

The American-Israel Friendship League (AIFL) is a non-sectarian, non-political, not-for profit organization dedicated to strengthening ties between the people of the United States and Israel. More information about the AIFL can be found at www.aifl.org.

The AIFL will pay all travel costs for Attorneys General between Newark Liberty International Airport and Israel. Travel, lodging, and meal costs while in Israel are paid for by a combination of AIFL and the Government of Israel. Attorneys General are only responsible for paying for airfare to Newark and back to their home from Newark. Attorneys General are allowed to bring a guest, but are responsible for the associated costs of their guest. All travel arrangements, including air travel between Newark and Israel, are made by AIFL.

Many Attorneys Generals have participated in past delegations and have given very high reviews of their experiences. Participating Attorneys General will be given the opportunity to help craft the delegation's agenda based on their interests. Also, the AIFL can arrange for live broadcasts with an AG back to the AG's home state and other media opportunities if they so desire.

Please save those dates and consider joining the 2015 NAAG delegation. We will be sending out an announcement in early 2016 asking for those interested in participating. If you have any questions, please e-mail me at jmcpherson@naag.org, Jeffrey Hunter at jhunter@naag.org. It is sure to be a rich and rewarding experience.

V/R

Jim

James E. McPherson
Executive Director
National Association of Attorneys General
2030 M Street, NW, Washington, DC 20036
202.326.6260
Cell: [redacted]

From:	Brnovich, Mark
To:	Bailey, Michael
Subject:	FW: Auditor General"s Request - Pending or Threatened Litigation, Claims & Assessments and Unasserted Claims or Assessments
Date:	Thursday, October 01, 2015 1:15:13 PM
Attachments:	Form B.docx Form A.docx

From: Gonzalez, Krystal
Sent: Tuesday, September 29, 2015 4:06 PM
To: DL-Division Chiefs; DL-Section Chiefs
Cc: Morgan, Lizette; Kamaleswaran, Biju; DL-Division OAs
Subject: Auditor General's Request - Pending or Threatened Litigation, Claims & Assessments and Unasserted Claims or Assessments

Division and Section Chiefs:

In connection with an examination of the financial statements for the State of Arizona by the Office of the Auditor General for the fiscal year ended June 30, 2015, please furnish a description and evaluation of material pending or threatened litigation, claims and assessments (excluding unasserted claims and assessments and Transportations Section's condemnation cases). In addition, please provide any unasserted claims and assessments involving matters for which you have been engaged and have devoted substantive attention on behalf of the State of Arizona, in the form of legal consultation or representation.

Your response need not include any matter involving potential losses or gains that is expected to have less than $1 million of effect on the financial statements unless the aggregate for all such individual amounts is more than $1 million. Your response should include matters that existed at June 30, 2015. Your response should state that it covers the entire period from June 30, 2015 to the response date.

Complete the attached **Form A** to report Threatened Litigation, Claims and Assessments and **Form B** to report Unasserted Claims or Assessments. **If there are no pending threatened litigations, claims or assessments, or if there are no unasserted claims or assessments, please specifically state this in your response.**

The Budget and Finance Section will be compiling the responses for the AGO and requests that you submit your responses electronically to me at Krystal.Gonzalez@azag.gov (cc Lizette.Morgan@azag.gov) on or before **October 14, 2015** to ensure that the State's Financial Statements are issued timely. In addition, immediately prior to the issuance of the State's Financial Statements, the Auditor General's office will request an update. We expect the timing of that request to be around mid-December and would appreciate your support in keeping Forms A & B updated until the State's Financial Statements are issued.

Thank you,

Krystal Gonzalez
Executive Staff Assistant
Budget and Finance Section/Operations Division

Office of the Arizona Attorney General
1275 W. Washington, Phoenix, AZ 85007
Desk: 602.542.8432
Krystal.Gonzalez@azag.gov
http://www.azag.gov

OFFICE OF THE ATTORNEY GENERAL

Threatened Litigation, Claims and Assessments

FORM A

(Excluding Unasserted Claims or assessments & Transportations Section's condemnation cases)
Return Forms Electronically to Krystal.Gonzalez@azag.gov (cc Lizette.Morgan@azag.gov) on or before October 14, 2015

Please describe any pending or threatened litigation, claims and assessment, including those arising from non-compliance with laws and regulations regarding the administration of federal financial assistance and other federal award programs, (excluding unasserted claims or assessments) not covered by the Department of Administration, Risk Management Division. **If there are no pending threatened litigations, claims and assessments, please specifically state this in your response.**

Your response need not include any matter involving potential losses or gains that is expected to have less than $1 million of effect on the financial statements unless the aggregate for all such individual amounts is more than $1 million. Your response should include matters that existed at June 30, 2015. Your response should state that it covers the entire period from June 30, 2015 to the response date.

AGO DIVISION/SECTION:

CASE NAME:

TOPIC:

PERIOD COVERED: June 30, 2015 to __________________(Insert Response Date)

1. The nature of the litigation, claim or assessment:

2. The progress to date:

3. The State of Arizona's response or its intentions as to its response (for example, to contest the matter vigorously or to seek an out-of-court settlement):

4. An evaluation of the likelihood of a favorable or unfavorable outcome:

5. An estimate, if one can be made, of the amount, range or upper limit of the potential loss or gain:

OFFICE OF THE ATTORNEY GENERAL
Unasserted Claims or Assessments
FORM B

Return Forms Electronically to Krystal.Gonzalez@azag.gov (cc Lizette.Morgan@azag.gov) on or before October 14, 2015

Please describe any unasserted claims or assessments, including those arising from non-compliance with laws and regulations regarding the administration of federal financial assistance and other federal award programs not covered by the Department of Administration, Risk Management Division. Included should be those unasserted claims considered to be probable and which, if asserted against the State of Arizona, would have at least a reasonable possibility of an unfavorable outcome or favorable outcome if asserted by the State of Arizona. **If there are no such unasserted claims or assessments, please specifically state this in your response.**

Your response need not include any matter involving potential losses or gains that is expected to have less than $1 million of effect on the financial statements unless the aggregate for all such individual amounts is more than $1 million. Your response should include matters that existed at June 30, 2015. Your response should state that it covers the entire period from June 30, 2015 to the response date.

AGO DIVISION/SECTION:

CASE NAME:

TOPIC:

PERIOD COVERED: June 30, 2015 to ____________________(Insert Response Date)

1. The nature of the matter:

2. An explanation as to the probability that a claim or assessment will be asserted:

3. An explanation of how management intends to respond if the claim or assessment is asserted:

4. An estimate, if one can be made, of the amount, range or upper limit of the potential loss or gain if the claim or assessment is asserted:

From:	Brnovich, Mark
To:	Bailey, Michael
Subject:	FW: Background for Ranchers Meeting on 10/6
Date:	Tuesday, October 06, 2015 12:12:36 PM
Attachments:	Cattlemen Assessor meeting.docx ACGA ADOR Ans Brf (4).pdf

I thought they mostly wanted to talk about us taking on EPA. Do we need someone from tax section in on this? Don't we have pending litigation?

From: McKinstry, Courtney
Sent: Monday, October 05, 2015 2:33 PM
To: Brnovich, Mark
Cc: Kredit, Beth; Anderson, Ryan
Subject: Background for Ranchers Meeting on 10/6

Mark,

Please see attached background info on the meeting scheduled for tomorrow with Rep. Darin Mitchell and the ranchers as well as an answering brief filed by our office that relates to this meeting. If you need any other info, please let me know.

Courtney

Courtney E. McKinstry
Director of Legislative Affairs
Office of Arizona Attorney General Mark Brnovich
1275 West Washington Street
Phoenix, AZ 85007
Office: 602-542-7922
Mobile: 602-339-5911

Representative Darin Mitchell
Andy Groseta- former President of the Cattle Growers' Association
Bas Aja- VP of the Cattle Growers' Association (may be there)
Brad and Ron Fain- Prescott Valley ranchers, family business for over 140 years
Joy Gomez- Yavapai county rancher

Meeting to discuss next year's property tax valuation rate for Yavapai County. The ranchers do not wish to discuss the pending lawsuit at the Court of Appeals regarding how ranchlands in the state are to be valued but it is relevant to the discussion. Jerry Fries on behalf of DOR filed an answering brief a week and a half ago (also attached).

Background: Ranchlands are valued not at their market value, but rather under a statutory formula whereby an assessor is obligated to use grazing rental rates derived from "arm's length transaction." Arm's length transactions are those negotiated by two parties acting in their own financial interests. The Department of Revenue (confidentially) is generally of the opinion that the market grazing rate for ranchlands in Yavapai County is between $10-15 per acre. At a four day trial in March, 2014, the Arizona Tax Court concluded around $10 per acre.

The Cattlemen were not content with that number. At trial they argued that the statutory rental rate should not just be determined from arm's length transaction negotiated between private parties, they wanted State and federal (BLM) grazing rates to be included when determining the per acre rental value. These rates are preset by statute or by regulation. The State's rate for the tax years at issue is $2.34/acre, and the federal rate is $1.35/acre. These State and federal leases are often sublet to other ranchers, and in every case that we know of, and in every case reported by the rancher's themselves, the properties when sublet to another rancher always sublease at rates 2-8 times higher than the government rate. Because these subleases of government lands are negotiated between private parties, the Department and the Yavapai County Assessor consider them to be "arm's length transactions and thus the negotiated grazing rates are proper for use by an Assessor when determining ranchland values under the agricultural valuation statute.

So the ranchers want non-market State and federal rates used to determine their private ranchland values, and the Department and the County Assessor disagreed. The tax court agreed with us, and the ranchers appealed that ruling. The ranchers filed their opening brief in July, and the County and I filed separate answering briefs yesterday.

The ranchers' valuation report and their witnesses' testimony pretty much did them in, as you will note if you read Jerry's brief. The ranchers have had a running PR battle with Pam Pearsall, the County Assessor, the past three years, and Pam has pretty much won that battle in the court of public opinion. The feud between Pam and the ranchers has been that the cattlemen are not paying their fair share of property taxes, and that appears to be the public sentiment among Yavapai County residents.

Pending Opinion Request: The Yavapai County Board of Supervisors recently combined 3 divisions (2 of which were overseen by the Assessor's Office) that performed mapping and cartography functions and created one division which now reports directly to the BOS. The AGO has a pending opinion request from Pam Pearsall that asks if the BOS has the authority to assign positions that were previously under the Assessor's Office to a newly formed department under the BOS.

Other Meetings: Prior to the inception of the lawsuit, Mr. Groseta had 2 or 3 meetings with John Greene, the then director of the Department of Revenue to try to influence him and the DOR to prevail

upon the Assessor not to do what she did or to undo what she did. There may have even been a meeting or two after the lawsuit was filed. John did not intervene in the manner that Mr. Groseta wanted; he followed the advice of his property valuation people at the DOR and we ended up successfully defending the Department's position, at least at the Tax Court.

ARIZONA COURT OF APPEALS

DIVISION ONE

ARIZONA CATTLE GROWERS ASSOCIATION, et al., Plaintiffs/Appellants, v. YAVAPAI COUNTY, a political subdivision of the State of Arizona; PAMELA J. PEARSALL, the duly-elected Assessor of Yavapai County, Arizona; ARIZONA DEPARTMENT OF REVENUE, an agency of the State of Arizona, Defendants/Appellees.	No. 1 CA-TX 15-0003 Arizona Tax Court No. TX2011-000619

APPELLEE ARIZONA DEPARTMENT OF REVENUE'S ANSWERING BRIEF

Mark Brnovich
Attorney General
Firm State Bar No. 14000
Jerry A. Fries
Assistant Attorney General
State Bar No. 011788
1275 W. Washington
Phoenix, Arizona 85007-2997
(602) 542-8385
(602) 542-1726(fax)
tax@azag.gov
Attorneys for Arizona Department of Revenue

TABLE OF CONTENTS

TABLE OF CITATIONS 4

STATEMENT OF THE CASE AND FACTS 7

ISSUES PRESENTED FOR REVIEW 25

ARGUMENT 26

I. The Trial Court Did Not Make a Legal or Factual Error and Properly Acted Within Its Discretion When It Considered and Ultimately Excluded Nonnegotiated Government Lease Rates that Were Not the Product of Arm's-Length Transactions for Purposes of Determining the Average Annual Net Cash Rental of Yavapai County Grazing Properties under A.R.S. § 42-13101(B)(1). 26

A. Standard of Review. 26

B. The Trial Court Was Required to Consider, As It Did, Only Arm's-Length Transactions When Making Determination on the Value of Agricultural Properties. 27

C. Appraisal and Other Authorities and Rolston's Trial Testimony Clearly Establish that Government Rates Are Not Typical Arm's-Length Rates. 32

D. Rolston's Report and His Trial Testimony Support the Trial Court's Rejection of the Use of Government Lease or Permit Rates to Determine Average Annual Net Cash Rental Under A.R.S. § 42-13101, and that Rejection Does Not Preclude the Use of Market-Based Government Land Rental Rates from Being Used to Determine Average Annual Net Cash Rental. 35

E. Rolston Never Opined that State and Federal Grazing Rates Must Be Used to Determine Average Annual Net Cash Rental, and in Fact, Effectively Disavowed the Cattlemen's Effort to do so. 39

F. The Fact that the Assessor's Files Contain Copies of Many State and Governmental Leases Is Irrelevant with Respect to Whether

Lease Rates from Such Leases May Be Used to Determine Average Annual Net Cash Rental..........47

G. Mr. Groseta's Testimony Regarding the Use of Government Leases and Their Comparability to Private Leases Is Irrelevant and Is Controverted by Rolston's Testimony..........50

II. The Court Should Enter any Award of Attorneys' Fees and Expenses to the Cattlemen Against the County..........54

CONCLUSION..........55

TABLE OF CITATIONS

Page

Cases

Aileen H. Char Life Interest v. Maricopa Cnty.,
208 Ariz. 286 (2004) 27

Ariz. Dep't of Revenue v. Raby,
204 Ariz. 509 (App. 2003) 26

Ariz. Dep't of Revenue v. Ormond Builders, Inc.,
216 Ariz. 379 (App. 2007) 26

Calpine Const. Fin. Co. v. Ariz. Dep't of Revenue,
221 Ariz. 244 (App. 2009) 26

Dep't of Revenue v. Transam. Title Ins. Co.,
117 Ariz. 26 (App. 1977) 27

Eurofresh, Inc. v. Graham Cnty.,
218 Ariz. 382 (2008) 8, 22

Guard v. Maricopa Cnty.,
14 Ariz. App. 187 (1971) 26

John C. Lincoln Hosp. & Health Corp. v. Maricopa Cnty.,
208 Ariz. 532 (App. 2004) 26

Maricopa Cnty. v. N. Cent. Dev. Co.,
27 Ariz. App. 561 (1976) 27

Navajo Cnty. v. Four Corners Pipe Line Co.,
106 Ariz. 511 (1970) 27

Or. Nat. Desert Assn's v. Bureau of Land Mgmt.,
625 F.3d 1092 (9th Cir. 2010) 12

Recreation Ctrs. of Sun City, Inc. v. Maricopa Cnty.,
162 Ariz. 281 (1989) 22

Yuma County v. Tongeland,
15 Ariz. App. 237 (1971) 27

Statutes

A.R.S. § 12-348(B) 54

A.R.S. § 12-2030 54

A.R.S. § 37-285(I) 12

A.R.S. § 42-11001(6) 8

A.R.S. § 42-11005(C) 15

A.R.S. § 42-11052 10

A.R.S. § 42-11053 10

A.R.S. § 42-11054 .... 10, 17

A.R.S. § 42-12151(3) 48

A.R.S. § 42-12152(A)(3) 48

A.R.S. § 42-12153 49

A.R.S. § 42-13101 .... passim

A.R.S. § 42-13101(B)(1) 11, 14, 25, 49

A.R.S. § 42-13101(B)(2) 14

A.R.S. § 42-13102 .... passim

A.R.S. § 42-13102(A) 9, 10, 13, 49

A.R.S. § 42-13102(B) 10, 13, 49

A.R.S. § 42-13102(C) 9, 10, 13, 49

A.R.S. § 42-15052(2) 13

A.R.S. § 42-16212(B) 22

Rules

Ariz. R. Civ. P. 52 21

Regulations

26 C.F.R. § 20.2032A-4(a) 31

26 C.F.R. § 20.2032A-4(b)(2)(ii) 31

Other Authorities

American Institute of Real Estate Appraisers, *The Dictionary of Real Estate Appraisal* (5th ed.) 32

Carol Hardy Vincent, Cong. Research Serv., RS21232, *Grazing Fees: Overview and Issues*, at 3 (June 19, 2012) 37

STATEMENT OF THE CASE AND FACTS

For the 2011 tax year, and at least as far back as 1987, the Yavapai County Assessor had valued natural (nonirrigated) grazing properties in Yavapai County at $7.56 per acre for property taxation purposes. (IR 45, ¶ XV.) For the 2012 tax year, the Yavapai County Assessor, Pam Pearsall, increased that value to $25 per acre. *Id.*

Appellants (hereafter "Cattlemen") filed a complaint against Appellees Yavapai County ("County"), the Yavapai County Assessor, Pam Pearsall ("Assessor"), and the Arizona Department of Revenue ("Department") seeking valuation relief, relief from "illegally-collected taxes," a declaratory judgment and a writ of mandamus relating to the Assessor's valuation of the Cattlemen's natural grazing properties ("Property" or "Subject Property") for 2012 property-tax purposes. (IR 2.) The complaint was amended to add the 2013 tax year. (IR 45.) The Cattlemen alleged that the Assessor had unlawfully or excessively valued their natural grazing lands. (IR 2, ¶ XV.)

Following a four-day trial, the trial court granted the Cattlemen some relief by lowering the values of their grazing properties from $25 to $9.19 per acre and $10.10 per acre for tax years 2012 and 2013, respectively. (IR 138, ¶ No. 49.) The trial court agreed with the Department and the County, however, that government lease rates should not be used wholesale in the manner that the Cattlemen

advocated in determining an average annual rate under A.R.S. § 42-13101. (*Id.* ¶ 45.) The Cattlemen then brought this appeal.

Properties in Arizona are valued for property tax purposes at their "full cash value." *Eurofresh, Inc. v. Graham Cnty.*, 218 Ariz. 382, 385, ¶ 15 (App. 2007). Full cash value is defined as "the value determined as prescribed by statute." A.R.S. § 42-11001(6). "If no statutory method is prescribed, full cash value is synonymous with market value, which means the estimate of value that is derived annually by using standard appraisal methods and techniques." *Id.* The Legislature has prescribed a statutory valuation method for agricultural properties, including grazing lands, in A.R.S. § 42-13101. Qualifying grazing properties are therefore not valued at their market value as determined through standard appraisal methods and techniques.

Section 42-13101 provides a statutory income valuation procedure for the valuation of agricultural land as follows:

> A. *Land that is used for agricultural purposes shall be valued using only the income approach to value* without any allowance for urban or market influences.
>
> B. *The income of agricultural property shall be determined using the capitalized average annual net cash rental of the property.* For purposes of this subsection the *average annual net cash rental of the property*:
>
> 1. *Is the average of the annual net cash rental*, excluding real estate and sales taxes, *determined through an*

analysis of typical arm's length rental agreements collected for a five year period before the year for which the valuation is being determined for comparable agricultural land used for agricultural purposes and located in the vicinity, if practicable, of the property being valued.

2. Shall be capitalized at a rate 1.5 percentage points higher than the average long-term annual effective interest rate for all new farm credit services loans for the five year period before the year for which the valuation is being determined.

(Emphases added.) To assist in the valuation process, owners or lessors of agricultural properties who have a lease or an agreement to lease agricultural land for a period of more than ninety days must file a written statement that contains at least the following information:

1. The name and address of the lessor and lessee.
2. The complete legal description of the property.
3. The situs address, if any, of the property.
4. The cash or cash equivalent of the lease payments.
5. The conditions of the lease, including the relationship, if any, of the parties.
6. The lessor expenses associated with the property excluding land cost, interest on land cost, income tax depreciation and capital improvements.

A.R.S. § 42-13102(A), (C). Pursuant to A.R.S. § 42-13102(C), this information is "for use by the assessor" in determining average annual net cash rental under

A.R.S. § 42-13101. When valuing agricultural land under A.R.S. § 42-13101, the assessor is prohibited from using information other than that reported by owners or lessors under A.R.S. § 42-13102(A). A.R.S. § 42-13102(B)-(C). Owners or lessors must file the written statement concerning agricultural leases a form that the Department has approved. This form is referred to as the "Agricultural Lease Abstract," or as DOR Form 82917. (IR 37-38 [Ex. 1, ¶ No. 3].)

In addition to approving the form for reporting lease information under A.R.S. § 42-13102(A), the Department has broader responsibilities relating to investigating and prosecuting violations (A.R.S. § 42-11052), investigating property valuations and "any matters relating to property taxes" (A.R.S. § 42-11053), and prescribing guidelines for applying standard appraisal methods or preparing and maintaining manuals and guidelines to perpetuate a current inventory of taxable property and the valuation of that property (A.R.S. § 42-11054).

In fulfilling those responsibilities, the Department initiated an agricultural land rent study of agricultural leases for all fifteen Arizona counties in 2009, which a Department appraiser, Michael Lopata, a former state-certified general appraiser, led. (IR 37-38 [Ex. 1, ¶ 2]; 3/6/14 Trial Transcript ["Tr."] at 101, ll. 10-18.) The Department obtained the data used for this study from completed lease abstracts (DOR form 82917) that county assessors had provided to the Department in

accordance with A.R.S. § 42-13102. (IR 37-38 [Ex. 1, ¶ No. 3].) The Department had requested lease abstracts for years 2005-2009 in accordance with A.R.S. § 42-13101(B)(1)'s requirement that the data collected for valuation purposes be obtained from the five-year period preceding the year for which the valuation was being determined. (3/6/14 Tr. at 104, ll. 6-9.)

In response to the Department's request for lease data abstracts, the Yavapai County Assessor sent the Department approximately 200 lease abstracts for the 2005-2009 period. (*Id.* at 104, ll. 10-12.) The Department did not seek out or use any other data for purposes of its study of Yavapai County lease rates. (*Id.* at 104, ll. 13-16.)

In reviewing the 200 abstracts, Mr. Lopata created three categories of abstracts. The first category was "zero" or "no rent." (*Id.* at 106, ll. 17-19.) These were lease abstracts that indicated that no rent whatsoever was being paid under the lease. (*Id.* at 107, ll. 3-13.) Approximately 100 (or half) of the lease abstracts that the Assessor provided to the Department fell into this category. (*Id.* at 107, ll. 14-17.) The second category of lease abstracts were "junk leases" which had nominal rents in the amounts of $1, $5 or $10 per year. (*Id.* at 107, ll. 18-25.)[1]

---

[1] Ron Gibbs, the Yavapai County Chief Deputy Assessor, testified in his opinion and based upon his experience, that a property owner would lease his land for negligible or no consideration because by leasing one's vacant land to a rancher and allowing the rancher to graze cattle on it, the owner can qualify his property for valuation as an agricultural property for property-tax purposes. In essence, the

Mr. Lopata rejected the approximately 75 junk leases as not being representative or useful in determining average annual rental rates under A.R.S. § 42-13101, leaving 26 lease abstracts out of the original 200 that Mr. Lopata used to determine market rent figures for natural grazing lands in Yavapai County. (*Id.* at 108, ll. 1-6.) He performed due diligence with respect to the information reported on those twenty-six lease abstracts, including corroborating the tax parcel numbers with the recorded ownership, confirming the acreage, and so on. (*Id.* at 109, ll. 1-12.) Mr. Lopata and an associate thereafter analyzed the rent in terms of rent per acre and rent per animal unit per month ("AUM ")[2]. (*Id.* at 109, ll. 13-19.)

Mr. Lopata did not review any of the underlying leases from which the information in the lease abstracts had been derived or any other agricultural lease data or information aside from the lease abstracts that the Yavapai County Assessor had provided him. (*Id.* at 108, ll. 4-23.) In that regard, his use of the lease abstracts to determine average annual rental rates for natural grazing lands in Yavapai County was consistent with the requirements that apply to a county assessor when determining average annual rental rates for agricultural properties, including natural grazing properties, under A.R.S. §§ 42-13101 and 42-13102. As

---

compensation that the owner receives is realized in the form of significantly lower property taxes rather than a direct rental payment from the lessee. (*Id.* at 202, l. 23 to 203, l. 15.)

[2] An "animal unit per month" refers to the amount of forage necessary to sustain a single animal grazing for one month. *See* A.R.S. § 37-285(I); *Or. Nat. Desert Assn's v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1104 n. 9 (9th Cir. 2010).

previously noted, under A.R.S. § 42-13102(A), owners and lessors of agricultural lands must report certain terms of their agricultural leases to county assessors, and assessors must use those reports to determine the average net cash rental of agricultural properties under A.R.S. § 42-13101. A.R.S. § 42-13102(C). In fact, A.R.S. § 42-13102(B) precludes an assessor from using other information listed in chapter 15, article 2 of Title 42 to supplement the lease information obtained pursuant to A.R.S. § 42-13102.[3]

Mr. Lopata and his associate performed similar reviews and analyses for most other Arizona counties, which eventually led to the grazing rental analysis portion of the Department's September 2010 Agricultural Land Rent Study (the "Rent Study"), attached hereto as Appendix ("App.") 1. (3/6/14 Tr. at 109, ll. 20-25; IR 37-38 [Ex. 1].) The Rent Study compiled rent statistics for three types of agricultural properties—natural grazing land, irrigated grazing land, and field crops—for those counties in Arizona that reported sufficient information for a study to be made. *Id.* (3/6/14 Tr. at 116, l. 22 – 117, l. 12.) For Yavapai County, the Rent Study reported three types of "gross rent per acre" statistics taken from

---

[3] Among other materials and sources in chapter 15, article 2 that an assessor is precluded from using to supplement the lease information obtained pursuant to A.R.S. § 42-13102, an assessor is precluded from requesting from ranchland owners and lessors information that bears on reporting or valuing taxable property. A.R.S. § 42-15052(2).

twenty-six leases—a $1.44 "average," a $1.30 "median," and a $2.10 "weighted average." (App. 1 at 3; IR 37-38 [Ex. 1].)

For 2012 property-tax purposes, the Assessor used the $2.10 weighted average as set forth in the Rent Study to value all natural grazing properties in Yavapai County. (3/6/14 Tr. at 202, ll. 13-21.) Specifically, the Assessor used the $2.10 weighted average as the "gross rent figure" (*Id.* at 203, l. 1) to which she then applied a ten percent adjustment to bring the gross amount down to what she thought was a net annual income per acre for the grazing land. (*Id.* at 204, ll. 1-6.) As set forth above, A.R.S. § 42-13101(B)(1) provides that the "average annual net cash rental" of agricultural properties "[i]s the average of the annual net cash rental, excluding real estate and sales taxes, determined through an analysis of typical arm's length rental agreements collected for a five year period before the year for which the valuation is being determined." Since sales taxes are not levied on leases of agricultural land, the Assessor made no adjustment to the gross rent figure of $2.10 per acre to account for sales taxes. (*Id.* at 204, ll. 7-13.) The Assessor's ten percent allowance (21¢) to account for property taxes resulted in an average annual net cash rental of $1.89. (*Id.* at 204, ll. 17-19.)

Capitalizing that $1.89 at the statutory rate of 7.62% (the cap rate for the 2012 tax year per A.R.S. § 42-13101(B)(2) [IR 112, ¶ 7]) resulted in a per acre

value of $24.80 for the 2012 tax year. (3/6/14 Tr. at 219, ll. 17-19.)[4] The Assessor rounded the $24.80 to $25 per acre, and valued all natural grazing land in Yavapai County at $25 per acre for the 2012 tax year. (*Id.* at 219, ll. 15-19; IR 112, ¶ No. 11.) The Assessor later valued all natural grazing land in Yavapai County for the 2013 tax year at $25 per acre. (IR 112, ¶ No. 11.)[5]

The Cattlemen thereafter filed their complaint and subsequently a first amended complaint stating four claims for relief: a property-tax valuation appeal, a claim for illegally collected taxes, declaratory-judgment claim, and special action or mandamus claim. (IR 1, 2.) The Cattlemen primarily directed these claims at Yavapai County, and named the Department as a defendant only with respect to their illegally collected taxes claim because A.R.S. § 42-11005(C) requires that the Department be a party to any action alleging illegally-collected taxes. (IR 2, ¶ VIII.)

---

[4]When walking the County Assessor's Chief Deputy through these calculations, the Cattlemen's counsel inadvertently used the gross rent number of $2.10 multiplied by the 7.62% capitalization rate to arrive at a value of $24.80 per acre. (*Id.* at 204, ll. 10-14.) This was incorrect because $2.10 capitalized at 7.62% ($2.10 ÷ .0762) equals $27.56, not $24.80. The *net* number of $1.89 capitalized at 7.62% ($1.89 ÷ .0762) equals $24.80.

[5]Because the capitalization rate for 2013 (6.93%) (IR 112, ¶ 7) was lower than the 7.62% capitalization rate for 2012, the resulting per acre value for 2013 was actually higher than $25 at $27.27 per acre ($1.89 ÷ .0693). Notwithstanding this higher indicated value, the Assessor simply set the 2013 value at the 2012 value of $25 per acre. (IR 112, ¶ No. 11.)

At trial, the Cattlemen introduced a Grazing Lease Rental Study for private grazing leases in Yavapai County that Tom Rolston, an Arizona certified general real estate appraiser, had prepared for Andy Groseta, the then President of the Arizona Cattle Growers Association. (Trial Ex. No. 1 (the "Rolston Report"), attached as App. 2 hereto; IR 97-98 [Ex. D].) The Rolston Report contained sections on private grazing lease data and government grazing lease rates, including Arizona state grazing leases, Bureau of Land Management ("BLM") grazing allotments, and Forest Service grazing leases. (Rolston Report, Table of Contents.) The Cattlemen sought to have the court adopt an average of the private and governmental rental rates for grazing lands in Yavapai County that the Rolston Report set forth instead of the Assessor's rental rate conclusions for the 2012 and 2013 tax years.

The Rolston Report contained two general types of grazing information that the Cattlemen argued supported lower grazing land values. First, it contained two sections of private leases. The first section contained information on twelve "private leases and subleases" that indicated an average net rent per AUM of $5.17, which resulted in an average net rent per acre of seventy-three cents. (Rolston Report, [App. 2] at 4, 8-25; IR 97-98 [Ex. D].) The second section of private grazing leases contained information on four "pasture agreements" that

indicated an average net rent per AUM of $1.89, resulting in an average net rent per acre of twenty cents.[6] (*Id.* at 5, 26-32; IR 97-98 [Ex. D].)

The second general type of grazing information contained in the Rolston Report were rates charged by governments for grazing rights on state or federal lands. (Rolston Report [App. 2] at 33-36; IR 97-98 [Ex. D].) Before preparing his report, Rolston had been instructed by Andrew Groseta, the then President of the Arizona Cattle Growers Association, to evaluate all grazing leases in Yavapai County, including private, state and federal leases. (3/4/14 Tr. at 93, ll. 2-13.) At some point while preparing his report, someone gave Rolston a copy of the Department of Revenue's Arizona Agricultural Property Manual (the "Manual"), a manual prepared by the Department in accordance with its discretion and obligations under A.R.S. § 42-11054. The Manual discusses, among other things, the use and non-use of governmental grazing lease or permit rates as well as subleases of such governmental lands to determine grazing rental rates under A.R.S. § 42-13101. (3/5/14 Tr. at 20, ll. 2-9.) In relevant part, the Manual provides as follows:

> Two points should be made regarding public grazing land, because public land grazing fees may not be reflective of what are true "arm's-length" contractual

[6] Rolston defined "pasture agreements" as agreements wherein, in addition to allowing a rancher's cattle to graze on a landowner's property, the landowner assisted in taking care of the cattle. (3/5 Tr. at 51, ll. 14-20.)

agreements and rental amounts for the leasing of private land.

. . . .

Second, a common ranching practice is to obtain a lease on public land at a rate based on various federal government formulas which result in a reduced lease rate. That lease might be excluded from analysis. However, the lessee may then sublease all or part of that land at a market rate for private leased land. In so doing, the sublease becomes a market lease, and a representative example for the district.

It is very important when analyzing the reported land lease agreements of comparable ranching operations to determine if the leases or subleases utilized include any public land grazing leases, which agency the land is leased from, and if the terms and conditions are significantly different from any local area private land leases. The County Assessor should determine whether or not the terms of the public land grazing leases in effect in the area (or any subleases) are applicable to all ranching operations equally.

If public land lease terms can be considered essentially equal in the area, no value adjustments for public land leases may be necessary. However, if the lease terms for State Trust land versus BLM land versus U.S. Forest Service land in the same area, zone or district differ significantly, and if the local ranching operations being analyzed use the public land of different agencies in conjunction with their privately owned or leased holdings, adjustments for those value differences should be made, as appropriate. If any such adjustments appear necessary, but cannot be effectively determined, the County Assessor should exclude such public land leases from the comparable lease analysis for the valuation of the privately owned rangeland.

(IR 97-99 [Ex. A, at 4.5-4.6]; emphasis added.) In essence, the Manual provides that if public land lease rates are demonstrably lower than private land lease rates, an assessor can use the public land lease rates if he adjusts the public rates upward to reflect private rates. But if insufficient data exists for the assessor to make adjustments, an assessor should exclude public land leases from its analysis and conclusions concerning the average of annual rental for grazing lands under A.R.S. § 42-13101. Further, subleases of such government grazing lands are far more likely to represent market rates as determined through arm's length negotiations, and an assessor can use such sublease rates to determine an average annual net cash rental rate under A.R.S. § 42-13101.

Rolston's report included one-page summaries for state land leases, BLM allotments and Forest Service grazing leases. (App. 2, at 34-36; IR 97-98 [Ex. D].) Rolston noted that the State leased state lands for grazing purposes at $2.34/AUM ($0.31/acre) and that BLM and Forest Service lands were "allotted" or leased at $1.35/AUM ($0.15 acre).

The County filed a motion for partial summary judgment before trial seeking a ruling that neither federal nor state grazing rates can be used to determine the average annual net cash rental for grazing lands pursuant to A.R.S. §§ 42-13101 or -13102 because, among other reasons, government leases are not the product of arm's length transactions. (IR 82, 83.)

In support of its motion, the County filed the Assessor's Declaration of Pamela J. Pearsall which stated that "I am not aware of any Department of Revenue guideline or any statute that qualifies state or federal government leases as arm's length rental agreements" and that it was her understanding that "the Department of Revenue does not include such leases in performing its lease study for purposes of A.R.S. § 42-13101." (IR 83 [Ex. E].) The trial court denied the County's motion, stating that it "would like to decide this issue after development of the trial record" and explaining as follows:

> Whether public grazing leases constitute "typical arm's length rental agreements" under A.R.S. § 42-13101 is a question of law, or at least a hybrid question of law and fact. It is therefore for the Court, not the jury, to decide, if it is to be decided at all. The Court agrees that neither the statute nor the AG [Department's agricultural] Manual says that public leases are to be included or are not to be included. *But both the statute and the AG Manual interpreting it leave it to the assessor to determine just what an arm's length agreement is and whether public leases are sufficiently "typical" to be included in the average.* The Court is not certain that the record yet reflects whether the Assessor categorically excluded public leases or instead excluded some or all on the discretionary ground that they were not "typical."

(IR 120.) (Emphasis added.)

The Rolston Report contained no analysis and no conclusions as to what the average annual rate for natural grazing lands was for the 2012 and 2013 tax years. Rather, over the County's objections, the Cattlemen's counsel had Rolston

calculate the total average net rent from both private and public leases (private, pasturage, federal, and state) by dividing the sum of all gross rent by total leased acres, resulting in an average rental rate of thirty cents. (3/5/14 Tr. at 106-107.) When capitalized at the 2012 capitalization rate of 7.62%, the resulting 2012 value was $3.94 per acre. (*Id.* at 107, ll. 2-11.) When capitalized by the 2013 capitalization rate of 6.93%, the resulting 2013 value was $4.33/acre. (*Id.* at 107, ll. 12-17.)

At the close of the Cattlemen's case-in-chief, Yavapai County moved for judgment as a matter of law under Ariz. R. Civ. P. 52. (3/6/14 Tr. at 175, ll. 8-9.) The gravamen of the motion was that the Assessor's 2012 and 2013 values enjoyed a statutory presumption of correctness and that neither Mr. Groseta nor Mr. Rolston had offered opinions of value concerning the values of any of the hundreds of tax parcels at issue that overcame that presumption. (*Id.* at 175, l. 9 – 176, l. 23.) Before allowing the Cattlemen's counsel to respond, the court explained its view of the case at that point in the trial. The court stated that it believed that the Cattlemen had presented enough evidence to overcome the presumption that the Assessor's $25 per acre values were correct. (*Id.* at 181, l. 20 – 182, l. 3.) However, the court was less certain that the Cattlemen had met their burden of

determining and proving what the new, lower full cash values should be.[7] (*Id.* at 182, ll. 3-19.) Following that and similar comments from the court, Yavapai County's counsel argued that the County need not put on additional evidence and that judgment should be entered for the County on the Cattlemen's claim for a valuation reduction. (*Id.* at 192, l. 15 – 193, l. 11.) The court denied the County's motion for judgment as a matter of law. (*Id.* at 193, l. 19 – 194, l. 16.)

The next trial day, apparently based upon the court's comments regarding the Cattlemen not appearing to have introduced sufficient competent evidence for the court to arrive at new, lower values for their properties, Yavapai County rested its case without calling its expert witness, Mr. Finley. (3/7/14 Tr. at 4, ll. 11-12.) The Cattlemen's counsel objected, but not having served Mr. Finley with a trial subpoena (*id.* at 7, ll. 11-17), and for other reasons that the court articulated, the court ultimately denied the Cattlemen's request to call the County's expert witness to testify. (*Id.* at 73, ll. 13-21.)

The Department did not present any case-in-chief because it took no direct position on the dispute between the Cattlemen and the County regarding what the

---

[7] The Assessor's valuation is presumed to be correct and lawful. A.R.S. § 42-16212(B). "The taxpayer may overcome the presumption by presenting competent evidence that the taxing authority's valuation is excessive." *Eurofresh*, 218 Ariz. at 386, ¶¶ 16-18. Once the presumption is overcome, the taxpayer must then demonstrate by competent evidence what the new, lower value should be. *Id.*; *Recreation Ctrs. of Sun City, Inc. v. Maricopa Cnty.*, 162 Ariz. 281, 285 (1989).

proper average annual net cash rental rate was for grazing lands in Yavapai County as determined through an analysis of arm's length grazing agreements. Consistent with its position on the subject in its Manual (IR 97-99 [Ex. A, at 4.5-4.6]), the Department did dispute the Cattlemen's arguments that state or federal grazing lease or permit rates resulted from qualifying arm's length transactions and that they should be used to determine an average annual rental rate under A.R.S. § 42-13101 given that they demonstrably were not market rates. (3/5/14 Tr. at 199, l. 23 – 210, l. 20.)

Following trial, the court issued its ruling criticizing the Assessor for her largely wholesale reliance on the Department's Rent Study figures for Yavapai County when determining the values of grazing land in Yavapai County for the 2012 and 2013 tax years. (IR 138, ¶¶ Nos. 9-18.) The court found the Department's Rent Study to be insufficient, in part because Mr. Lopata had no "firsthand knowledge as to the factual accuracy of *any* of the information included in the report, nor had he personally verified any of the information used to develop the weighted average gross rental rate of $2.10 per acre for Yavapai County." (*Id.* ¶ No. 25.) Further, the court noted that Mr. Lopata himself had questions regarding the reliability of the weighted average figure of $2.10 per acre for Yavapai County given that the median value set forth in his report, ($1.30/acre [IR

37-38 [Ex. 1] at 3]) was significantly lower than both the average and the "weighted average" that he had computed. (IR 138, ¶ No. 27.)

As to the Rolston Report, the trial court rejected Rolston's wholesale use of public grazing rates as a material component of his average annual net cash rental analysis (*Id.* ¶ No. 45), which the Department and the County had both argued was improper. The Rolston Report on private grazing and pasturage agreements suggested rental rates of $0.635 per acre, which resulted in a 2012 full cash value of $8.33 per acre and a 2013 full cash value of $9.16 per acre when capitalized at the 2012 and 2013 capitalization rates of 7.62% and 6.93%. (*Id.* ¶ No. 43.) However, the court had a few issues with Rolston's private per acre value, stating in pertinent part as follows:

> 44. The Court finds Mr. Rolston's Study to have a number of flaws.
>
> 45. Of greatest concern, the Court finds that Mr. Rolston should not have used public grazing leases in the manner that he did. Although the ADOR manual allows the limited use of public grazing leases, it clearly does not advocate for their wholesale inclusion in an average annual net cash rental study. See, trial exhibit 184 at pages 4.5-4.6. (The Court also notes that this produced full cash values that were approximately half of what had been utilized in Yavapai County for decades.)
>
> 46. There were a number of other, more minor concerns raised by Yavapai County regarding Mr. Rolston's study, and the Court agrees with several of them.

> 47. Nonetheless, the Court does not find that the flaws in Mr. Rolston's report are so great as to render it incompetent.

(Id. ¶¶ Nos. 44-47.) In the end, the court adjusted Rolston's private rental rate for the 2012 and 2013 tax years upwards a bit from $0.635/acre to $0.70/acre. (*Id.* ¶ No. 49.) At that rate, using the 2012 and 2013 capitalization rates, the Court reached 2012 and 2013 values of $9.19 and $10.10, respectively. (*Id.* ¶¶ Nos. 49-50.)

The Cattlemen subsequently filed a Notice of Appeal (IR 181) and have appealed in part the trial court's rejection of public land lease rates when determining average annual net cash rental under A.R.S. § 42-13101 (IR 138, ¶ No. 45).

ISSUES PRESENTED FOR REVIEW

1. Did the trial court abuse its discretion or make a legal or factual error when it excluded non negotiated government lease rates that were not the product of arm's length transactions when determining the average annual net cash rental of grazing properties in Yavapai County under A.R.S. § 42-13101(B)(1)?

2. If this Court awards the Cattlemen attorneys' fees, should it enter the award only against the County?

ARGUMENT

I. The Trial Court Did Not Make a Legal or Factual Error and Properly Acted Within Its Discretion When It Considered and Ultimately Excluded Nonnegotiated Government Lease Rates that Were Not the Product of Arm's-Length Transactions for Purposes of Determining the Average Annual Net Cash Rental of Yavapai County Grazing Properties under A.R.S. § 42-13101(B)(1).

A. Standard of Review.

While the Court reviews the trial court's construction of statutes and its findings that combine facts and law de novo, it reviews the trial court's findings of fact for clear error. *Ariz. Dep't of Revenue v. Ormond Builders, Inc.*, 216 Ariz. 379, 383, ¶ 15 (App. 2007). The Cattlemen have the burden of demonstrating that an error was committed below. *Guard v. Maricopa Cnty.*, 14 Ariz. App. 187, 188-89 (1971).

A reviewing court generally accords "great weight" to the administrative agency's interpretation of a statute that it enforces. *Ariz. Dep't of Revenue v. Raby*, 204 Ariz. 509, 512, ¶ 17 (App. 2003) (internal quotation marks omitted). Further, appellate courts review "evidentiary rulings for an abuse of discretion and generally affirm a trial court's admission or exclusion of evidence absent a clear abuse or legal error and resulting prejudice." *John C. Lincoln Hosp. & Health Corp. v. Maricopa Cnty.*, 208 Ariz. 532, 543, ¶ 33 (App. 2004); *see also Calpine Constr. Fin. Co. v. Ariz. Dep't of Revenue*, 221 Ariz. 244, 249, ¶ 23 (App. 2009) (stating that the tax court's rulings are reviewed for abuse of discretion).

The trial court should not substitute its opinion for that of the taxing authority when determining the value of a taxpayer's property, *Yuma Cnty v. Tongeland*, 15 Ariz. App. 237, 240 (1971), but the trial court may impose its valuation opinion when the evidence supports it. *See Maricopa Cnty. v. N. Cent. Dev. Co.*, 27 Ariz. App. 561, 563 (1976) (citing *Navajo Cnty. v. Four Corners Pipe Line Co.*, 106 Ariz. 511, 522 (1970)); *Dep't of Revenue v. Transam. Title Ins. Co.*, 117 Ariz. 26, 28 (App. 1977). Once the trial court makes its findings, this Court may not reverse those findings unless an appellant is able to show that the trial court's findings of fact contain a clear error. *See, e.g., Aileen H. Char Life Interest v. Maricopa Cnty.*, 208 Ariz. 286, 300, ¶ 49 (2004) (the tax court is the trier of fact that is in the best position to determine whether a witness's testimony is of assistance).

B. The Trial Court Was Required to Consider, As It Did, Only Arm's-Length Transactions When Making Determination on the Value of Agricultural Properties.

The Cattlemen argue that A.R.S. § 42-13101 and the Department's Manual obligate an assessor to use governmental lease or permit grazing rates when valuing their properties. (OB at 37-40.) The Cattlemen are mistaken.

Sections 42-13101 and 42-13102 set forth a method whereby county assessors are to value agricultural lands not at their fair market value using standard appraisal methods and techniques, but rather under the method that the

two statutes prescribe. Under A.R.S. § 42-13101, assessors are to perform "an analysis of typical arm's length rental agreements" in determining the average annual net cash rental of grazing lands. The purpose is to determine the grazing market rental rates of grazing lands for use in valuing such lands.

Government lease rates do not arise from arm's-length agreements given that they are not negotiated by two parties seeking to maximize their financial interests. In this case, the undisputed fact that lessees holding government grazing leases or permits in Yavapai County often sublease their grazing rights on governmental lands for far more than the lease rate that the government sets demonstrates that state and federal government rates are not market rates for grazing lands as contemplated and provided for under A.R.S. § 42-13101. The Assessor therefore properly rejected using such governmental rates when setting the 2012 and 2013 average annual rental rates for grazing lands in Yavapai County in her discretion and consistent with the Department's Manual on the subject (IR 97-99 [Ex. A, at 4.5-4.6]). The trial court properly upheld the Assessor's decision and the Department's position in that regard based upon the evidence and the testimony and properly rejected the Cattlemen's arguments to the contrary.

Section 42-13101 provides that only typical arm's-length transactions are to be considered when calculating the average annual net cash rental of grazing lands, but it does not define the term "arm's-length transaction." Determining what

constitutes a typical arm's-length transaction is thus left to the discretion and judgment of county assessors and, to a lesser extent, the Department of Revenue.[8] In this regard, the Department issued the Manual consistent with its duties under A.R.S. § 42-11054. The Cattlemen have not challenged the Department's guidance as provided in the Manual.

With respect to government lands, the Manual explains that a government lease rate, which is based upon a formula, is likely a "reduced lease rate" and does not represent the market rental rate of the underlying governmental lands. (IR 97-99 [Ex. A at 4.5-4.6].) It further states that when government lands are subleased, the rental rate in the sublease is probably indicative of a market or an arm's-length rental rate, and that such sublease rates are probably appropriate for an assessor to use when performing an average rent analysis under A.R.S. § 42-13101, providing in pertinent part:

---

[8] The Cattlemen erroneously contend that "relevant canons of statutory construction" support their request that the court order an assessor to use government contract rates to determine average annual net cash rental under A.R.S. § 42-13101. (OB at 46-51.) Section 42-13101 gives an assessor the discretion to analyze and determine average annual rental rates from typical arm's-length transactions. If the Legislature had wanted an assessor to use an average of <u>all</u> lease rates of all grazing lands in a county to determine average annual net cash rental under that statute, it would have said so. Instead, by giving the assessor discretion and by limiting her consideration to arm's length transactions only, the Legislature plainly expressed its intent that assessors *not* use all grazing rental transactions in determining average annual net cash rental, and equally plainly expressed its intent that assessors not use rental rates that are not the result of negotiated, arm's-length transactions.

> [P]ublic land grazing fees may not be reflective of what are true "arm's-length" contractual agreements and rental amounts for the leasing of private land.
>
> . . . .
>
> [A] common ranching practice is to obtain a lease on public land at a rate based on various federal government formulas which result in a reduced lease rate. That lease might be excluded from analysis. However, the lessee may then sublease all or part of that land at a market rate for private leased land. In so doing, the sublease becomes a market lease, and a representative example for the district.
>
> . . . .
>
> [I]f the local ranching operations being analyzed use the public land of different agencies in conjunction with their privately owned or leased holdings, adjustments for those value differences should be made, as appropriate. If any such adjustments appear necessary, but cannot be effectively determined, the County Assessor should exclude such public land leases from the comparable lease analysis for the valuation of the privately owned rangeland.

(IR 97-99 [Ex. A at 4.5-4.6].)

The Manual's statement that "public land grazing fees may not be reflective of what are true 'arm's-length' contractual agreements and rental amounts for the leasing of private land" (*id.*) is consistent with the federal guidance on this subject

in the context of valuing agricultural properties for federal estate tax purposes.[9] The applicable federal regulation provides as follows:

> *Arm's-length transaction required.* Only those cash rentals which result from a lease entered into an arm's length transaction are acceptable under section 2032(A)(e)(7). For these purposes, *lands leased from the Federal government, or any state or local government, which are leased for less than the amount that would be demanded by a private individual leasing for profit are not leased in an arm's length transaction.* Additionally, leases between family members (as defined in section 2032A(e)(2)) which do not provide a return on the property commensurate with that received under leases between unrelated parties in the locality are not acceptable under this section.

26 C.F.R. § 20.2032A-4(b)(2)(ii) (emphasis added).

Under the facts and the law of this case, the Department, the Assessor, and ultimately the trial court, all properly acted within their discretion, consistent with A.R.S. § 42-13101, when all excluded government grazing rental or permit rates that were not negotiated in arms-length transactions when determining the average rental rate of grazing properties in Yavapai County.

---

[9] Similar to A.R.S. § 42-13101, the federal regulation provides the valuation formula for the property used for farming as determined by "(1) Subtracting the average annual state and local real estate taxes on actual tracts of comparable real property in the same locality from the average annual gross cash rental for that same property, and (2) Dividing the result so obtained by the average annual effective interest rate charged on new Federal land bank loans." 26 C.F.R. § 20.2032A-4(a).

C. Appraisal and Other Authorities and Rolston's Trial Testimony Clearly Establish that Government Rates Are Not Typical Arm's-Length Rates.

The Cattlemen offer definitions from various sources concerning the meaning of an "arm's-length agreement" that purportedly establish that the sole requirement for an arm's-length transaction is that the parties be unrelated. (OB at 40 n.10.) The Cattlemen's own authorities make clear that the scope of an arm's-length agreement is broader than that. As the Cattlemen note, the American Institute of Real Estate Appraisers, *The Dictionary of Real Estate Appraisal* (5th ed.) defines "arms-length" as "[a] transaction between unrelated parties *who are each acting in his or her own best interest.*" *Id.* (Emphasis added.) The Cattlemen also cite *Merriam-Webster's Dictionary* (on-line version) which defines "arms-length" as "the condition or fact that the parties to a transaction are independent *and on an equal footing.*" *Id.* (Emphasis added.)

The Cattlemen's own authorities therefore establish that an arm's-length transaction is not simply one in which the parties are unrelated. Rather, it is a transaction that satisfies several requirements that in toto establish that the transaction is a reliable indicator of value or worth of similar or like properties. The "Glossary for Property Appraisal and Assessment" of the International Association of Assessing Officers defines an arm's-length transaction as follows: "(1) A sale between a willing buyer and a willing seller that are unrelated and are

not acting under duress, abnormal pressure or undue influences. (2) A sale between two unrelated parties, both seeking to maximize their positions from the transaction." (IR 83-85 [Ex. A, at 8].) Tom Rolston, the certified Arizona general real estate appraiser who testified on behalf of the Cattlemen, testified on direct examination in support of the Department's and the County's position:

> Q. What is an arm's-length transaction as an appraiser?
>
> A. [Rolston] It is two - - buyer and seller negotiating something for - - *two knowledgeable people in negotiation in their own interest,* trying to come up with a number that will - - is acceptable to both of them.
>
> Q. Can they be related?
>
> A. They can be related. We'd prefer not to have a related sale.
>
> Q. Okay. And why is that?
>
> A. There could be other influences.

(3/5/14 Tr. at 93, ll. 3-14; [emphasis added].)

As Rolston testified in that exchange, even a transaction between related parties can qualify as an arm's-length transaction, but the appraiser must use extra caution to ensure that the transaction price truly does involve two persons negotiating in their best financial interests and that their relationship has no effect on those negotiations.

In an arm's-length transaction, each party acts in his, her, or its own financial interest so that the ultimate transaction price reflects a reliable measure of the worth of the thing being negotiated. As set forth below and in the Rolston Report (App. 2, at 34-36; IR 97-98 [Ex. D]), not only are government grazing leases and permits not negotiated, but when they are actually negotiated (i.e., through a sublease), the rates in the subleases are invariably significantly higher than the nonnegotiated contract rate with the government which provides irrefutable evidence that government lease and permit rates are not the result of arm's-length as required in A.R.S. § 42-13101. When Rolston was asked on direct examination how he had confirmed the information in the Private Grazing Lease section of his report, he responded as follows:

> Q. All right. Did you have any trouble getting information from ranchers about the terms of those leases?
>
> A. This has really been an issue and been a little troubling for me. Probably 30 percent - - or 25 to 30 percent of the leases that I confirmed were with either young men just getting started or cowboys that were making the transition from being a cowboy to being a rancher.
>
> *And these grazing leases are extremely competitive. There's a lot of people out there looking for them.* And it's entry level to get into the ranch business. None of them wanted to tell me what they were paying, when their lease expired, and they certainly didn't want it in a report that someone else could read and know exactly what they were paying, exactly when it matured,

> and have to compete with anyone else besides the people they were already competing with.

(3/5/14 Tr. at 28, ll. 4-19.)

By contrast, government grazing lease and permit rates involve no negotiation whatsoever because their rates are predetermined by statutory or agency formulas (3/4/14 Tr. at 38, l. 9 – 39, l. 8) that are obviously not based on considerations of profit maximization. Because government lease or permit rates are not the result of arm's-length negotiations and are not typical arm's-length rates for the properties at issue, the trial court did not clearly err in ruling in favor of the Department and the County on these issues.

D. Rolston's Report and His Trial Testimony Support the Trial Court's Rejection of the Use of Government Lease or Permit Rates to Determine Average Annual Net Cash Rental Under A.R.S. § 42-13101, and that Rejection Does Not Preclude the Use of Market-Based Government Land Rental Rates from Being Used to Determine Average Annual Net Cash Rental.

Before and at trial, the Cattlemen argued that rejecting government lease rates meant that nearly four million acres or eighty percent of the land in Yavapai County would not be included in a grazing rental analysis under A.R.S. § 42-13101.[10] (IR 97-99, at 4, ll. 9-11; 3/4/14 Tr. at 154, l. 18 to 155, l. 6.)

[10] Even assuming this were true, it is unclear why an average annual net cash rental for grazing lands could not be determined from the hundreds of thousands of acres of leased private grazing lands in Yavapai County.

The Rolston Report completely contradicts the argument that unless an assessor used the state and federal lease or permit rates, arm's-length lease rates for public lands would be wholly excluded from consideration under A.R.S. § 42-13101. In the "Private Grazing Lease" section of that report (App. 2, at 4-25; IR 97-98 [Ex. D]), Rolston identified twelve leases and subleases of grazing lands in Yavapai County. All of these private leases contained a component of deeded land (i.e., private land) and components of either state or federal land, or in many cases, both. Indeed, as Rolston admitted on cross-examination, more than fifty percent of his private leased acreage were subleases[11] of state or federal grazing lands. Specifically, 237,030 acres involved leases or subleases of private lands, and 297,774 acres involved subleases of state or federal lands. (*Id.* at 4; IR 97-98 [Ex. D].)

For example, Rolston Private Lease No. YA-11 was a lease that contained eight acres of private land, 4,616.12 acres of State land, and 28,401 acres of federal BLM land, for a grand total of 33,097 acres or 51.7 sections (square miles) of total lease/subleased lands. (App. 2, at 19; IR 97-98 [Ex. D].) The owner of the eighty

[11] Individuals who lease or otherwise obtain a grazing permit on federal BLM or state land for $1.35/AUM or $2.34, respectively (App. 2 at 34-35; IR 97-98 [Ex. D])), can and often do sublease such lands for whatever they can obtain in the marketplace.

acres, who had presumably[12] leased the grazing rights for state and federal land at $2.34 and $1.35/AUM, respectively, then subleased the entirety of the 51.7 sections of land to another for $10.00/AUM, more than four times the amount paid to lease the state land from the State and more than seven times the amount paid to the BLM for grazing rights on the 33,097 acres of BLM land. (*Id.* at 19.)

Each of the twelve private leases in the private grazing lease section of the Rolston Report (*Id.* at 9-25) contains similar data establishing that when governmental grazing lands are subleased, the rates in the sublease are always significantly higher than the rates that the sublessor paid to the State or federal government. For example, Lease No. YA-12 subleased state lands at $14.45/AUM, more than six times higher than the rate of $2.34/AUM that the sublessor paid the State. (*Id.* at 21-22.) The Rolston Report makes clear beyond a shadow of a doubt that government rates do not reflect the rates that such lands command in a true arm's-length transaction.

Moreover, Rolston's private grazing lease section exposes the hollowness of the Cattlemen's argument that excluding state and federal lease rates from an average annual rental analysis under A.R.S. § 42-13101 means that eighty percent of lands in Yavapai County will not be included in the rental study. Such lands can

[12] The federal rate of $1.35/AUM has been in effect for many years. *See* Carol Hardy Vincent, Cong. Research Serv., RS21232, *Grazing Fees: Overview and Issues*, at 3 (June 19, 2012), https://www.fas.org/sgp/crs/misc/RS21232.pdf. (App. 3.)

be included in a rental study if the terms of the lease or, most often, the sublease were negotiated in a true arm's-length transaction. In fact, as noted above, more than fifty percent of the acreage in Rolston's private grazing lease portion of his report are governmental lands (*Id.* at 4), but they are government lands whose rental rates resulted from true arm's-length negotiations; they were not pre-determined, nonnegotiated governmental rates that were inarguably below market value as the Rolston Report itself evidences.

Even assuming that an assessor's analysis of average annual rental rates under A.R.S. § 42-13101 must include rental rates for state and federal lands, the Cattlemen's argument that an assessor must use state and federal lease rates of $2.34 and $1.35, respectively, to determine those rates has nothing to do with accomplishing that goal. Government lands that are sublet to another are as capable of being used in a rent study under A.R.S. § 42-13101 as are private lands that are leased to another. The Cattlemen simply want this Court to force the Assessor to use nonmarket government rates to determine an average rental rate under A.R.S. § 42-13101, thereby lowering their property values and their property taxes. As set forth below, Rolston himself testified that the use of these non arm's-length leases to determine the average annual rental of grazing lands is inappropriate. Again, the trial court did not commit clear error when it rejected the

Cattlemen's argument that government lease rates must be used to determine an average annual rental rate under A.R.S. § 42-13101.

E. Rolston Never Opined that State and Federal Grazing Rates Must Be Used to Determine Average Annual Net Cash Rental, and in Fact, Effectively Disavowed the Cattlemen's Effort to do so.

The Cattlemen tout Mr. Rolston's credentials as an appraiser of agricultural lands and his report and the conclusions therein in support of their argument that private and governmental grazing rental rates must be averaged to determine average annual net cash rental under A.R.S. § 42-13101. (OB at 34-37.) The fact is that Rolston never opined that private and public grazing rates must be averaged in such a manner, and in fact expressly disavowed the Cattlemen's arguments to that effect.

Contrary to Appellants' assertions (*id.* at 37), Rolston never offered an opinion or any analysis as to what the average annual rental rate for grazing lands should be in Yavapai County for the 2012 and 2013 tax years. On direct examination he testified as follows:

> Q. Did you - - based on the work that you and Mr. Clark did, were you able to form an opinion regarding what the average annual net cash rental is for grazing land in Yavapai County?
>
> A. We did not do that job. It was not our assignment.

(3/5/14 Tr. at 74, ll. 12-17.)

Rather, Rolston was asked to do a rent study of grazing leases in Yavapai County. (*Id.* at 93, ll. 23-25.) His client, Andy Groseta, the then President of the Arizona Cattle Growers Association, instructed him to evaluate *all* the grazing leases in Yavapai County, including private, state, and federal leases.[13] (3/4/14 Tr. at 93, ll. 2-13.) The Cattlemen or one of their representatives also gave Rolston portions of the Department's Agricultural Property Manual (3/5/14 Tr. at 11, ll. 8-15) which, in the Cattlemen's view, lent support to their argument that state and federal grazing lease or permit rates be used to determine average annual net cash rental under A.R.S. § 42-13101. (OB at 37-40.)

On direct examination, the Cattlemen's counsel sought to have Rolston perform an analysis of his private and public land rental data to arrive at an opinion of average annual net cash rental. (3/5/14 Tr. at 75, l. 5 – 81, l. 22.) Combining the average of $0.73/acre for the private grazing lands (*id.* at 77, ll. 6-9) with the pasturage average of $0.20/acre (*id.* at 77, ll. 15-25), the Cattlemen elicited from Rolston's testimony that the combined grazing and pasturage lands leased for, on average, $0.635/acre. (*Id.* at 80, ll. 7-11.) Counsel for the County objected to this given that no such analysis had been disclosed in the Rolston Report or otherwise.

---

[13] The fact is that no evaluation or "analysis" of federal or state grazing lease rates is necessary. They are what they are. The annual federal rate is uniform across the country and is readily knowable via a Google search for any given year, e.g.: http://www.blm.gov/wo/st/en/info/newsroom/2012/january/NR_01_31_2012.html. The state rate is similarly available online.

(*Id.* at 78, l. 7 – 79, l. 22.) The court allowed Rolston to perform the mathematical computations (*id.* at 79, ll. 23-25), which Rolston then did (*id.* at 80, l. 22 – 81, l. 10), reaching an amount of $0.64/acre (rounded) (*id.* at 81, ll. 19-22).

The Cattlemen's counsel then proceeded to have Rolston testify concerning his rental information from state land leases, which yielded a per-acre rental value of $0.31/acre (*id.* at 81, l. 23 to 82, l. 8), and then to his rental information from federal (BLM) leases, which yielded $0.15/acre (*id.* at 82, ll. 13-22). When asked if he could "do the mathematics" to combine the entirety of his report in terms of what the average net rent per acre was for private grazing, pasturage, state and federal lands combined, Rolston stated that he could do that, but that he had not. (*Id.* at 83, l. 18 – 84, l. 7.) The Cattlemen's counsel stated that Rolston could do it at lunch and then return and testify to that number. (*Id.* at 84, ll. 8-11.)

After lunch, the Cattlemen's counsel asked Rolston what the total average rent was for grazing leases from the private and public lease data in his report, to which Rolston responded $0.30/acre. (*Id.* at 102, ll. 1 8-17.) Counsel for the County objected, noting that there were no such conclusions or analysis in the Rolston Report. (*Id.* at 102, ll. 18-22.) The Court overruled the objection and allowed the testimony in purely as mathematical testimony. (*Id.* at 102, l. 23 to 103, l. 3.) The Cattlemen's counsel similarly then sought testimony from Rolston as to what the grazing land values would be when the 2012 and 2013 statutory

capitalization rates of 7.62% and 6.93% were applied to the $0.30/acre average rental rate figure. (*Id.* at 106, ll. 9-13.) Again, counsel for the County objected insofar as the Cattlemen's counsel was seeking to elicit an opinion of an annual rental value under A.R.S. § 42-13101, when Rolston admittedly had done no analysis and had no opinion of value under that statute. (*Id.* at 106, ll. 15-20.) Again, the court (implicitly) allowed the simple math to be done. (*Id.* at 106, ll. 21-25.) When the $0.30 per acre rental number was capitalized at 7.62% for the 2012 tax year, the resulting per acre value was $3.94. (*Id.* at 107, ll. 2-6.) When the $0.30 per acre rental number was capitalized at 6.93% for the 2013 tax year, the resulting per acre value was $4.33. (*Id.* at 107, ll. 12-17.)

In their Opening Brief, the Cattlemen imply that their 2012 and 2013 values of $3.94 and $4.33 were supported by Rolston's rent study. (OB at 34-37.) The simple fact is that Rolston never gave an opinion or testified as to these numbers, or whether he would have arrived at them had he been asked to do so; rather, he simply performed mathematical calculations at the insistence of the Cattlemen's counsel. In fact, on cross-examination, he expressly disavowed the Cattlemen's desire to use governmental, nonmarket lease rates to drive down the true arm's-length lease rates that private parties had negotiated when determining the average rental rate of grazing lands in Yavapai County.

On cross examination by the Department's counsel concerning Rolston's private lease No. YA-11 as an example (App. 2, at 19-20), Rolston confirmed that that lease was for 51.7 sections (51.7 square miles), eighty acres of which were private land, 7.21 sections were state lands, and the remaining 44.38 sections of which were federal (BLM) land. (3/5/14 Tr. at 201, l. 3 to 202, l. 2.) Rolston confirmed that the original permit rate paid to the BLM was $1.35/AUM and that the rate paid to the State for the state lands was $2.34/AUM. (*Id.* at 202, ll. 3-23.) He then confirmed that the lease rate paid to the owner of the eighty acres for the entirety of the 51.7 sections being leased/subleased was $10/AUM. (*Id.* at 202, l. 24 – 203, l. 7.)

Rolston then confirmed that grazing properties have only one market rental rate and that the rental rate for the YA-11 property was $10/AUM, not $1.35 or $2.34 or, as the Cattlemen would have it, an average of the three ($4.56). Rolston testified as follows:

> Q. Now, grazing land like the land identified in your YA-11 has only one market rate; correct?
>
> A. One market rate?
>
> Q. Correct. If you were asked to determine, as you were and as you have, a market rental rate for that property, there would only be one; correct?
>
> A. That's right.

Q. And the fact of the matter is, the rental rate – the market rental rate for that property, according to your report, is $10 an AUM; correct?

A. In the open market, yes.

Q. And that included both the State land; correct?

A. And the BLM.

Q. And the BLM.

A. And the deeded.

Q. . . . So the market rate for the State property is not 2.34[AUM]; correct? That's the permit rate. The market rate is $10 an AUM; correct?

A. The market rate negotiated between those two people is $10 per head per month.

Q. And the market rate for the BLM property initially permitted at 1.35 is $10; correct?

A. That's correct.

Q. And in determining a market rate for that property, you don't add upon the market rate of $10 per AUM; correct? You don't add that to the State rental rate and the BLM rate, do you, and do division? You don't divide that by three, do you?

A. No.

Q. I've done the math. That would be 4.56 an AUM. And you wouldn't do that, would you?

A. One more time.

Q. Well, just before lunch, you recall Mr. Mooney had you go through the exercise of determining rental rates and all that for . . . the totality of your private grazing, totality of the BLM permitted, and the totality of

> the State land, and he had you do the math, adding them up . . . and dividing by three or four; correct?
>
> A. Correct.
>
> Q. The fact of the matter is you don't do that when you determine a market rental rate for a piece of property; correct?
>
> A. You don't go through that exercise on a -- for private leases, no.

(3/5/14 Tr. at 203, l. 8 – 205, l. 7.)

In performing an analysis of arm's-length rental agreements under A.R.S. § 42-13101, an assessor is charged with determining average annual rental rates for grazing lands. By Rolston's own admission, grazing lands have one rental rate, not two, three, or four, and that one rental rate can best be determined from an arm's-length transaction, one in which both parties act in their own best financial interests, and not from predetermined, demonstrably non-market government rates. The rental rate for the YA-11 property for use in determining average annual net cash rental under A.R.S. § 42-13101 is therefore $10/AUM (or $0.72/acre).

The Cattlemen are not content with that rental rate and with other rental rates determined through an analysis of private, arm's-length leases, whether Rolston, the Assessor, or Lopata determined them. Rather, they seek a ruling from this Court, as they sought from the trial court, that would reduce the market-derived rental rate by *obligating* the Assessor to add state and federal lease and permit rates to the arms'-length rate and dividing the product by three, thereby reducing the

average annual rental rate against which the statutory capitalization rates are to be applied, resulting in markedly lower property valuations and property taxes.

The Cattlemen's arguments are contrary to the plain intent of A.R.S. § 42-13101 and to the Assessor's obligation therein to determine average annual net cash rental through an analysis of typical arm's-length transactions. Their arguments are also contrary to their appraiser's testimony and to the Department's Manual.

The trial court, having considered and evaluated all evidence and testimony, correctly rejected the Cattlemen's attempt to convert the "wholesale" data in the Rolston Report into an expert opinion when the trial court stated,

> Of greatest concern, the Court finds that Mr. Rolston should not have used public grazing leases in the manner that he did. Although the ADOR manual allows the limited use of public grazing leases, it clearly does not advocate for their wholesale inclusion in an average annual net cash rental study. See, trial exhibit 184 at pages 4.5-4.6. (The Court also notes that this produced full cash values that were approximately half of what had been utilized in Yavapai County for decades.)

(IR 138, ¶ No. 45.)

Nonmarket and nonarm's-length government grazing lease or permit rates should not be used to reduce the average annual rent determined through an assessor's analysis of typical arm's length transactions under A.R.S. § 42-13101. The Assessor's exercise of discretion and the Department's opinion in that regard

are consistent with the statute and should be given deference. This Court should uphold the trial court's determination that the Manual neither advocates nor supports "the wholesale inclusion of public grazing lease rates in an average annual net cash rental study." (IR 38, ¶ 45.) This Court should reject the Cattlemen's wholesale use of government grazing rates to lower market-derived rental rate because not only was the trial court's decision in this regard not clearly in error, but it had overwhelming support in the record and the law, including from the Cattlemen's own appraiser.

F. The Fact that the Assessor's Files Contain Copies of Many State and Governmental Leases Is Irrelevant with Respect to Whether Lease Rates from Such Leases May Be Used to Determine Average Annual Net Cash Rental.

The Cattlemen argued in pretrial pleadings and at trial that the Assessor's Office had many state and federal leases and permits in its possession that it could and should have used to determine average annual net cash rental for 2012 and 2013. (IR 97-99, at 4, ll. 10-17; OB at 37.) Those leases and permits were not in the Assessor's files because they had been reported to the Assessor pursuant to an owner's or lessor's obligations under A.R.S. § 42-13102 to report lease information to the Assessor.[14] Rather, they were filed by owners in an attempt to

[14] Indeed, there is no evidence in the record that the owners of the state and federal lands, the State itself and the BLM, ever filed a lease abstract with the Yavapai County Assessor pursuant to A.R.S. § 42-13102.

prove that their holdings were sufficiently large to qualify the land that they owned for an agricultural valuation under A.R.S. § 42-13101.

Under A.R.S. § 42-12151(3), grazing land can qualify for agricultural valuation under A.R.S. § 42-13101 only if it has a minimum carrying capacity of forty AUMs and if it actually contains an economically feasible number of animal units (i.e., if animals actually graze on it). Many private landholdings, for example, private lease YA-11 in the Rolston Report which has only eighty acres of private land, are too small to qualify under the forty AUM requirement of A.R.S. § 42-12151(3). However, if the landholder leases grazing lands from a government and those lands are managed and operated on a unitary basis with grazing operations on the land that the applicant owns, those lands can be "added" to the privately owned acreage, and if the combined private and government acreages have a total of at least forty AUMs of carrying capacity, the private acreage will be valued as agricultural lands under A.R.S. § 42-13101. A.R.S. § 42-12152(A)(3). Thus, when applying for agricultural valuations for their private property, land owners whose properties are too small to satisfy the forty AUM requirement attach copies of their government leases to establish that their private lands, when coupled with their government acreage under lease or permit, satisfy the minimum carry capacity requirement for valuation under A.R.S. § 42-13101. (3/6/14 Tr. at 58, ll. 3-21; 90, l. 25 to 91, l. 17; 112, ll. 12-21.)

The fact that landowners file government leases and permits with an assessor under A.R.S. § 42-12153 when applying for a grazing land agricultural valuation does not obligate an assessor to use those grazing rates to determine average annual net cash rental under A.R.S. § 42-13101. To begin with, A.R.S. § 42-13102(B) and (C) generally limit an assessor to using only that information that an owner or lessor of agricultural lands reports to the assessor under A.R.S. § 42-13102(A). Second, even if the original government leases to an assessor under § 42-13102(A), an assessor could properly reject using those lease or permit rates in its analysis of typical arm's-length rental agreements under A.R.S. § 42-13101(B)(1) for the several reasons set forth in argument subsections I.B. and C. above. Finally, it is irrelevant whether two or 200 government leases or permits were in the Assessor's possession because there is nothing in those documents to "analyze." Government rates are not determined through negotiations; they are preset by the respective governments and are available online in a fifteen-second Google search. The Assessor's "failure" to have "analyzed" and used government lease rates to determine average annual net cash rental was therefore no failure at all. [15] As noted in subsection B and C above, refusing to use such nonmarket, non

[15] Under the Cattlemen's theory of the case, the 175 leases that Mr. Lopata rejected for containing no or nominal consideration ($1, $5, or $10) should be used to determine average annual net cash rental because they were the result of arm's-length negotiations, i.e., were negotiated between unrelated parties. Such leases, however, were plainly not the result of typically motivated arms-length

arm's-length grazing rates was within the Assessor's discretion and was consistent with section 42-13101, with the Department's Manual, and with Rolston's testimony.

G. Mr. Groseta's Testimony Regarding the Use of Government Leases and Their Comparability to Private Leases Is Irrelevant and Is Controverted by Rolston's Testimony.

The Cattlemen argue that Mr. Groseta testified, without any contradiction by any other witness or evidence at trial (OB at 40), that among other things, private and government grazing leases are "very comparable" to each other and that both should thus be included in calculating an "average" cost of leasing grazing land in Yavapai County. (*Id.* at 41.) The Cattlemen also note that he testified that although the gross rental rates for private leases are nominally higher than those for government leases, because governments do not pay any of the expenses associated with grazing cattle, whereas private lessors of grazing lands do, the actual "net" rental rate for both government and private leases is "very comparable." *Id.* Groseta impliedly testified that government rates are lower than private rates because public lands are just that—public. (3/4/14 Tr. at 34, ll. 3-6.) He stated that federal and State lands, even those that have been permitted or

---

negotiations and should not be used by an assessor to determine average annual net cash rental under A.R.S. § 42-13102, as even the Cattlemen appear to admit. Thus, like government lease rates, the 175 "no rent" or "junk" leases were rejected by the Department and the Assessor for use in determining average annual net cash rental of grazing lands in Yavapai County because they plainly do not represent the true rental value or rate for the underlying grazing lands.

leased for grazing, are open to the public for hunting and other recreational purposes such as off-vehicles, dirt bikes, and so on. (*Id.* at 34, ll. 6-15.) Further, he stated that because the public can enter and use public lands, there is a lot of vandalism and degradation to the resources associated with public lands. (*Id.* at 34, ll. 20-23.) The Cattlemen argue that Groseta's testimony supports their argument that BLM and state land contract rates of $1.35 and $2.34 should be used in an assessor's analysis when determining average annual grazing rates under A.R.S. § 42-13101. (OB at 42.)

The problem with the Cattlemen's argument is that Rolston's rent study overwhelmingly contradicts Groseta's testimony. In *every* private sublease of government lands cited by Rolston, government grazing lands *always* sublease at rates far higher than the government rate. That is, even with all of the alleged infirmities associated with grazing rights on public lands, sublessee ranchers of the government lands always agree to pay a far higher rate for the government lands in an arm's-length transaction than the rate that sublessor paid to the government. As Rolston himself testified with respect to the public access and use issue, the public can continue to use and allegedly abuse public lands after the land has been subleased:

> Q. You listened to Mr. Groseta testify about all of the problems with grazing cattle on public lands. Do you recall that?

A. Yes.

Q. And I wrote some down. The public can come on the property; correct?

A. That's true.

Q. Fences can get cut, water tanks get shot. Do you remember all that?

A. Yes.

. . . .

Q. So I think the implication of that testimony was that all of these negative attributes associated with BLM and State land somehow leads to them being rented at a lower rate; correct? Do you recall that implication?

A. Yes.

Q. Okay. The fact of the matter is, is that all of these attributes are equally true when the BLM land and the State land is subleased; correct?

A. Yes.

Q. So when the State land in the example we have, lease number 11 [Rolston Private Lease YA-11], when that was sublet for $10 an AUM, all of the negative attributes about the public land, about the public being able to go on the property, hunting and all that, all of those attributes ran with that sublease; correct?

A. Yes.

(3/5/14 Tr. at 206, ll. 4-13, l. 20 – 207, l. 13.)

The Rolston Report demonstrates beyond a shadow of a doubt that the arm's-length (i.e., negotiated) lease rates for government land far exceed the original lessee's nonnegotiated contract rate with the particular government. To

the extent that the Cattlemen's arguments and Groseta's testimony are true—that government lands suffer from infirmities relative to private lands that make government lands less valuable—then that supports a case for the rental rates of private lands in the Rolston Report that contain a public land sublease to be adjusted *upwards* by an assessor when determining the value of private lands for property-tax purposes given that private lands do not suffer from any of the alleged infirmities suffered by public lands.

In that regard, given that the majority of lands in Rolston's private lease section are subleased public lands, the Rolston Report plainly sets a *floor* for lease rates of private grazing lands, and an assessor would be well within his or her authority to adjust Rolston's average annual rate upwards when determining an average annual rental rate for private grazing lands. Equally plainly, and more to the point, the Cattlemen's arguments that the federal and state contract rates of $1.35 and $2.34, respectively, somehow manifest the market values for such properties because government lands are somehow infirm lack any support in the record as evidenced by *every* private sublease in the Rolston Report that contains a public lands component, all of which sublease at rates far higher than the respective governments' rates.

II. The Court Should Enter any Award of Attorneys' Fees and Expenses to the Cattlemen Against the County.

The Cattlemen have asked the Court to reverse the trial court's ruling dismissing their claim for mandamus relief and their request for attorneys' fees under A.R.S. § 12-2030. (OB at 17-32.) The Department takes no position on that issue. However, if the Court reverses the trial court's mandamus ruling and awards the Cattlemen attorneys' fees under such statute, whether at the trial level or the appellate level, such an award should be made against the County because the Cattlemen sought and received no mandamus relief against the Department at the trial level, and because the Cattlemen are seeking and will obtain no mandamus relief against the Department from this Court.

For much the same reasons, any fee or expense award in favor of the Cattlemen by this Court under A.R.S. § 12-348(B) at the appellate level should be entered against the County. The Cattlemen sought fees and expenses in part under A.R.S. § 12-348(B) (IR 141-144), and upon objection of the Department (IR 146-148, IR 173), the parties ultimately lodged a stipulated judgment (IR 178) that the trial court entered in which the parties agreed that the fee and expense award to the Cattlemen under A.R.S. § 12-348(B) would only be against the County and not the Department. (IR 180, ¶ No. 11.)

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's rejection of the wholesale use of state and federal grazing lease rates to determine average annual net cash rental rates under A.R.S. § 42-13101.

Respectfully submitted this 23rd day of September, 2015.

Mark Brnovich
Attorney General

/s/ Jerry A. Fries
Jerry A. Fries
Assistant Attorney General

From: Brnovich, Mark
To: Bailey, Michael; Watkins, Paul
Subject: FW: Email on Behalf of Patrick C. Lynch
Date: Monday, December 21, 2015 10:16:20 AM
Attachments: 2015.12.18 - Open Letter to AGs edit.pdf
ATT00001.htm
Attachments to Open Letter to AGs.pdf
ATT00002.htm

From: Kim Campagna [mailto:kim@patricklynchgroup.com]
Sent: Friday, December 18, 2015 4:01 PM
To: Brnovich, Mark
Cc: Neumann, Valerie; Bailey, Michael
Subject: Email on Behalf of Patrick C. Lynch

Dear General,

Below please find a message from Patrick along with attachments.

Thank you.

Kimberley A. Campagna
Office Manager
Patrick Lynch Group, LLC
One Park Row, 5th Flr., Providence, Rhode Island 02903
O: 401.274.3311 | C: 401.[redacted] | F: 401.274.3326
kim@patricklynchgroup.com | www.patricklynchgroup.com

General Brnovich-

I am writing to you on behalf of my client FanDuel. As you know, the daily fantasy sports (DFS) industry, enjoyed by more than 50 million Americans, has been facing intense scrutiny from the media and regulators over the course of the last few months, including regulatory and legal action. As the debate continues to unfold, I wanted to forward to you, and through you to the appropriate staff, the documents attached below to give some context and perspective and background on the the company as well as some other documents related to the ongoing debate.

Attached below for your consideration are some documents including: (1) a letter to you and your colleagues from FanDuel CEO Nigel Eccles; (2) DFS player stories; (3) analysis of NY litigation and of the problems of applying state gambling laws; (4) an open letter to users from FanDuel CEO Eccles; (5) the Massachusetts Proposed

Regulations published by Attorney General Maura Healey; and, (6) a copy of Illinois State Bill providing for consumer protection requirements. Similar bills have been filed in Florida and elsewhere.

As CEO Eccles pledges in the attached letter to you and your colleagues, FanDuel is and always has been committed to ensuring that their contests are fair, transparent and provide great entertainment for the consumer. FanDuel firmly believes that the best path forward is to craft regulatory solutions through legislation or even voluntary agreements, that will allow the millions of users who love fantasy sports to continue to play on platforms operated by legitimate U.S. companies with a demonstrated commitment to working with regulators to ensure compliance with the requirements to address their concerns.

Please advise me if you or anyone on your staff has any questions regarding the documents attached or if I or anyone from FanDuel can assist you in your ongoing considerations of DFS. Thank you in advance for that consideration.

Happy holidays to you!
Patrick

Patrick C. Lynch
Patrick Lynch Group
O: 401.274.3311 | C: 401.[redacted] | F: 401.274.3326
patrick@patricklynchgroup.com | www.patricklynchgroup.com

The Leader In One-Day Fantasy Sports

December 17, 2015

Dear General:

As you are no doubt aware, our company and our industry have been under intense scrutiny from the media and regulators over the course of the last few months. Based on the media coverage alone, as well as the recent regulatory and legal action, we expect that many of you have questions about our company and our industry. The purpose of this letter is to introduce you to FanDuel and provide some information about the recent developments and how we are responding. We hope this letter is a helpful start. We stand ready to answer your questions and work together with you and your staff to address all the issues discussed herein.

FanDuel Company Background

First, some background on FanDuel. In 2009, our co-founders had a vision to address some of the growing user frustration with traditional fantasy sports, which had existed in more or less the same format for over 30 years. Instead of being stuck with the same team all season where a bad draft could quickly put you hopelessly behind with nothing to do but wait for the season to end, you could draft a new team every week. We thought it was a more fun way to play, and our fans agreed. Now millions of people play daily fantasy sports on any given week, with well over 5 million registered players on FanDuel alone. As the notes from FanDuel players attached to this letter demonstrate, people love playing on FanDuel and it has increased their enjoyment of sports (*See Attachment A, User Stories)*. We have always aspired to be a mass-market sports entertainment platform for true sports fans, and we are confident that our future plans to better enable social interaction among players and offer once in a lifetime experiential prizing (NBA floor seats, NFL sidelines passes, the chance to be a "General Manager for a Day," etc.) will only enhance our customers' enjoyment.

In the last three years, FanDuel, headquartered in New York City, has grown to over 400 employees, and now also has offices in California and Florida. Other companies have entered the market too, offering similar contests and creating jobs for other communities around the country. Countless others are employed producing radio and television shows, websites, news reports and analysis specifically about daily fantasy sports—all part of the daily fantasy sports ecosystem that FanDuel and its competitors support.

FanDuel's investors include leading entities in the American sports, media, and private equity landscape: Google, Comcast, NBC Sports, Time-Warner, KKR, Shamrock Capital, the NBA, and others. FanDuel has marketing partnerships with half of the NBA and NFL teams. These entities have invested in and partnered with our industry because they know that sports fans love to play fantasy sports, and fantasy sports players watch even more sports. They know that daily fantasy sports do not hurt leagues or fans—they make sports even more engaging and fun.

FanDuel has always operated transparently, offering contests only in states in which it was advised its services were lawful. We have contracted with trusted payment providers, openly promoted our contests, and paid out the prizes we've offered players in a timely fashion as promised. We have participated actively and openly in fantasy sports trade associations, working with payment processors, counsel, and others to ensure that our games are fair, and players' money is safe.

We have done all these things because we have always understood that player trust is essential – without it we have no business. At the same time, we have grown rapidly, and that pace brings with it many challenges. Like other technology start-ups, we have experienced bumps along the road, and have strived to learn from those mistakes and do better. We continue to evolve and mature as a company, working our way through long-planned initiatives aimed both at improving the product experience and increasing protections for our users.

We believe the future of fantasy sports is bright, and that our company can and should work with regulators to ensure that the millions of Americans who value this form of sports entertainment can continue to enjoy it, and do so on platforms operated by conscientious businesses committed to providing fair, reliable consumer experiences. We have already seen a number of Attorneys General and state legislators taking a leadership role in helping to define this path forward. We describe some of those efforts below, and also have included some attachments highlighting examples of recent actions taken. We know that other offices are determining how fantasy sports contests should be analyzed under their states gambling laws, and we have attached our perspective on that issue as well (*see Attachment B, Fantasy Sports: The New York State Litigation and the Problems With Applying State Gambling Laws*).

The Path Forward: Legal Clarity and Commitment to Consumer Protection

Customers rightly expect protections to ensure the fairness and integrity of our contests. As a large-scale business with millions of customers and hundreds of millions of dollars flowing though our platforms, we need our customers to be confident that all contests are conducted fairly, that we operate transparently and with integrity, and that there are systems in place to protect consumers' money and their information. For these reasons, we support legislation that establishes sensible regulation governing large operators like us.

FanDuel understands that user trust in the integrity of our product is paramount, not only to satisfy regulators but, frankly, to remain a viable business. For that reason, when questions were raised about the propriety of employees playing on competitor sites, we hired a former U.S. Attorney General and his firm to conduct a thorough review and evaluate our internal controls, standards, and practices. Going forward, we have created an Advisory Board to advise FanDuel on maintaining transparent and fair policies and internal controls. The Board will be chaired by former U.S. Attorney for the Southern District of New York Michael Garcia, and also include former Secretary of Homeland Security and Pennsylvania Governor Tom Ridge, former Major League Baseball EVP of Business Tim Brosnan, UBS Global Head of Compliance and Operational Risk Colin Bell, and Terdema Ussery, former President and CEO of the Dallas Mavericks.

We know that additional steps beyond what we can do on our own may be necessary and helpful in establishing player trust. Beyond our individual actions, we have therefore expressed our commitment to embracing strong, common sense, enforceable consumer protection requirements for the daily fantasy sports industry (*See Attachment C, Letter from Nigel Eccles)*. We are eager to be a partner in working with state Attorneys General and state legislatures to pursue the enactment of sensible regulation, and believe we can play a valuable role in ensuring that any such protections address not only consumer protection issues common to all online marketplace businesses (like age verification, anti-money laundering programs, and protection of consumer deposits) but also requirements unique to daily fantasy sports that are nevertheless critical to ensure fairness for users (like transparency about contest rules, prizing, and entry limits, how and when lineups lock, and prohibitions on employee play and the use of automated scripts).

Such efforts are underway in several states. Attorney General Healey in Massachusetts recently announced proposed regulations in her state that attach a number of strong consumer protection requirements to the lawful operation of Daily fantasy sports contests. (*See Attachment D, Massachusetts Proposed Regulations*). We commend General Healy on this approach. Although we have some concerns about specific aspects of the proposed regulations and plan to work with her office through the public comment period, we are also actively working to implement a number of the requirements.

We also understand that legislators in Florida, Illinois, and elsewhere, are prepared to introduce new bills when their sessions open in January. These bills differ by state, but share the common characteristics of providing clarity to the status of fantasy sports under state law while providing for consumer protection requirements on larger operators. (*See Attachment E, State Bills)*. In several instances, legislators have sought to work closely with their state's Attorney General in crafting proposed legislation.

The Leader In One-Day Fantasy Sports

The New York Court Decision and the place of Fantasy Sports under State Law

Despite our efforts to address consumer protection issues, some Attorneys General have questioned the underlying legality of fantasy sports under their states gambling laws. Over the years, we have sought and received legal advice that our business is lawful and consistent with applicable state and federal laws. Nonetheless, in a recent civil case brought by the New York Attorney General against FanDuel and DraftKings, the legality of fantasy sports – both the season long and daily/weekly variety – has squarely been called into question. That litigation is continuing and we look forward to demonstrating why the New York Attorney General's view of the law is incorrect. But more broadly, the litigation highlights the problems with applying state gambling laws that have been relatively unchanged for decades or even over a century to fantasy sports, be they traditional season-long or daily and weekly games. (For a more detailed discussion of the case and its import, *see Attachment B, Fantasy Sports: The New York State Litigation and the Problems With Applying State Gambling Laws*).

Given the fact that fantasy sports are enjoyed by tens of millions of Americans and are now a part of the fabric of mainstream sports culture, we believe there is value in eliminating any ambiguity that might give rise to the kind of disagreement exemplified by the New York litigation. At the federal level, Congress specifically defined fantasy sports contests as exempted from the meaning of "bet or wager" in the context of a federal criminal enforcement statute aimed at processing financial transactions for online gambling. We would like to see that same clarity at the state level for all fantasy sports, and are preparing to work with state legislatures throughout the country in 2016 to do just that.

In conclusion, we want to work with you and state legislators to ensure that our contests remain fair and transparent for consumers and continue to provide the great entertainment value that has driven our growth over the past few years. We respectfully believe that the best path forward is to craft regulatory solutions, be it through legislation or even voluntary agreements, that will allow the millions of users who love fantasy sports to continue to play – and most importantly, to do so on platforms operated by legitimate U.S. companies with a demonstrated commitment to working with regulators to ensure compliance with requirements to address their concerns.

We stand ready and willing to work with you.

Sincerely,

Nigel Eccles

CEO, FanDuel

FanDuel.com (646) 930-0950 FanDuel 19 Union Square West, 9th Floor, New York NY 10003

Attachment A

REAL PLAYER STORIES

SHAWN, GA I play fantasy sports because I'm older and can't play competitive sports like I did when I was younger. However, I still miss the competition. Also, I'm an analytical person who likes a challenge. Fantasy sports provides me with the competition I crave. I enjoy crunching numbers and analyzing statistical data, so fantasy sports is a perfect fit for me. Plus, it's so much fun.

MICHAEL, GA I enjoy playing fantasy sports simply to test my knowledge of how certain players may or may not typically play against other teams. I believe taking away this form of entertainment would be a terrible idea. I am disabled, and this gives me something to occupy my time.

LESTER, AL I have been playing only for a short time. You see, I suffer from a chronic illness that impairs my cognitive functions and keeps me indoors 95% of the time. My energy level is always low and I have chronic pain just about every day. My doctors are always trying to get me to do things that exercise my brain. We have tried all sorts of therapy for this and nothing has worked. On my last doctor visit I told one of my doctors that I was thinking about playing fantasy football. He said that's a great idea. He told me you love football and you are always talking about wishing you could go to the games like you did before you got sick. So after I got home from the doctor I joined FanDuel. It has been so much fun. Reading and studying the players has helped my cognitive function. The football games are more fun to watch now. And my outlook on life is most definitely better. You see this game is not just a game to me, its therapy, and it works. Please Don't Take It Away!!

GARY, IL Fantasy sports is a test of my skill versus other people who have similar skills. I don't feel it is a game of luck. I spend hours researching and gathering data in an attempt to beat other skilled players. This is nothing like a roll of the dice or draw of a card. The politicizing of this activity is insulting to me and I feel it should not even be discussed in such a manner. I love to compete and to me this a competition, with entry fees, just like any other competition.

CHACE, CA I play fantasy sports because it is the best test of my knowledge pertaining to football. I love to compare my picks with my friends and brag about my better picks. Playing daily/weekly fantasy also brings endless conversation between my friends and co-workers and it also makes me love the sport that much more. I used to just root for my team to win the game and not care about the rest, now I find myself rooting for teams and players I never have before. All in all daily/weekly fantasy sports is by far my favorite thing about sports.

DEMARIO, MI I play fantasy sports because I am a sports enthusiast and I love the excitement surrounding sports events. Fantasy sports allow me to be inclusive to that particular sport and be a part of a community with people who share a similar passion for sports as me. FanDuel allow participants to experience the sport as a "GM" to form a team and potentially win money as a success. I love FanDuel and hope that it will continue to exist for those who have a strong passion for fantasy sports.

MARVIN, CA I enjoy FanDuel because it gives me and my wife something we can do together. It's fun when we sit down and research players and then watch the games together and root for our players. Go FanDuel!! Happy Wife, Happy Life!

KOREY, NJ I like the statistics side of sports, I have a background in mathematics and have played sports all my life. The analytical side of the fantasy game is what draws me in. I enjoy doing some research and trying to see if I can find some sort of trend that I can apply to the daily and season long formats and have experienced moderate success which I feel indicates that I'm on to something and makes me want to keep playing. I'm just glad that there are opportunities out there to keep applying the lessons I learn. Thanks.

JACOB, MI I've always been a super sports fan. I'm married and have a young son. I'm going through a disability suit right now and fantasy sports have given me a new life. I'm pretty much stuck at home and don't get around well any more. I was becoming pretty depressed. But when I discovered fantasy sports it's given me something to look forward to doing. I get to do research on teams and players. Watching the games are more exciting when rooting for your guys to do good. Since I have been going through my health issues I no longer can play sports or do the things I once enjoyed but now with fantasy sports. I'm enjoying a new hobby and hope it's not banned anytime soon.

KYLE, IL I for one play fantasy sports for the love of competition. I've been playing for 4 years and when I first started I didn't win a lot, and when I did win I could tell it was fluky. The more and more I played the more my SKILLS improved, when I win now it's based on informed decisions and not luck. We have real problems in the world, daily fantasy sports isn't one of them!

Attachment B

Fantasy Sports: The NY State Litigation and the Problems with Applying State Gambling Laws

Since fantasy sports contests first began over 30 years ago, they have generally been accepted as contests of skills between participants who together formed "leagues" in which they managed their own fantasy "teams" in a role akin to that of real-world general managers.

Consumer research makes clear that, from the beginning, the vast majority of these leagues have been played for money, with the league members paying their entry fee or "dues" into a prize pool that is distributed to various winners under predefined rules. With the rise of the Internet in the late 1990's, fantasy sports exploded in popularity and emerged as a mainstream phenomenon. As interest grew, so did business opportunity. Among the new business ventures spawned by the growth of fantasy sports were sites offering "commissioner" products to help manage leagues; specialty businesses that collect, manage and disburse entry fees on behalf of participants for such commissioner leagues; and operators who themselves offered season-long leagues with pre-announced entry fees and prizes awarded to the winners, out of which the operators took a fee for administering the leagues. These businesses continue to flourish today, alongside the newer phenomena of daily and weekly fantasy leagues that emerged about six years ago and incorporate the same attributes of paid entry season-long contests into compressed "seasons" lasting a day or a week depending on the sport.

Sparked in part by the heavy rotation of advertisements for FanDuel and its competitors, a new debate has emerged about how fantasy contests should be evaluated under particular state laws. As that debate has found its way into court in New York, a few things have become clear:

- **All fantasy sports contests – daily, weekly, or season-long – that involve entry fees and prizes must be treated the same under existing state gambling laws.** There is simply no basis in law or fact to meaningfully distinguish among different types of fantasy sports contests where any money changes hands. They are either all permissible or they are all prohibited.

- **Before the current New York case, the courts that have looked at fantasy sports contests have found them different from gambling.** Indeed, faced with a nearly identical law to the one in New York, the District of New Jersey in *Humphrey v. Viacom* determined that "entry fees for . . . fantasy sports contests are not bets or wagers as a matter of law," stating that in the fantasy sports context it would be "patently absurd to hold that the combination of an entry fee and a prize equals gambling." The fact that there are not many cases addressing these issues reflects the longstanding recognition that contests of the kind that FanDuel offers, in which participants pit their skills against one another, simply do not implicate gambling statutes. The contests are open and transparent, they involve fixed entry fees and prizes that are pre-announced, and there is not a "House" that competes against participants and itself stands to win or lose. The effects of using vaguely worded gambling statutes to try to prohibit that kind of contest would be

far-reaching, and would call into question a range of activities from fishing tournaments to stock-market investing to insurance.

- **All fantasy sports contests are based upon a fantasy scoring system that incorporates the individual statistical performances of real-world athletes.** This "real-world" component of the fantasy contests has raised questions for some, including the New York Attorney General, who has taken the position that fantasy sports are more akin to traditional sports betting than to skill contests among participants.

- **But fantasy contests are fundamentally different from sports wagering in critical ways.** Those distinctions make clear that fantasy sports do not raise the same underlying concerns that led most states (and the federal government) to ban sports betting explicitly and which have formed the basis for the sports leagues' longstanding opposition to sports betting, even as they have embraced fantasy sports.

    - First, sports wagering (whether on a point spread, prop bet, or "pick 6" horse race) involves an actual, *real world event outcome* on which the bet or wager's success directly rides – that is, the bettor is a winner or loser based on the actual real-world outcome (who wins, the final score, etc.). By contrast, in fantasy sports contests, there is *no corresponding real world event at all.* No two fantasy team lineups will ever take a real playing field against one another. In fact, fantasy operators like FanDuel whose contests comply with the federal UIGEA carve-out expressly mandate this by contest rule. Rather, a compilation of individual statistical achievements (that are *the same* for all fantasy contest participants) are merely inputs into the distinct fantasy contest, which operates under its own separate set of rules and in which skill is measured by the acumen of choosing one's fantasy lineup. The empirical evidence showing that the skill of the fantasy player strongly influences the outcome of the fantasy contest is overwhelming.

    - Second, key features of fantasy sports eliminate the real-world game integrity concerns that have formed the basis for opposition to sports betting, especially among sports leagues. The individual athlete statistics that form the backdrop for fantasy sports contests bear little, if any, relation to the outcomes of real-world sporting events: for example, a quarterback can throw three touchdowns in a game his team loses badly, or none in a game his team wins handily. Similarly, because there are an extraordinarily high number of variables that factor into a fantasy contest – players at multiple positions, and multiple statistics used to calculate the score for each position – fantasy contests thus provide no incentive to "fix" a real world sporting event or athletic performance.

- **Given these factors that clearly separate fantasy sports contests from gambling, we believe that more litigation is not the answer to concerns about daily fantasy sports contests.** Sensible regulations or even voluntary agreements

can provide clear, strong protections for consumers while preserving the public's opportunity to enjoy the fantasy sports contests so many of us love.

Attachment C

A Letter to Users from FanDuel CEO, Nigel Eccles

Dear FanDuel Fans,

Over the last few weeks, the fantasy sports industry has received quite a bit of attention. I wanted to take a moment to communicate directly with you, our players, to update you on what we are doing to ensure you can continue to enjoy FanDuel. And, most importantly, to thank you for your ongoing support and confidence in our company.

At FanDuel, we are proud to have transformed fantasy sports and are inspired every day as we watch our young business change the way fans watch and engage with their favorite sports. In the same way that Netflix transformed television and StubHub transformed the ticket marketplace, FanDuel is transforming how fans engage in their favorite sports.

Fantasy sports will continue to evolve, and we remain focused on being the leader in that evolution by constantly seeking to deliver new and better experiences for our players. We are incredibly excited for what the future holds.

We all know fantasy sports are often a bond shared by friends, family, coworkers and others, and as I write, our team is experimenting with a number of innovative social features to further community building and help the growing number of fantasy fans from around the country connect with one another. Some of these

features also will simplify the ability to play against and challenge your friends on the site.

We recently re-launched FanDuel Insider, with a full editorial staff, providing premium content on fantasy expert advice and breaking news. Our acquisition of numberFire will add even more tools for you to research lineups and players, since we know from many of you that researching a lineup is often the most fun part of playing the game. In short, we are only at the outset of transforming what the fantasy sports experience can be.

In any disruptive fast-growing industry, important questions are often raised about how the industry should operate – fantasy sports is no different. Real questions have emerged. At FanDuel, we have always believed in taking a leadership role in protecting users and in how our industry operates.

It's why I personally drafted the Fantasy Sports Trade Association's original paid operator charter, which defines our industry's principles for protecting the integrity of the game and the fantasy experience – from segregating player funds to ensuring compliance with existing state and federal law.

It's why we asked former federal judge and United States Attorney General Michael Mukasey to evaluate our internal controls, standards and practices. He is conducting a review of all areas of our operation to identify ways we can further ensure we are protecting all players.

It's why we are forming an advisory board led by former United States Attorney for the Southern District of New York Michael Garcia, to provide on-going advice, recommendations and guidance to guarantee the integrity of our site and games.

In short, we have always been committed to protecting our players and the industry as a whole, and we will continue to be.

That said, it has become apparent to me that our industry has grown to a size where a more formal, industry-wide approach is needed. To be clear, our industry needs strong, common sense, enforceable consumer protection requirements to ensure its continued growth and success.

A number of smart, but tough proposals in various state legislatures have begun to emerge, which I believe can serve as the basis for the sensible regulation of the fantasy sports industry.

The proposals include requirements for age and location verification, segregation of user funds, protection of user information, safeguards against use of proprietary contest information and requiring third-party audits. These are steps I have always advocated for – and now is the time to memorialize them in law for FanDuel and the entire industry.

We hope to work with legislative leaders in each state to ensure you, our fans, maintain access to the fun and excitement you have come to love at FanDuel. The commissioners at the top professional sports leagues including the NFL, the NBA and MLB share support for sensible regulation of fantasy sports that protects consumers, without sacrificing their enjoyment of the game.

We know this is an important issue for many of you, evidenced by the overwhelming outpouring of support in recent weeks. In the past two weeks more than 145,000 of you signed our petition seeking to protect your right to play fantasy sports. We believe smart regulations should be in place, but some

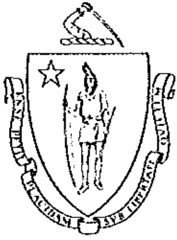
lawmakers are seeking to prohibit your right to play fantasy sports as you know it. We need to remind officials how deep and wide the support for fantasy sports is across the country. If you have not already, please sign our petition here.

Thank you again for your continued support of FanDuel and fantasy sports.

Nigel Eccles

CEO, FanDuel

Attachment D



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

940 C.M.R. 34.00: Daily Fantasy Sports Contest Operators in Massachusetts

34.01: Purpose
34.02: Scope
34.03: Definitions
34.04: Gameplay by Minors; Restrictions on Games Based on Student Sporting Events
34.05: Protection of Consumer Funds on Deposit and Compliance with Data Security Requirements
34.06: Limitation to One Account Per DFS Player
34.07: Truthful Advertising; Limitation on Advertising Content
34.08: Restrictions on Advertising to Minors or at Schools or School Sporting Events
34.09: Promotional Offers
34.10: Protections for Problem Gamers
34.11: Prohibition on Extensions of Credit
34.12: Fairness of DFS Contests
34.13 Tax Laws and Disclosures
34.14: Data Retention
34.15: Investigating and Resolving Complaints by DFS Consumers; Self-Reporting of Violations
34.16: Severability

34.01 Purpose

940 CMR 34.00 is designed to protect Massachusetts consumers who play Daily Fantasy Sports contests for prizes from unfair and deceptive acts and practices that may arise in the gaming process. The regulation is also intended to protect the families of persons who play Daily Fantasy Sports to the extent that they may be affected by unfair and deceptive practices that lead to unaffordable losses.

34.02 Scope

940 CMR 34.00 defines unfair or deceptive acts or practices that violate G.L. c. 93A, § 2(a), but is not intended to define all Daily Fantasy Sports activities that violate the statute. Daily Fantasy

Sports acts or practices not specifically proscribed in this regulation are not to be treated, by implication, as permitted under G.L. c. 93A or other applicable law. Nor shall this regulation be interpreted to limit claims available under G.L. c. 93A and other law prior to the effective date of this regulation.

940 CMR 34.00 applies to acts or practices of Daily Fantasy Sports Operators doing business in Massachusetts.

Nothing in this regulation may be interpreted as authorizing a wager, bet, or gambling activity that is prohibited by law.

34.03 Definitions

Daily Fantasy Sports or "DFS": Any contest in which the offer or award of a Prize is connected to the statistical performance or finishing position of one or more individual participants in an underlying amateur or professional competition, but does not include offering or awarding a Prize to the winner of or participants in the underlying competition itself.

Daily Fantasy Sports Operator or "DFSO": Any Enterprise that engages in the business of offering, by means of the Internet or smart phone application (or via other similar electronic or digital media or communication technologies), multiple Daily Fantasy Sports contests to persons who include residents of Massachusetts. For the purpose of this regulation, Daily Fantasy Sports Operators includes any Enterprise that offers more than 10 DFS contests by means of the Internet or smart phone application each month. However, an Enterprise is not a Daily Fantasy Sports Operator if it offers only DFS contests that meet one of the following criteria:

1. No Prize is awarded;
2. No entry fee is collected;
3. The Enterprise offering the contest receives no compensation in connection with the contest regardless of the outcome of the contest;
4. The Prize or Prizes offered are of no greater value than the lowest individual entry fee charged to a single participant for entering the contest; or
5. The contest encompasses an entire season of the activity in which the underlying competition is being conducted, consists of at least 200 underlying competitions, and the Prize or Prizes awarded are determined by agreement of the participants in order to distribute the participants' contributions to a fund established to award a Prize or Prizes for the contest.

DFS Consumer: Any individual or corporate resident of the Commonwealth of Massachusetts with an account to enter contests on a DFS Contest Platform.

DFS Contest Platform: Any website, smart phone application or other portal providing access to a DFS contest.

Enterprise: Any business organization including, without limitation, its subsidiaries and parent entities, its owners, officers, partners and employees as individuals, as well as other related entities that share common ownership, control or management.

Prize: Anything of value, including money, contest credits, merchandise, or admission to another contest.

Minors: Persons under the age of 21.

Script: A list of commands that a DFS-related computer program can execute that are created by DFS players (or by third parties for the use of DFS players) to automate processes on a DFS Contest Platform.

Beginner: Any DFS player who has entered fewer than 51 contests offered by a single DFSO.

Highly-experienced Player: Any DFS player who has 1) entered more than 1,000 contests offered by a single DFSO; or 2) entered more than 250 contests offered by a single DFSO and has prevailed in more than 65% of the total number of such contests; or 3) has won more than three DFS contest Prizes valued at $1,000 or more. Once a DFS player is classified as a Highly-experienced Player, a player will remain classified as such.

Prominently Publish: Material will be considered prominently published within the meaning of this regulation if it is placed, directly or via link, on a dashboard or similar visualization tool that is properly labeled and clearly accessible from the home page of each of a DFSO's Contest Platforms.

DFSO Contractor: Any person or corporate entity who works pursuant to an independent contract with a DFSO and who has access to non-public portions of the DFSO's office, the DFSO's computer network, or to DFSO proprietary information that may affect gameplay.

AGO: The Commonwealth of Massachusetts Office of the Attorney General.

34.04 Gameplay by Minors; Restriction on Games Based on Student Sporting Events

(1) No Gameplay by Minors: No DFSO will allow a Minor to participate in any contest, whether or not a Prize is offered in that contest.

(2) Refunds of Deposits by Minors: A DFSO will promptly refund any deposit received on a Minor's account, whether or not the Minor has engaged in or attempted to engage in gameplay, provided, however, that any refund may be offset by Prizes already awarded.

(3) No DFS Games Based on Student Sporting Events: DFSOs shall not offer DFS contests that include college, high school or student sporting events.

(4) Parental Controls: DFSOs will Prominently Publish and facilitate parental control procedures to allow parents or guardians to exclude minors from access to any DFS Contest Platform.

34.05 Protection of Consumer Funds on Deposit and Compliance With Data Security Requirements

(1) Data Security: DFSOs will comply with all applicable state and federal requirements for data security.

(2) Protections for DFS Accounts: Funds in DFS Consumer accounts will be held in trust by the DFSO for the DFS Consumer that establishes the account. DFSOs will implement and Prominently Publish procedures that:

a. prevent unauthorized withdrawals from DFS Consumer accounts by DFSOs or others;

b. prevent commingling of funds in a DFS Consumer account with other funds including, without limitation, funds of the DFSO; and

c. establish procedures for responding to and reporting on complaints by DFS Consumers that their accounts have been misallocated, compromised or otherwise mishandled.

(3) Procedures for Closing Accounts at the Request of a Customer: DFSOs will implement and Prominently Publish procedures that allow any DFS Consumer to permanently close an account at any time and for any reason. The procedures will allow for cancellation by any means including, without limitation, by a DFS Consumer on any DFS Platform used by that DFS Consumer to make deposits into a DFS account.

(4) Prompt Refunds on Closed Accounts: When a DFS Consumer account is closed, the DFSO will refund all funds in the account no later than the close of business on the next full business day.

(5) Payment of Prizes on Closed Accounts: If a Prize is awarded to a DFS Consumer with a closed account, that Prize, to the extent it consists of funds, will be distributed by the DFSO within five business days.

(6) Account Closures Due to Inactivity; Unclaimed Funds in DFS Consumer Accounts:

a. A DFSO will close any DFS Consumer account that is inactive for two years and notify the account holder that the account has been closed by email and by mail to the account holder's last known address.

b. When a DFS Consumer account is closed due to inactivity, the DFSO will refund all funds in the DFS Consumer account within thirty days.

c. In the event that funds in a closed DFS Consumer account cannot be refunded and remain unclaimed, the DFSO will provide annual notice of the existence of funds to the DFS Consumer no less often then semi-annually for three years. Such notice will be provided by email and by mail to the account holder's last known address and will provide a process for claiming the funds.

d. In the event that funds in a closed DFS Consumer Account cannot be refunded and remain unclaimed by the DFS Consumer after three years, such funds will be paid by the DFSO to the Commonwealth of Massachusetts Unclaimed Property Fund in the Office of the State Treasurer unless the DFS Consumer has established a last-known address in another state.

(7) Publication of Terms, Conditions and Rules: A DFSO will Prominently Publish all contractual terms and conditions and rules of general applicability that affect a DFS Consumer's Account. Presentation of such terms, conditions and rules at the time of on-boarding a new DFS Consumer will not suffice.

34.06 Limitation to One Account Per DFS Player

(1) One Account Per Player: DFSOs will not allow a DFS player to establish more than one username or more than one account.

(2) Identification of Players by DFSOs: DFSOs will take commercially and technologically reasonable measures to verify DFS players' true identities and addresses to the greatest extent possible and will use such information, at a minimum, to enforce subsection 34.06(1).

(3) No Proxy Servers: DFSOs will not allow any DFS player to use a proxy server to enter any DFS Contest Platform.

(4) Termination of Players that Establish More than One Account: DFSOs will implement procedures designed to terminate all accounts of any DFS player that establishes or seeks to establish more than one username or more than one account, whether directly or by use of another person as proxy.

(5) Simultaneous Log-ins: DFSOs will not allow simultaneous log-ins on a single account.

34.07 Truthful Advertising; Limitations on Advertising Content

(1) Compliance with Existing Advertising Regulations: DFSOs will comply with the following regulations promulgated by the Attorney General to the extent they concern advertising and apply to the DFS business model: 940 CMR §§ 3.00 (General) and 6.00 (Retail Advertising).

(2) No Depiction of Minors: DFSO advertisements will not depict Minors, students or school or college settings.

(3) No Endorsement by Minors, College Athletes, Colleges, or College Athletic Associations: DFSO advertisements will not state or imply endorsement by Minors, collegiate athletes, colleges or college athletic associations.

(4) Advertisements to Include Information to Assist Problem Gamers: DFSO advertisements in published media (*e.g.*, print, television, Internet and smartphone applications) will include information concerning assistance available to problem gamblers or will direct consumers to a reputable source for such information.

(5) Limitation on Representations About Winnings: Any representation concerning winnings shall be accurate, not misleading, and capable of substantiation at the time the representation is made. DFSO advertisements may make no representations about average winnings that do not equally prominently represent the average net winnings of all players.

34.08 Restrictions on Advertising to Minors or at Schools or School Sporting Events

(1) No Advertisements Targeted to Minors: DFSOs will not advertise in publications or other media that are aimed exclusively or primarily at Minors.

(2) No Promotional Activities at Schools or Colleges: DFSOs will not advertise or run promotional activities at schools or on college campuses.

(3) No Advertising at Amateur or Student Sporting Venues: DFSOs will not advertise or run promotional activities at amateur, school or college sporting events unless such sporting event is conducted in a venue that is not primarily used for amateur, school or college events.

(4) Limitations on Advertising at Amateur or Student Sporting Events Held in Other Venues: At an amateur, school or college sporting event conducted in a venue that is not primarily used for such events, DFSOs will neither conduct promotional activities nor run electronic advertisements by means, for example, of the game scoreboard or advertising tickers. Nor will it place an advertisement in any format other than those that are typically present at that venue for all events.

34.09 Promotional Offers

(1) Compliance with Existing Law On Promotional Offers: A DFSO's promotional offers will comply with 940 CMR § 3.13(3) and § 6.08 with the exception of 6.08(3)(b)-(c), (5)(b)-(c) & (6).

(2) Predisclosure of Terms of Promotional Offers: DFSOs will fully and accurately disclose the terms of all promotional offers at the time such offers are advertised and provide full disclosures of limitations on the offer before the DFS Consumer provides anything of value in exchange for the offer. If a promotional offer cannot be fully and accurately disclosed within the constraints of a particular advertising medium (*e.g.*, on a billboard), the promotional offer may not be advertised in that medium.

(3) Limitation of Delay of Implementation of Promotional Offers Available to New Customers: No promotional offer available to new DFS Consumers may contain terms that delay its full implementation by the DFSO for a period of longer than 90 days, regardless of the amount of gameplay in that period by the DFS Consumer.

34.10 Protections for Problem Gamers

(1) Self-Exclusion: DFSOs will honor requests from DFS Consumers to self-exclude from all contests on any DFS Contest Platform or to set self-imposed deposit limits or to set self-imposed loss limits. DFSOs will implement and Prominently Publish procedures for DFS Consumers do so. Such procedures must include, at a minimum, opportunities to self-exclude or to set deposit limits on any DFS Platform used by that DFS Consumer to make deposits into a DFS account.

(2) Self-Limitation: DFSOs will provide options to DFS Consumers that allow them to limit the number of contests they enter per week, and/or that they only be allowed to play in contests with contest fees below a limit that they establish. DFSOs will implement and Prominently Publish procedures for DFS Consumers to do so. Such procedures must include, at a minimum, opportunities to set contest limits on any DFS Platform used by that DFS Consumer to make deposits into a DFS account.

(3) Restriction On Direct Marketing to Excluded DFS Consumers: DFSOs will not market a contest to DFS Consumers by phone, email or in any form of individually targeted advertisement or marketing material if the player is self-excluded or otherwise barred from playing in that contest.

(4) Publication of Sources of Assistance to Problem Gamers: DFSOs will Prominently Publish a description of opportunities for problem gamers to receive assistance or which direct DFS Consumers to a reputable source, accessible in Massachusetts, for such information.

(5) Requests for Exclusion Made by Third Parties: DFSOs will develop and Prominently Publish procedures for honoring requests of third parties to exclude DFS Consumers (or to set deposit or loss limits).

a. These procedures will include provisions for honoring requests to exclude DFS Consumers for whom the requestor can provide documentary evidence of sole or joint financial responsibility for the source of any funds deposited with a DFSO for gameplay, including

i. proof that the requestor is jointly obligated on the credit or debit card associated with the DFS Consumer's account;

ii. proof of legal dependency of the DFS Consumer on the requestor under state or federal law; and

iii. other situations in which the requestor may be legally obligated for the debts of the person for whom exclusion is requested.

b. The procedures established under this subsection will also provide for exclusion in situations in which the requestor can establish the existence of a court order requiring the DFS Consumer to pay unmet child support obligations.

(6) Limitations on Consumer Deposits: DFS Consumer deposits will be limited to no more than $1,000 in any calendar month; provided however that a DFSO may establish and Prominently Publish procedures for temporarily or permanently increasing a DFS Consumer's deposit limit, at the request of the DFS Consumer, above $1,000 per calendar month.

a. If established by a DFSO, such procedures will include evaluation of information, including income or asset information, sufficient to establish that the DFS Consumer can afford losses that might result from gameplay at the deposit limit level requested.

b. When a temporary or permanent deposit level limit increase is approved, the DFSO's procedures will provide for annual evaluation of a player's financial ability to afford losses.

34.11 Prohibition on Extensions of Credit

DFSOs shall not issue credit to DFS Consumers.

34.12 Fairness of DFS Contests

(1) No Game Play by Employees and Others Affiliated with a DFSO: No DFSO employee, DFSO principal, DFSO officer, DFSO director, or DFSO Contractor may play on any DFS Contest Platform of any DFSO. Nor may such person play through another person as a proxy. However, such individuals may play in a private contest on a DFS Contest Platform in which the individual's relevant affiliation with a DFSO is fully disclosed to each player. DFSOs will make these restrictions known to all affected individuals and corporate entities.

(2) No Disclosure of Proprietary Information: No DFSO employee, DFSO principal, DFSO officer, DFSO director, or DFSO Contractor may disclose proprietary or non-public information that may affect DFS gameplay to any person permitted to engage in DFS gameplay. DFSOs will make these restrictions known to all affected individuals and corporate entities.

(3) No Gameplay by Athletes and Others Connected with DFS Contest Outcomes: No DFSO will allow a professional or amateur athlete whose individual statistics or performance may be used to determine any part of the outcome of any DFS contest, or a sports agent, team employee, referee or a league official associated with any competition which is the subject of DFS contests, to enter DFS contests in the sport in which they participate. Nor may such athlete, sports agent, team official, team representative, referee or league official play through another person as a proxy.

a. DFSOs will make commercially reasonable efforts to obtain lists of such persons for the purpose of implementing this provision.

b. DFSOs, upon learning of a violation of this rule, will bar the individual committing the violation from playing in any DFS contest by suspending such individual's account and banning such individual from further play, will terminate any existing promotional agreements with such individual and will refuse to make any new promotional agreements that compensate such individual.

c. DFSOs will make these restrictions known to all affected individuals and corporate entities.

(4) Restriction on Sharing Non-Public Information that May Affect DFS Gameplay: No DFSO will knowingly permit an athlete, sports agent, team employee, referee or league official to provide proprietary or non-public information to any DFS player, or to provide such information to a DFS player before such information is made public.

a. DFSOs, upon learning of a violation of this rule, will bar the individual(s) committing the violation as well as the person(s) receiving such information from playing in any DFS contest by suspending the affected account(s) and banning such individual(s) from further play. The DFSO will also terminate any existing individual promotional agreements with any athlete, sports agent, team employee,

referee or league official that violates this rule and will refuse to make any new individual promotional agreements that compensate such individual.

b. DFSOs will make these restrictions known to all affected individuals and corporate entities.

(5) Beginner Games: All DFSOs will develop games that are limited to Beginners and will keep non-Beginner players from participating in those games either directly or through another person as a proxy. A DFSO will suspend the account of any non-Beginner DFS player that attempts to enter a Beginner game directly or through another person as a proxy and will ban such individual from further play.

(6) Games that Exclude Highly-Experienced Players: All DFSOs will develop games in which Highly-experienced Players cannot participate either directly or through another person as a proxy. A DFSO will suspend the account of any Highly-Experienced Player who attempts to enter a game that excludes Highly-Experienced Players directly or through another person as a proxy and will ban such individual from further play.

(7) On-boarding Procedures for New Players: On-boarding procedures for new players will explain opportunities to learn about contest play, to identify Highly-experienced Players, and will recommend beginner contests and low-cost private contests with friends for their value as a learning experience.

(8) Prohibition of Scripts: No Scripts will be allowed. Existing scripts will be removed. A DFSO will bar any individual or corporation found to be using an unauthorized Script from playing in any DFS contest by terminating such individual or corporate account and by banning that individual or corporation from DFS Contest Platforms.

(9) Rules on When DFS Contests Lock:

a. As of the time a DFS contest locks, no further entries or substitution of participants will be accepted in connection with that contest. Nor will participants be allowed to make further alterations or substitutions in connection with their entry or entries.

b. DFSOs will have Prominently Published rules that govern when each DFS contest will lock. Each DFSO contest will also prominently disclose contest-specific information about the time that contest locks in connection with each contest offered.

c. A DFSO will strictly enforce all disclosed lock times.

(10) Identification of Highly Experienced Players: DFSOs will identify Highly-experienced Players by a symbol attached to their username, or by other easily visible means, on all DFSO Contest Platforms.

(11) Restrictions on Number of Entries by Contest:

a. DFSOs will not allow DFS players to submit more than one entry in any DFS contest involving 12 entries or less.

b. DFSOs will not allow DFS players to submit more than two entries in any DFS contest involving 13-36 entries.

c. DFSOs will not allow DFS players to submit more than three entries in any DFS contest involving 37-100 entries.

d. DFSOs will not allow DFS players to submit more than 3% of all entries in any contest involving more than 100 entries.

e. For all advertised DFS contests, the DFSO will prominently include information about the maximum number of entries that may be submitted for that contest.

34.13 Tax Laws and Disclosures

(1) Obligation to Comply with Applicable Tax Laws Including Disclosures: DFSOs will comply with all applicable tax laws and regulations including, without limitation, laws and regulations applicable to tax withholding and laws and regulations applicable to providing information about winnings and withholdings to taxing authorities and to DFS Consumers.

(2) Disclosure of Potential Tax Liabilities: DFSOs will disclose potential tax liabilities to DFS Consumers in the on-boarding process and again at the time of award of any prize in excess of $600. Such disclosures will include a warning that the obligation to pay applicable taxes on winnings is the responsibility of the DFS Consumer and that failure to pay applicable tax liabilities may result in civil penalties or criminal liability.

34.14 Data Retention

(1) Consumer Account Information: DFSOs will retain information sufficient to trace the deposits into and out of a DFS Consumer's account for at least ten years from the date of deposit or withdrawal.

(2) Prize Information: DFSOs will retain data about the winner(s) of each DFS contest and the amount of any Prizes awarded to the winner(s) for at least ten years from the date of the DFS contest.

(3) Advertising: DFSOs will retain copies of all advertisements for at least four years from the date of the last use of that advertisement and will retain records sufficient to identify

where such advertisements were placed. To the extent that an advertisement cannot be maintained in its original form (*e.g.*, billboards), the advertising copy will be retained.

34.15 Investigating and Resolving Complaints by DFS Consumers; Self-Reporting of Violations

(1) Consumer Complaint Procedures:

a. DFSOs will develop and Prominently Publish procedures by which a DFS Consumer may file a complaint, by internet chat, in writing or by other means, with the DFSO about any aspect of DFS operation.

b. DFSOs will respond to such complaints in writing within seven days. If the relief requested in the complaint will not be granted, the response to the complaint will state the reasons with specificity.

c. If the response to a complaint is that more information is needed, the form and nature of the necessary information will be specifically stated. When additional information is received, further response will be required within seven days.

d. All complaints received by a DFSO from a DFS Consumer and the DFSO's responses to complaints will be retained for at least four years and made available to the AGO within seven days of any request by the AGO.

34.16 Severability

If any provision of 940 CMR 34.00 or the application of such provision to any person, entity or circumstances is held to be invalid, the validity of the remainder of 940 CMR 34.00 and the applicability of such provision to other persons, entities or circumstances shall not be affected.

Attachment E

LRB099 15007 AMC 39247 b

99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

INTRODUCED ________________, BY

SYNOPSIS AS INTRODUCED:

New Act
720 ILCS 5/28-1 from Ch. 38, par. 28-1

Creates the Fantasy Contests Act. Establishes certain requirements for policies and procedures for the operation of fantasy contests. Provides that any person, firm, corporation, association, agent, or employee who violates any provision of the Act shall be liable for a civil penalty of not more than $1,000 for each violation, which may be recovered in a civil action brought by the Attorney General. Amends the Gambling Article of the Criminal Code of 2012. Provides that participants in fantasy contests as defined under the Fantasy Contests Act shall not be convicted of gambling. Effective immediately.

LRB099 15007 AMC 39247 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning fantasy contests.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Fantasy Contests Act.

6 Section 5. Definitions. As used in this Act:
7 "Confidential information" means information related to
8 the play of a fantasy contest by fantasy contest players
9 obtained as a result of or by virtue of a person's employment.
10 "Fantasy contest" means any fantasy or simulated game or
11 contest in which:
12 (1) winning participants are eligible to receive cash
13 or anything else of value;
14 (2) the value of all prizes and awards offered to
15 winning participants are established and made known to the
16 participants in advance of the contest;
17 (3) all winning outcomes reflect the relative
18 knowledge and skill of the participants and shall be
19 determined predominantly by accumulated statistical
20 results of the performance of individuals, including
21 athletes in the case of sports events; and
22 (4) no winning outcome is based on the score, point
23 spread, or any performance or performances of any single

1 actual team or combination of such teams or solely on any
2 single performance of an individual athlete or player in
3 any single actual event.
4 "Fantasy contest operator" means a person or entity that
5 offers a fantasy contest for a cash or cash equivalent prize to
6 members of the public.
7 "Fantasy contest player" means a person who participates in
8 a fantasy contest offered by a fantasy contest operator.

9 Section 10. Policies and procedures. A fantasy contest
10 operator offering fantasy contests in this State shall
11 implement policies and procedures that are intended to:
12 (1) prevent employees of the fantasy contest operator
13 from competing in any fantasy contest offered by a fantasy
14 contest operator;
15 (2) prevent sharing of confidential information that
16 could affect fantasy contest play with third parties until
17 the information is made publicly available;
18 (3) have a mechanism in place that is designed to
19 verify that a fantasy contest player is 18 years of age or
20 older;
21 (4) ensure that individuals who participate in a game
22 or contest that is the subject of a fantasy contest are
23 restricted from entering a fantasy contest that is
24 determined, in whole or in part, on the accumulated
25 statistical results of a team of individuals in the game or

1 contest in which they are a player;

2 (5) allow individuals to restrict themselves from
3 entering a fantasy contest upon request and take reasonable
4 steps to prevent those individuals from entering the
5 operator's fantasy contests;

6 (6) post the number of entries a single fantasy contest
7 player may submit to each fantasy contest and take
8 reasonable steps to prevent players from submitting more
9 than the allowable number;

10 (7) check for tax liens and child support obligations
11 of greater than $10,000 prior to paying a cash prize to a
12 fantasy contest player of greater than $5,000;

13 (8) segregate player funds from operational funds and
14 maintain a reserve in the form of cash, cash equivalents,
15 an irrevocable letter of credit, or a bond, or a
16 combination of any of these types, in the amount of the
17 deposits in player accounts for the benefit and protection
18 of authorized fantasy contest players' funds held in
19 fantasy contest accounts;

20 (9) annually contract with a third party to perform an
21 independent audit, consistent with the standards
22 established by the Public Company Accounting Oversight
23 Board, to ensure compliance with all of the requirements in
24 this Act; and

25 (10) submit the results of the independent audit to the
26 Office of the Attorney General.

1 Section 15. Penalties. Any person, firm, corporation,
2 association, agent, or employee who violates any provision of
3 this Act shall be liable for a civil penalty of not more than
4 $1,000 for each such violation, which shall accrue to the State
5 and may be recovered in a civil action brought by the Attorney
6 General.

7 Section 90. The Criminal Code of 2012 is amended by
8 changing Section 28-1 as follows:

9 (720 ILCS 5/28-1) (from Ch. 38, par. 28-1)
10 (Text of Section before amendment by P.A. 99-149)
11 Sec. 28-1. Gambling.
12 (a) A person commits gambling when he or she:
13 (1) knowingly plays a game of chance or skill for money
14 or other thing of value, unless excepted in subsection (b)
15 of this Section;
16 (2) knowingly makes a wager upon the result of any
17 game, contest, or any political nomination, appointment or
18 election;
19 (3) knowingly operates, keeps, owns, uses, purchases,
20 exhibits, rents, sells, bargains for the sale or lease of,
21 manufactures or distributes any gambling device;
22 (4) contracts to have or give himself or herself or
23 another the option to buy or sell, or contracts to buy or

1 sell, at a future time, any grain or other commodity
2 whatsoever, or any stock or security of any company, where
3 it is at the time of making such contract intended by both
4 parties thereto that the contract to buy or sell, or the
5 option, whenever exercised, or the contract resulting
6 therefrom, shall be settled, not by the receipt or delivery
7 of such property, but by the payment only of differences in
8 prices thereof; however, the issuance, purchase, sale,
9 exercise, endorsement or guarantee, by or through a person
10 registered with the Secretary of State pursuant to Section
11 8 of the Illinois Securities Law of 1953, or by or through
12 a person exempt from such registration under said Section
13 8, of a put, call, or other option to buy or sell
14 securities which have been registered with the Secretary of
15 State or which are exempt from such registration under
16 Section 3 of the Illinois Securities Law of 1953 is not
17 gambling within the meaning of this paragraph (4);
18 (5) knowingly owns or possesses any book, instrument or
19 apparatus by means of which bets or wagers have been, or
20 are, recorded or registered, or knowingly possesses any
21 money which he has received in the course of a bet or
22 wager;
23 (6) knowingly sells pools upon the result of any game
24 or contest of skill or chance, political nomination,
25 appointment or election;
26 (7) knowingly sets up or promotes any lottery or sells,

1 offers to sell or transfers any ticket or share for any
2 lottery;
3 (8) knowingly sets up or promotes any policy game or
4 sells, offers to sell or knowingly possesses or transfers
5 any policy ticket, slip, record, document or other similar
6 device;
7 (9) knowingly drafts, prints or publishes any lottery
8 ticket or share, or any policy ticket, slip, record,
9 document or similar device, except for such activity
10 related to lotteries, bingo games and raffles authorized by
11 and conducted in accordance with the laws of Illinois or
12 any other state or foreign government;
13 (10) knowingly advertises any lottery or policy game,
14 except for such activity related to lotteries, bingo games
15 and raffles authorized by and conducted in accordance with
16 the laws of Illinois or any other state;
17 (11) knowingly transmits information as to wagers,
18 betting odds, or changes in betting odds by telephone,
19 telegraph, radio, semaphore or similar means; or knowingly
20 installs or maintains equipment for the transmission or
21 receipt of such information; except that nothing in this
22 subdivision (11) prohibits transmission or receipt of such
23 information for use in news reporting of sporting events or
24 contests; or
25 (12) knowingly establishes, maintains, or operates an
26 Internet site that permits a person to play a game of

1 chance or skill for money or other thing of value by means
2 of the Internet or to make a wager upon the result of any
3 game, contest, political nomination, appointment, or
4 election by means of the Internet. This item (12) does not
5 apply to activities referenced in items (6) and (6.1) of
6 subsection (b) of this Section.
7 (b) Participants in any of the following activities shall
8 not be convicted of gambling:
9 (1) Agreements to compensate for loss caused by the
10 happening of chance including without limitation contracts
11 of indemnity or guaranty and life or health or accident
12 insurance.
13 (2) Offers of prizes, award or compensation to the
14 actual contestants in any bona fide contest for the
15 determination of skill, speed, strength or endurance or to
16 the owners of animals or vehicles entered in such contest.
17 (3) Pari-mutuel betting as authorized by the law of
18 this State.
19 (4) Manufacture of gambling devices, including the
20 acquisition of essential parts therefor and the assembly
21 thereof, for transportation in interstate or foreign
22 commerce to any place outside this State when such
23 transportation is not prohibited by any applicable Federal
24 law; or the manufacture, distribution, or possession of
25 video gaming terminals, as defined in the Video Gaming Act,
26 by manufacturers, distributors, and terminal operators

1 licensed to do so under the Video Gaming Act.
2 (5) The game commonly known as "bingo", when conducted
3 in accordance with the Bingo License and Tax Act.
4 (6) Lotteries when conducted by the State of Illinois
5 in accordance with the Illinois Lottery Law. This exemption
6 includes any activity conducted by the Department of
7 Revenue to sell lottery tickets pursuant to the provisions
8 of the Illinois Lottery Law and its rules.
9 (6.1) The purchase of lottery tickets through the
10 Internet for a lottery conducted by the State of Illinois
11 under the program established in Section 7.12 of the
12 Illinois Lottery Law.
13 (7) Possession of an antique slot machine that is
14 neither used nor intended to be used in the operation or
15 promotion of any unlawful gambling activity or enterprise.
16 For the purpose of this subparagraph (b)(7), an antique
17 slot machine is one manufactured 25 years ago or earlier.
18 (8) Raffles and poker runs when conducted in accordance
19 with the Raffles and Poker Runs Act.
20 (9) Charitable games when conducted in accordance with
21 the Charitable Games Act.
22 (10) Pull tabs and jar games when conducted under the
23 Illinois Pull Tabs and Jar Games Act.
24 (11) Gambling games conducted on riverboats when
25 authorized by the Riverboat Gambling Act.
26 (12) Video gaming terminal games at a licensed

establishment, licensed truck stop establishment, licensed fraternal establishment, or licensed veterans establishment when conducted in accordance with the Video Gaming Act.

(13) Games of skill or chance where money or other things of value can be won but no payment or purchase is required to participate.

(15) Fantasy contests as defined under the Fantasy Contests Act.

(c) Sentence.

Gambling is a Class A misdemeanor. A second or subsequent conviction under subsections (a)(3) through (a)(12), is a Class 4 felony.

(d) Circumstantial evidence.

In prosecutions under this Section circumstantial evidence shall have the same validity and weight as in any criminal prosecution.

(Source: P.A. 97-1108, eff. 1-1-13; 98-644, eff. 6-10-14.)

(Text of Section after amendment by P.A. 99-149)

Sec. 28-1. Gambling.

(a) A person commits gambling when he or she:

(1) knowingly plays a game of chance or skill for money or other thing of value, unless excepted in subsection (b) of this Section;

(2) knowingly makes a wager upon the result of any

1 game, contest, or any political nomination, appointment or
2 election;
3 (3) knowingly operates, keeps, owns, uses, purchases,
4 exhibits, rents, sells, bargains for the sale or lease of,
5 manufactures or distributes any gambling device;
6 (4) contracts to have or give himself or herself or
7 another the option to buy or sell, or contracts to buy or
8 sell, at a future time, any grain or other commodity
9 whatsoever, or any stock or security of any company, where
10 it is at the time of making such contract intended by both
11 parties thereto that the contract to buy or sell, or the
12 option, whenever exercised, or the contract resulting
13 therefrom, shall be settled, not by the receipt or delivery
14 of such property, but by the payment only of differences in
15 prices thereof; however, the issuance, purchase, sale,
16 exercise, endorsement or guarantee, by or through a person
17 registered with the Secretary of State pursuant to Section
18 8 of the Illinois Securities Law of 1953, or by or through
19 a person exempt from such registration under said Section
20 8, of a put, call, or other option to buy or sell
21 securities which have been registered with the Secretary of
22 State or which are exempt from such registration under
23 Section 3 of the Illinois Securities Law of 1953 is not
24 gambling within the meaning of this paragraph (4);
25 (5) knowingly owns or possesses any book, instrument or
26 apparatus by means of which bets or wagers have been, or

1 are, recorded or registered, or knowingly possesses any
2 money which he has received in the course of a bet or
3 wager;

4 (6) knowingly sells pools upon the result of any game
5 or contest of skill or chance, political nomination,
6 appointment or election;

7 (7) knowingly sets up or promotes any lottery or sells,
8 offers to sell or transfers any ticket or share for any
9 lottery;

10 (8) knowingly sets up or promotes any policy game or
11 sells, offers to sell or knowingly possesses or transfers
12 any policy ticket, slip, record, document or other similar
13 device;

14 (9) knowingly drafts, prints or publishes any lottery
15 ticket or share, or any policy ticket, slip, record,
16 document or similar device, except for such activity
17 related to lotteries, bingo games and raffles authorized by
18 and conducted in accordance with the laws of Illinois or
19 any other state or foreign government;

20 (10) knowingly advertises any lottery or policy game,
21 except for such activity related to lotteries, bingo games
22 and raffles authorized by and conducted in accordance with
23 the laws of Illinois or any other state;

24 (11) knowingly transmits information as to wagers,
25 betting odds, or changes in betting odds by telephone,
26 telegraph, radio, semaphore or similar means; or knowingly

1 installs or maintains equipment for the transmission or
2 receipt of such information; except that nothing in this
3 subdivision (11) prohibits transmission or receipt of such
4 information for use in news reporting of sporting events or
5 contests; or
6 (12) knowingly establishes, maintains, or operates an
7 Internet site that permits a person to play a game of
8 chance or skill for money or other thing of value by means
9 of the Internet or to make a wager upon the result of any
10 game, contest, political nomination, appointment, or
11 election by means of the Internet. This item (12) does not
12 apply to activities referenced in items (6) and (6.1) of
13 subsection (b) of this Section.
14 (b) Participants in any of the following activities shall
15 not be convicted of gambling:
16 (1) Agreements to compensate for loss caused by the
17 happening of chance including without limitation contracts
18 of indemnity or guaranty and life or health or accident
19 insurance.
20 (2) Offers of prizes, award or compensation to the
21 actual contestants in any bona fide contest for the
22 determination of skill, speed, strength or endurance or to
23 the owners of animals or vehicles entered in such contest.
24 (3) Pari-mutuel betting as authorized by the law of
25 this State.
26 (4) Manufacture of gambling devices, including the

1 acquisition of essential parts therefor and the assembly
2 thereof, for transportation in interstate or foreign
3 commerce to any place outside this State when such
4 transportation is not prohibited by any applicable Federal
5 law; or the manufacture, distribution, or possession of
6 video gaming terminals, as defined in the Video Gaming Act,
7 by manufacturers, distributors, and terminal operators
8 licensed to do so under the Video Gaming Act.
9 (5) The game commonly known as "bingo", when conducted
10 in accordance with the Bingo License and Tax Act.
11 (6) Lotteries when conducted by the State of Illinois
12 in accordance with the Illinois Lottery Law. This exemption
13 includes any activity conducted by the Department of
14 Revenue to sell lottery tickets pursuant to the provisions
15 of the Illinois Lottery Law and its rules.
16 (6.1) The purchase of lottery tickets through the
17 Internet for a lottery conducted by the State of Illinois
18 under the program established in Section 7.12 of the
19 Illinois Lottery Law.
20 (7) Possession of an antique slot machine that is
21 neither used nor intended to be used in the operation or
22 promotion of any unlawful gambling activity or enterprise.
23 For the purpose of this subparagraph (b)(7), an antique
24 slot machine is one manufactured 25 years ago or earlier.
25 (8) Raffles and poker runs when conducted in accordance
26 with the Raffles and Poker Runs Act.

1 (9) Charitable games when conducted in accordance with
2 the Charitable Games Act.
3 (10) Pull tabs and jar games when conducted under the
4 Illinois Pull Tabs and Jar Games Act.
5 (11) Gambling games conducted on riverboats when
6 authorized by the Riverboat Gambling Act.
7 (12) Video gaming terminal games at a licensed
8 establishment, licensed truck stop establishment, licensed
9 fraternal establishment, or licensed veterans
10 establishment when conducted in accordance with the Video
11 Gaming Act.
12 (13) Games of skill or chance where money or other
13 things of value can be won but no payment or purchase is
14 required to participate.
15 (14) Savings promotion raffles authorized under
16 Section 5g of the Illinois Banking Act, Section 7008 of the
17 Savings Bank Act, Section 42.7 of the Illinois Credit Union
18 Act, Section 5136B of the National Bank Act (12 U.S.C.
19 25a), or Section 4 of the Home Owners' Loan Act (12 U.S.C.
20 1463).
21 (15) Fantasy contests as defined under the Fantasy
22 Contests Act.
23 (c) Sentence.
24 Gambling is a Class A misdemeanor. A second or subsequent
25 conviction under subsections (a)(3) through (a)(12), is a Class
26 4 felony.

1 (d) Circumstantial evidence.

2 In prosecutions under this Section circumstantial evidence
3 shall have the same validity and weight as in any criminal
4 prosecution.
5 (Source: P.A. 98-644, eff. 6-10-14; 99-149, eff. 1-1-16.)

6 Section 95. No acceleration or delay. Where this Act makes
7 changes in a statute that is represented in this Act by text
8 that is not yet or no longer in effect (for example, a Section
9 represented by multiple versions), the use of that text does
10 not accelerate or delay the taking effect of (i) the changes
11 made by this Act or (ii) provisions derived from any other
12 Public Act.

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.

By Senator Negron

32-00936-16 2016832__

1 A bill to be entitled
2 An act relating to fantasy games; creating ch. 547,
3 F.S., entitled "Fantasy Games"; creating s. 547.01,
4 F.S.; defining terms; creating s. 547.02, F.S.;
5 requiring certain game operators to register with the
6 Department of Agriculture and Consumer Services and to
7 pay related fees; requiring a game operator to
8 implement certain procedures; requiring a game
9 operator to prevent certain persons from competing in
10 a fantasy game; preventing certain information from
11 being shared with third parties; requiring a game
12 operator to verify the age of a game participant;
13 restricting certain persons from participating in a
14 fantasy game; requiring a game operator to allow
15 individuals to restrict or prevent their own access to
16 fantasy games; requiring that certain information be
17 disclosed to game participants; requiring the
18 segregation of certain funds by a game operator;
19 requiring a game operator to annually contract with a
20 third party to perform an independent audit; requiring
21 a game operator to submit the audit results to the
22 department; creating s. 547.03, F.S.; providing a
23 civil penalty; creating s. 547.04, F.S.; exempting
24 fantasy games from regulation under ch. 849, F.S.;
25 providing an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28
29 Section 1. Chapter 547, Florida Statutes, entitled

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 "Fantasy Games," is created.
31 Section 2. Section 547.01, Florida Statutes, is created to
32 read:
33 547.01 Definitions.—As used in this chapter, the term:
34 (1) "Confidential information" means information related to
35 the playing of fantasy games by game participants which is
36 obtained solely as a result of a person's employment with or
37 work as an agent for a game operator.
38 (2) "Department" means the Department of Agriculture and
39 Consumer Services.
40 (3) "Fantasy game" means a fantasy or simulation sports
41 game or educational game or contest that meets the following
42 conditions:
43 (a) The value of all prizes and awards offered to winning
44 game participants is established and made known to the game
45 participants in advance of the fantasy game.
46 (b) All winning outcomes reflect the relative knowledge and
47 skill of game participants and are determined predominantly by
48 accumulated statistical results of the performance of
49 individuals, including athletes in the case of sporting events.
50 (c) A winning outcome is not based on the score, point
51 spread, or performance of a single team or combination of such
52 teams or on any single performance of an individual athlete or
53 player in a single event.
54 (4) "Game operator" means a person or an entity that offers
55 fantasy games for a cash prize to more than 750 members of the
56 public.
57 (5) "Game participant" means a person who participates in a
58 fantasy game offered by a game operator.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

59 Section 3. Section 547.02, Florida Statutes, is created to
60 read:
61 547.02 Consumer protection.—
62 (1) A game operator offering fantasy games in this state
63 must register with the department. The initial registration fee
64 is $500,000 and the annual renewal fee is $100,000.
65 (2) A game operator offering fantasy games in this state
66 must implement procedures that are intended to:
67 (a) Prevent employees or relatives living in the same
68 household as any game operator from competing in a fantasy game
69 in which the game cash prize is over $5.
70 (b) Prohibit the game operator from being a game
71 participant in a fantasy game that he or she offers.
72 (c) Prevent the employees or agents of the game operator
73 from sharing confidential information that could affect fantasy
74 game play with third parties until the information is made
75 publicly available.
76 (d) Verify that a game participant is 18 years of age or
77 older.
78 (e) Restrict an individual who is a player, game official,
79 or other participant in a real-world game or competition from
80 participating in a fantasy game that is determined in whole or
81 in part on the performance of that individual, the individual's
82 real-world team, or the accumulated statistical results of the
83 sport or competition in which he or she is a player, game
84 official, or other participant.
85 (f) Allow individuals to restrict or prevent their own
86 access to a fantasy game and take reasonable steps to prevent
87 those individuals from entering a fantasy game.

32-00936-16 2016832__

88 (g) Disclose the number of fantasy games a single game
89 participant may enter and take reasonable steps to prevent game
90 participants from entering more than the allowable number of
91 fantasy games.
92 (h) Segregate game participants' funds from operational
93 funds and maintain a reserve in the form of cash, cash
94 equivalents, an irrevocable letter of credit, a bond, or a
95 combination thereof in the total amount of deposits in game
96 participant accounts for the benefit and protection of
97 authorized game participants' funds held in fantasy game
98 accounts.
99 (3) A game operator offering fantasy games in this state
100 must annually contract with a third party to perform an
101 independent audit, consistent with the standards established by
102 the Public Company Accounting Oversight Board, to ensure
103 compliance with this chapter. The game operator must submit the
104 results of the independent audit to the department.
105 Section 4. Section 547.03, Florida Statutes, is created to
106 read:
107 547.03 Penalties.—A game operator, or an employee or agent
108 thereof, who violates this chapter is subject to a civil penalty
109 not to exceed $1,000 for each violation, which shall accrue to
110 the state and may be recovered in a civil action brought by the
111 department.
112 Section 5. Section 547.04, Florida Statutes, is created to
113 read:
114 547.04 Exemption.—Fantasy games are exempt from regulation
115 under chapter 849.
116 Section 6. This act shall take effect July 1, 2016.

From:	Brnovich, Mark
To:	Medina, Rick; Bailey, Michael
Subject:	FW: Letter to Obama Requesting NPL Listing
Date:	Friday, November 06, 2015 9:54:37 AM
Attachments:	2015.9.7 Ltr fr RBegaye to GMcCarthy & JHickenlooper.pdf CLAIM FOR DAMAGE FORM-FINAL.docx 2015-10-22 Letter to President Obama re NPL listing.docx NavajoNationAttorneyGeneralLetterGovernorDucey.pdf

Is someone going to forward all of this to ethel branch? Do we have a contact within her office?

From: Anderson, Ryan
Sent: Thursday, November 05, 2015 6:14 PM
To: mliburdi@az.gov
Cc: Brnovich, Mark; dseiden@az.gov
Subject: FW: Letter to Obama Requesting NPL Listing

Mr. Liburdi –

Attached, you will find several attachments for Governor Ducey concerning the Navajo Nation's request that Arizona sign on to its petition for the EPA to place Upper Animus Mining District on the National Priorities list. We are forwarding this material along with a letter from our office after consulting with the Navajo Nation. The Navajo Nation is preparing a formal request to President Obama, and as Governor, a similar request from you to the president would be greatly appreciated by the Navajo Nation.

A hard copy of the attachments will be delivered to your office on Friday, November 6.

Best regards,

Ryan Anderson
Director of Communications

Office of Attorney General Mark Brnovich
1275 W. Washington, Phoenix, AZ 85007
Desk: 602-542-8302 I Cell: 602-339-6208
Ryan.Anderson@azag.gov
http://www.azag.gov

THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

September 7, 2015

Gina McCarthy, Administrator
United States Environmental Protection Agency
Office of the Administrator, Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

John W. Hickenlooper, Governor
State of Colorado
200 E. Colfax Ave., #136
Denver, CO 80203

Re: Request to Place Upper Animas Mining District on National Priorities List

Dear Administrator McCarthy and Governor Hickenlooper:

We request your attention to the important and urgent matter of protecting the Navajo Nation from upstream threats of contamination coming from the 140-square-mile Upper Animas Mining District (District).[1] Specifically, we request that you immediately place the District on the CERCLA National Priorities List (NPL) so that prompt action may be taken to address and contain the long-standing risks to human health and the environment posed by the historic mining and processing activities in the District. As the Gold King Mine (GKM) spill demonstrated, the District and its over 300 abandoned hard rock mines[2] pose a looming threat to us downstream communities, and it is a threat that is far beyond the control of the local community. It is well past time for the United States Environmental Protection Agency (EPA) to step in and remediate the site in a meaningful manner to protect downstream communities. The first step in that process is to list the Upper Animas Mining District on the NPL. This will provide the much needed funding and technical assistance to responsibly address the threats posed by the District.

On August 5, 2015, the EPA and other potentially responsible parties caused millions of gallons of acid mine drainage—containing toxic substances such as aluminum, lead, zinc, arsenic, cadmium, manganese, iron, vanadium, and copper—to spill from the Gold King Mine outside of Silverton, Colorado into Cement Creek, which flows into the Animas River and ultimately reaches the San Juan River. In a flash the GKM spill illuminated the significant risk that District mines

---

[1] http://www2.epa.gov/region8/upper-animas-mining-district
[2] *Id.*

present to the people, animals, culture, ecosystem and economy of the Four Corners region. Despite the very real and significant risk posed by the District, it is not currently NPL-listed. The current system of management of the hazardous substances in the District does not protect the people or the environment of the rest of the Four Corners region. The health and well-being of the region should be of primary importance to the EPA. The time has come for the Upper Animas Mining District to be given NPL status.

In the 1990s, "EPA and the Colorado Department of Public Health and Environment (CDPHE) conducted a Superfund Site Assessment of the [District]."[3] The assessment concluded "that water quality standards were not achieved" in the District[4]—which includes private, federal, and state lands, and the town of Silverton[5]—and identified the District's "severe impacts to aquatic life in the Upper Animas and its tributaries."[6] Despite the serious harm being caused by the District, EPA postponed listing the District on the NPL because the local community asked for a "community-based collaborative effort" that would allow local cleanup and mitigation efforts to proceed "as long as progress was being made to improve the water quality of the Animas River."[7] In 2005, the "water quality ha[d] declined significantly" in the area despite the combined efforts of the local community and EPA.[8]

In 2008, EPA performed another NPL assessment, this time on the Upper Cement Creek alone, and the study again confirmed "that the area would qualify for inclusion" on the NPL.[9] Despite the carve-out of Silverton from the area of study and the additional confirmation that the GKM area should be listed on the NPL, "EPA [again] postponed efforts to include the area on the National Priorities List," "after receiving additional community input."[10] Yet the City of Durango, the Southern Ute Indian Tribe, the State of New Mexico, the Navajo Nation, the Ute Mountain Ute Tribe, the State of Utah, and the State of Arizona are all downstream interested parties whose input matters with respect to toxic releases and the threat thereof from GKM and the District. Our input and concerns should matter to you as you contemplate listing the District on the NPL.

The chemicals found in the District pose significant human health risk, such as cardiovascular, respiratory, gastrointestinal and reproductive systems. One early post-incident report from the EPA indicated that "arsenic levels in the Durango area of the Animas River were, at their

[3] http://www2.epa.gov/sites/production/files/2015-08/documents/goldkingminewatershedfactsheetbackground.pdf at 2.
[4] *Id.*
[5] http://www2.epa.gov/region8/upper-animas-mining-district.
[6] http://www2.epa.gov/sites/production/files/2015-08/documents/goldkingminewatershedfactsheetbackground.pdf at 2.
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*

peak, 300 times the normal level, and lead was 3,500 times the normal level."[11] Another report of EPA data indicated that "lead was found below Silverton's 14th Street bridge at more than 200 times higher than the acute exposure limit for aquatic life, and 3,580 times higher than federal standards for human drinking water. Levels of arsenic were more than 24 times the exposure limit for fish and 823 times the level for human ingestion. Cadmium was found at more than six times the aquatic limit, 33 times that for humans."[12]

The GKM spill in the Animas and San Juan rivers has imposed an unmitigated crisis upon the Navajo Nation. Coursing through 215 miles of the Navajo Nation, the San Juan River is a critical water source and significant spiritual icon for the Navajo Nation. EPA's determination that they "do not anticipate adverse health effects from exposure to the metals detected in the river"[13] is premature because "[t]he effects of lead may not be seen right away or may not be noticed for many years,"[14] and is indeed contradictory to the EPA's statements to the Navajo Nation made immediately after the spill that we will be dealing with these effects "for decades."[15] The Navajo Nation is gravely concerned with the spill's yet unknown impacts to river sediment and adjacent waterways, and is especially concerned about the ongoing releases from the District that U.S. Geological Survey measures to be at a rate of 610 gallons per minute.[16] Due to the long-term risk that these chemicals present, as well as the continued significant releases coming from the GKM and the District, estimated to now exceed a total release of over 27 million gallons, an NPL listing is well warranted.

The threats posed by the District are felt by the many people connected to the District through the San Juan River watershed, a significant singular surface water supply to the Four Corners region. As one of the impacted jurisdictions, the Navajo Nation's impacts are felt most significantly by our farmers and ranchers, and our traditional people. Many Navajo people rely on the San Juan River to sustain life through irrigating our farmed goods and watering our livestock. Our families then consume these fruits of their labor. The San Juan River also sustains our culture by watering the many unique species of Navajo corn plants that are critical to our prayers and ceremonies. Our traditions and culture are also kept alive by our San Juan River valley farmers' growing of heirloom Navajo fruits and vegetables from seed strains steadily refined by our people since time immemorial. The River is also an important male deity to our people. Its contamination by the GKM has been a significant spiritual blow.

---

[11] http://www.usatoday.com/story/news/2015/08/09/navajo-nation-epa-spill/31384515/
[12] http://m.startribune.com/nation/321518301.html
[13] http://www2.epa.gov/goldkingmine/frequent-questions-related-gold-king-mine-response EPA frequently asked questions
[14] http://www.atsdr.cdc.gov/csem/lead/docs/lead_patient-education.pdf at 1.
[15] Telephone Call with Joan Card, Senior Policy Advisor for USEPA Region 8, and Shaun McGrath, Administrator for USEPA Region 8 (Aug. 7, 2015).
[16] http://fox6now.com/2015/08/13/gold-king-mine-owner-i-foresaw-disaster-before-epa-spill-into-animas-river-in-colorado/

Contamination of the River is also a blow to our economy. The Nation faces a daunting unemployment rate of 42 percent.[17] Yet along the San Juan River, many of our people are able to make a life for themselves and support their families through farming and ranching. According to the 2012 Census of Agriculture there are approximately 1,500 farms in the Shiprock Agency alone. The Bureau of Indian Affairs estimates that there are about 1,175 grazing permit holders in the region. Many of our farmers create additional economic value for themselves by carefully growing profitable organic crops. Some of our ranchers produce grass-fed and organic beef product. Their livelihoods have been significantly disrupted by the GKM spill.

The River has always been of the upmost import to our people. Indeed, when our leaders negotiated our release from internment by the federal government at Fort Sumner in the Treaty of 1868, they were certain to include the San Juan River and its adjacent rich farmlands within our Nation's boundary. The reliance of our people on the River and the significance of the River to our people cannot be overstated.

The waste from the mines in the Upper Animas Mining District is also harmful to wildlife found in the Animas River below Cement Creek. In April, EPA released a *Draft Baseline Ecological Risk Assessment Upper Animas Mining District*, which documented the harmful impacts from the combination of mining and naturally occurring hazardous substances.[18] Among the various wildlife that are impacted, the report found that "[m]etals concentrations in the Animas River below Mineral Creek have eliminated virtually all fish down to Elk Creek and all cutthroat and rainbow trout down to Cascade Creek, where only a small community of brook and brown trout exist."[19] Further, the study found "that the benthic invertebrate community is impaired in most sections of the Animas River, Cement Creek and Mineral Creek."[20] The Upper Animas Mining District is causing portions of the Animas River to be uninhabitable for certain wildlife—and the generally negative impacts on wildlife are even broader. The Upper Animas Mining District should be a candidate for listing on the NPL due to its impacts on wildlife alone.

The danger of a spill in the Upper Animas Mining District will continue to exist under the current management scheme, and the spill on August 5 was not an isolated incident. In fact, there were two previous releases of hazardous mine waste from the area in 1975 and 1978. In 1975, "50,000 tons of heavy-metal-loaded tailings" were dumped into the Animas River.[21] And in 1978, "500 million gallons" of water contaminated with "tailings and sludge" spilled into the Animas

---

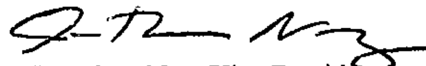
[17] http://navajobusiness.com/fastFacts/Overview.htm
[18] http://www2.epa.gov/sites/production/files/2015-06/documents/upper-animas-bera-fact-sheet-april-2015.pdf at 1
[19] *Id.* at 2.
[20] *Id.*
[21] http://www2.epa.gov/sites/production/files/2015-08/documents/goldkingminewatershedfactsheetbackground.pdf at 1.

River.[22] The damage caused by the Upper Animas Mining District has gone on far too long, and the health and well-being of our people cannot endure a repeat of the GKM spill. Please, do the right thing for us downstream communities. List the Upper Animas Mining District on the NPL. The current approach is inadequate to protect our people and environment. The delay in listing the site can only cause harm to our region. Please contact Jackson Brossy, Executive Director, Navajo Nation Washington Office, 202-682-7390 or jbrossy@nnwo.org.

Respectfully,

THE NAVAJO NATION

Russell Begaye, President



Jonathan Nez, Vice-President

Cc: Mayor Christine M. Tookey, City of Silverton, Colorado
Chairman Ernest Kuhlman, Board of County Commissioners of San Juan County, Colorado
Mayor Sweetie Marbury, City of Durango, Colorado
Chairman Clement Frost, Southern Ute Indian Tribe
Governor Susana Martinez, State of New Mexico
Chairman Manuel Heart, Ute Mountain Ute Indian Tribe
Governor Gary Herbert, State of Utah
Governor Doug Ducey, State of Arizona
U.S. Senator Tom Udall
U.S. Senator Martin Heinrich
U.S. Senator John McCain
U.S. Senator Jeff Flake
U.S. Senator Orrin Hatch
U.S. Senator Mike Lee
U.S. Senator John Barrasso
U.S. Senator John Tester
U.S. Representative Ann Kirkpatrick
U.S. Representative Paul Gosar
U.S. Representative Rob Bishop
U.S. Representative Jason Chaffetz
U.S. Representative Don Young

---

[22] *Id.*

CLAIM FOR DAMAGE, INJURY OR DEATH RESULTING FROM GOLD KING MINE INCIDENT	**INSTRUCTIONS:** Please read carefully the instructions on the reverse side and supply information requesting on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.	APPROVED BY NAVAJO NATION DEPARTMENT OF JUSTICE

1. Submit to: Richard Feldman Claims Officer U.S. EPA Office of General Counsel 1200 Pennsylvania Avenue, NW (MC 2399A) Washington, DC 20460	2. Name, address of claimant, and claimant's personal representative if any (See instructions on reverse). Number, Street, City, State and Zip code.

3. TYPE OF EMPLOYMENT ____MILITARY ____CIVILIAN	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (AM OR PM)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, Identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).

9. **PROPERTY DAMAGE**

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instruction on reverse side).

10. **PERSONAL INJURY/WRONGFUL DEATH**

STATE THE NATURE AND EXPENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJUIRED PERSON OR DECEDENT.

11. **WITNESS**

NAME	ADDRESS (Number, Street, City, State, and Zip Code)

12. (See instructions on reverse) AMOUNT OF CLAIM (in dollars)

12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights).

I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THE AMOUNT OF THE CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE. I HEREBY EXPRESSLY RESERVE MY RIGHT TO FILE SUPPLEMENTAL CLAIMS FOR DAMAGES AND INJURIES IN THE EVENT OF ANY FUTURE DISCOVERY OR ASSESSMENT OF ADDITIONAL DAMAGES OR INJURIES CAUSED BY THE INCIDENT ABOVE.

13a. SIGNATURE OF CLAIMANT (See instruction on reverse side).	13b. PHONE NUMBER OF PERSON SIGNING FORM	14. DATE OF SIGNATURE

INSURANCE COVERAGE

15. Do you carry accident insurance? ____ If yes, give name and address of insurance company (Number, Street, City, State and Zip Code) and policy number. ____ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ____Yes ____No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability damage insurance? ____Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). _____ NO

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act with respect to the release from the Gold King Mine should be submitted directly to the USEPA. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items – Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN USEPA RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, THIS EXECUTED FORM OR ANY SUPPLEMENT THERETO, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE USEPA WITHIN TWO YEARS AFTER THE DISCOVERY OF DAMAGES FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14, Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative , it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of this claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

October 14, 2016

The President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Gina McCarthy, Administrator
United States Environmental Protection Agency
Office of the Administrator, Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

John W. Hickenlooper, Governor
State of Colorado
200 E. Colfax Ave., #136
Denver, CO 80203

Dear Mr. President:

We request your immediate attention to the important matter of protecting the health and safety of the people of the Navajo Nation. On September 7, 2015, the Navajo Nation asked the United States Environmental Protection Agency ("EPA") and the State of Colorado to place the Upper Animas Mining District (District) on the CERCLA National Priorities List ("NPL"). This much needed step will ensure prompt action is taken to address and contain the long-standing risks to human health and the environment posed by the District's historic mining and processing activities. The EPA and Colorado have not responded to our request. A copy of the request is enclosed for your review.

On August 5, 2015, the EPA and other potentially responsible parties caused over three million gallons of acid mine drainage—containing harmful toxic contaminants such as lead and arsenic—to spill from the Gold King Mine near Silverton, Colorado into Cement Creek. As a result, toxic sludge flowed south from Cement Creek into the Animas River, then into the San Juan River, a major water source for the Navajo Nation. The impact of the Gold King Mine spill has been devastating to our community. The San Juan River flows through 215 miles of some of the richest farmland in the Nation's territory. Navajo farmers and ranchers rely on the San Juan River for their livelihoods. But beyond the economic and resource impacts, our people have also sustained deep cultural and spiritual losses.

There are over 300 abandoned hard rock mines in the District, like the Gold King Mine, that pose similar threats of substantial contamination to the Navajo Nation and surrounding areas. Despite this serious and significant risk, the District is not currently NPL-listed. The EPA and Colorado previously refrained from listing the District on the NPL because the local community insisted it be permitted to handle the District's dangerous problems through local cleanup and mitigation efforts. But the looming threat to downstream communities is far too immense to be handled by the local community. We need the funding and technical assistance to properly address the danger posed to our community. This is the first step.

The Navajo Nation respectfully asks that the administration make the health and well-being of the region a priority by promptly placing the District on the NPL. The damage caused by the District has gone on far too long, and the Navajo people cannot endure a repeat of the Gold King Mine spill.

Most respectfully,

THE NAVAJO NATION

Russell Begaye, President

MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL

CIVIL LITIGATION DIVISION

PAUL WATKINS
DIVISION CHIEF COUNSEL

November 5, 2015

Office of Governor Doug Ducey
State Capitol
1700 West Washington
Phoenix, AZ 85007

Dear Governor Ducey:

Our office has reviewed the attached documents regarding the Navajo Nation's ("Nation") request that Arizona sign on to its petition for the Environmental Protection Agency ("EPA") to place Upper Animus Mining District ("District") on the National Priorities ("NPL") list. We are forwarding this material after consulting with the Nation. The Nation is preparing a formal request to President Obama, and as Governor, a similar request from you to the president would be greatly appreciated by the Nation.

The NPL is a list of hazardous waste sites in the U.S. and its territories that are remediated under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), also known as "Superfund". While the Superfund provides funding, EPA and the respective states/territories work together to complete investigation and remediation of these sites.

To be listed on the NPL, EPA assesses the site and scores it based on criteria set forth under CERCLA, 42 U.S.C. § 9605(a)(8)(B). That score determines whether the site should be listed.

Further, each state can also designate *one* "top-priority" site within its jurisdiction to be listed regardless of its score. However, Indian Tribes are specifically excluded from having this designation power under the National Contingency Plan at 40 C.F.R. § 300.425(c).

Finally, a site can be listed if the Agency for Toxic Substances and Disease Registry issues a health advisory removing people from the site, EPA determines the site poses a significant public health risk, and EPA believes its remedial authority is more cost-effective than emergency removal authority.

If you choose to support this petition, it appears that there would be little to no legal obligation for our state. The District is located in Colorado and is in Region 8 EPA (Arizona is in Region 9). Thus, even if the site were listed on the NPL, Arizona would have no role in the remediation of the District.

A few months ago, the Arizona Department of Environmental Quality stated that the Animus River event had not impacted Arizona. Nevertheless, the Nation's concern is for possible future release events that, depending on the severity, may impact Arizona. Signing on to this request articulates a desire to see precautions taken to help avoid any future events.

The September 7th letter from the Nation mentions that EPA refrained from listing the District because "the local community insisted it be permitted to handle the District's dangerous problems through local cleanup and mitigation efforts".

After an initial review, it is our informal opinion that placing the District on the NPL would pose no significant monetary or legal issues for Arizona. This request is a policy decision for your consideration. The Nation strongly believes that it is in everyone's best interest for the District to be listed.

Sincerely,

Paul Watkins
Division Chief

PNW/gc
cc:
Enclosures

From: Brnovich, Mark
To: Pierce, Amilyn; Bailey, Michael; Lawrence, Don
Subject: FW: Major fraud, over 500 victims, see police contact 57 times this summer, see 200 complaints on YELP
Date: Monday, December 14, 2015 11:21:03 AM

Can someone follow up? Thanks.

From: DH [mailto[redacted]@gmail.com]
Sent: Monday, December 14, 2015 2:48 AM
To: Brnovich, Mark
Subject: Major fraud, over 500 victims, see police contact 57 times this summer, see 200 complaints on YELP

Mr Brnovich,

Please send an investigator. At my office I have proof this business is scamming thousands of tourist while renting Jet Skis.

Better Business Bureau investigated them and found fraud this past summer.

Business is

[redacted] Bullhead City AZ

Thank you,

Dean Holloway
928[redacted]