STATE LAND DEPARTMENT OF THE STATE OF ARIZONA
BEFORE THE STATE LAND COMMISSIONER

IN THE MATTER OF CONFLICTING APPLICATIONS FOR A LEASE ON THE STATE TRUST LAND DESCRIBED AS: TOWNSHIP 9 NORTH, RANGE 29 EAST SECTION 1, LOTS 3 & 4, S2NWS2; SECTION 2, LOTS 1-4, S2N2, S2; SECTION 4, LOTS 1 & 2, S2NE, SE; SECTION 4, LOTS 3 & 4, S2NW, SW; SECTION 5, LOTS 1-3, SENW, S2NE, N2SE, NESW SESE; SECTION 11, ALL, AND; TOWNSHIP 10 NORTH, RANGE 29 EAST SECTION 27, S2S2; SECTION 28, S2S2; SECTION 29, S2S2; SECTION 30, SESE, SWSE; SECTION 32, ALL; SECTION 33, ALL; SECTION 34, ALL; SECTION 35, ALL; SECTION 36, S2, FOR A TOTAL OF 6,237.48 ACRES, APACHE COUNTY, ARIZONA. LESSEE: GALYN & ROXANNE KNIGHT (05-1662) APPLICANT: FOREST GUARDIANS (05-110807)	ORDER NO. 093-2007/2008 DECISION & ORDER CONFLICTING GRAZING LEASE APPLICATIONS ADMIN. DOCKET NO. 011-2005/2006

Arizona State Land Department
1616 WEST ADAMS
PHOENIX, ARIZONA 85007

FINDINGS OF FACT

The records of the Arizona State Land Department (the "Department") reflect the following facts:

1. The Trust land at issue consists of approximately 6,237.48 acres classified for livestock grazing and is currently under State Grazing Lease No. 05-1662, which expired on November 30, 2006. The subject lands constitute a compact body of Trust land located approximately six miles north of the Town of Springerville in Apache County. The Little Colorado River runs through the leased land along the parcel's western boundary.

2. On February 28, 2006, prior to the expiration of Grazing Lease No. 05-1662, pursuant to A.R.S. § 37-284, Forest Guardians (the "Guardians") filed a timely conflicting grazing lease, application No. 05-110807, for the 6,237.48 acres currently under Grazing Lease No. 05-1662.

3. On March 28, 2006, the lessees, Galyn and Roxanne Knight, (the "Knights") submitted a renewal application pursuant to A.R.S. § 37-284, for the Trust lands under Grazing Lease No. 05-1662, the renewal of which has been conflicted by the Guardians' application.

4. On April 18, 2006, pursuant to A.R.S. § 37-284(B), the Department sent a Notice of Conflicting Applications and requested a Statement of Equity from both applicants to assist in the Department's review to determine which applicant has the best right and equity to the lease. On May 17, 2006, the Department received the Knight's Statement of Equity for the renewal of Grazing Lease No. 05-1662. On May 18, 2006, the Guardians submitted a Statement of Equity for new application No. 05-110807.

5. Pursuant to A.A.C. Rule R12-5-506(C), the conflicting applicants filed responses to each competing applicant's Statement of Equity with the Department.

6. On May 31, 2006, the conflicting applicants' Statement of Equity and responses submitted by the applicants were forwarded to the Department's Natural Resources Division, Range Section, for review and consideration.

7. The parties to the conflict addressed a number of equities. In response to a follow-up inquiry by the Department regarding the willingness to offer additional rental as equity, Forest Guardians indicated a willingness to bid $10 per AUM for the full term of the lease.

8. On July 27, 2007, the Department's Range Section completed a review of the conflicting applicants' Statement of Equity and prepared an assessment for consideration.

CONCLUSIONS OF LAW

A.R.S. § 37-284(B) provides in part:

> "If two or more applicants apply to lease the same land, the department shall approve the application of the one who, after investigation or hearing, appears to have the best right and equity to the lease. The order of filing shall not be a controlling factor in deciding who is entitled to the lease. If it appears that none of the applicants has any right or equities superior to those of another that would outweigh an offer of additional rent, and if it is in the best interest of the trust, the department may, at a stated time and after due notice to all applicants, receive bids submitted in accordance with rules of the department...".

The purpose of this law is to insure that the lease is issued to the applicant with superior equities, recognizing that no equities are considered superior to the best interests of the State Trust. *Manning v. Perry (1936) 48 Ariz. 425, 62 P.2d 693.*

The federal government's grant of land to Arizona for the public schools and other public institutions coupled with the state's acceptance of the grant created a Trust. Arizona's acceptance of the terms and conditions of the federal land grant, as set out in the Enabling Act, established the state's position as a trustee for the

beneficiaries of the Trust. The trustee relationship and responsibilities extend to the State Land Commissioner in any decisions made that affect the Trust. The trustee's primary responsibilities are to the best interest of the Trust.

Careful consideration was given the Range Section's analysis, each applicant's Statement of Equity and the Forest Guardian's offer of additional rent. Based on the information provided there are no equities that outweigh the offer of additional rental that could be achieved through the bidding process. It is in the best interest of the Trust to proceed to bidding.

CONCLUSIONS AND RECOMMENDATION

Upon review of the facts, it is concluded that:

1. neither applicant has any rights or equities superior to those of another that would outweigh an offer of additional rent; and,

2. it is in the best interest of the Trust to receive bids submitted in accordance with the rules of the Department.

It is further recommended that as neither party has any rights or equities superior to the other, the Department issue a Notice of Call for Bid which states the time, place and manner for bids, including the minimum rental that will be accepted.

Rozanna Sedillo, Review Officer

ORDER

Upon review of the recommendations of the Review Officer, IT IS HEREBY ORDERED THAT:

1. pursuant to A.R.S. § 37-284 the conflict between the subject applications will be resolved by receiving bids for additional rent,

2. the minimum acceptable bid will start at $2.40 per AUM.

IT IS FURTHER ORDERED that prior to issuance of a lease the first year's rent must be paid.

GIVEN under my hand and the official seal of the Arizona State Land Department this 3rd day of October, 2007.

MARK WINKLEMAN
State Land Commissioner

by:

This is an appealable agency action. Pursuant to A.R.S. § 41-1092.03, if you are directly or adversely affected by this decision, the party may request a hearing within thirty (30) days of the date the notice is received. A request for a hearing must be in writing and filed with the Department, and must state the appellant's name and address, the specific action or actions of the Department which are the basis of the hearing request, and a concise statement of the reasons for this appeal. The appellant also has the right to an informal settlement conference pursuant to A.R.S. § 41-1092.06, if it is requested in writing and filed with the Department no later than twenty (20) days before the hearing.

Pursuant to Rule 31(c)(11) of the Arizona Supreme Court, in proceedings before the Office of Administrative Hearings, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

The request must be sent to the State Land Department, Attention: Director, Land Information Title & Transfer Division. If the request for a hearing is not timely filed, the decision of the Commissioner may be final and not subject to further review.

In accordance with Title II of the Americans with Disabilities Act (ADA), the Arizona State Land Department does not discriminate on the basis of disability in the provision of its programs, services and activities.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter by contacting the Department's ADA Coordinator at (602) 542-2636. Request should be made as early as possible to allow time to arrange the accommodation.

Copy of the foregoing mailed/
delivered this 3rd day of
October, 2007, to:

Certified No. 91 7108 2133 3931 8304 4255	GALYN & ROXANNE KNIGHT P O BOX 240 SPRINGERVILLE AZ 85938
Certified No. 91 7108 2133 3931 8304 4569	JOHN HORNING FOREST GUARDIANS 312 MONTEZUMA SUITE A SANTA FE NM 87501
Certified No. 91 7108 2133 3931 8304 4576	FARMERS HOME ADMIN P O BOX 360 SPRINGERVILLE AZ 85938
Certified No. 91 7108 2133 3931 8304 4583	WELLS FARGO BANK OF AZ NA 100 W WASHINGTON P O BOX 53456 DEPT 807 PHOENIX AZ 85072-3456
Certified No. 91 7108 2133 3931 8304 4590	TRANSNATION TITLE INS CO ATTN DIANE FLAAEN 1850 N CENTRAL AVE STE 1200 PHOENIX AZ 85004
Certified No. 91 7108 2133 3931 8304 4606	THE STOCKMEN'S BANK 219 NORTH 4TH STREET P O BOX 1202 BUCKEYE AZ 85326

Copy to: Attorney General's Office, Natural Resources Section
Natural Resources Division/Range Section/attn: Ramon Fierro
Administrative Procedures Manager
Admin. Docket File No. 011-2005/2006
File No. 05-1662
File No. 05-110807