

Office of Administrative Hearings

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Janet Napolitano  
Governor



4/14/2008  
Mark Winkleman, Commissioner  
State Land Department  
ATTN: Roz Sedillo  
1616 West Adams  
Phoenix, AZ 85007  
Re: 08F-011-LAN

**IN THE MATTER OF APPEAL OF COMMISSIONER ORDER NO 093-2007/2008, FOR  
CONFLICTING APPLICATIONS FOR A GRAZING 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,  
ENW, 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)**

Dear Mr. Winkleman:

Please find the decision of the Office of Administrative Hearings for the above  
entitled matter.

Sincerely,

Cliff J. Vanell  
Director



**Mission Statement:** We will contribute to the quality of life in the State of Arizona by fairly and  
impartially hearing the contested matters of our fellow citizens arising out of State regulation.



1 The Arizona State Land Department ("ASLD" or the "Department") received two  
2 applications to lease a parcel of State Trust Land. After the Department conducted a  
3 review of the equities, the State Land Commissioner ordered that the matter would be  
4 resolved by receiving bids for additional rent. Galyn & Roxanne Knight, the current  
5 leaseholders, appealed that Order.

#### 6 FINDINGS OF FACT

7 1. The Trust land at issue is about 6,237.48 acres classified for livestock grazing  
8 and is currently under State Grazing Lease No. 05-1662. Galyn & Roxanne Knight are  
9 the current lessees. The land is located near Springerville, and the specific sections are  
10 set out in the caption of this Decision.

11 2. The current lease expired November 30, 2006.

12 3. On February 28, 2006 Forest Guardians filed application No. 05-110807 to  
13 lease the subject land. Knight's Ex. 1.

14 4. Forest Guardians has subsequently merged with the Wild Earth Guardians and  
15 goes by that name. In this decision the applicant is referred to as Forest Guardians,  
16 because that is the name under which the application was submitted.

17 5. On March 28, 2006 the Knights submitted a renewal application for the subject  
18 land.

19 6. On April 18, 2006 ASLD issued a Notice of Conflicting Applications and  
20 requested each applicant to submit a Statement of Equity. ASLD Ex. 2.

21 7. Each applicant submitted a Statement of Equity and a Response to the other  
22 applicant's Statement. Knight's Exs. 3 and 4; ASLD's Exs. 3 and 5.

23 8. The Department's Range Section reviewed the Statements of Equity and  
24 Responses and requested each applicant to submit additional information, which  
25 information was received and evaluated by the Range Section Manager, Stephen  
26 Williams. See ASLD's Exs. 7 and 9.

27 9. Mr. Williams prepared a Report containing his evaluation and recommendations  
28 that was provided to Ms. Rozanna Sedillo, the Review Officer in this matter. Knight's  
29 Ex. 11 (also admitted as ASLD's Ex. 10).  
30

1 10. On October 3, 2007, ASLD issued Order No. 093-2007/2008, which consists of  
2 Findings of Fact, Conclusions of Law, Conclusions and Recommendation, and an  
3 Order.

4 11. State Land Commissioner Mark Winkleman signed the Order. Review Officer  
5 Sedillo signed the Findings of Fact, Conclusions of Law, and Conclusions and  
6 Recommendation.

7 12. Commissioner Winkleman's Order provides that upon review of the  
8 recommendations of the Review Officer "IT IS HEREBY ORDERED THAT; pursuant to  
9 A.R.S. § 37-284 the conflict between the subject applications will be resolved by  
10 receiving bids for additional rent" and that the minimum bid would be \$2.40 per animal  
11 unit month ("AUM").

12 13. On or about November 1, 2007 the Knights filed a Notice of Appeal and  
13 Request for Hearing.

14 14. On November 9 2007 the Department issued a Notice of Hearing setting the  
15 matter for hearing on January 2, 2008. The matter was continued and the hearing was  
16 held on February 20, 21 and 22, 2008. The record was held open until March 24, 2008  
17 to allow the parties to submit post-hearing argument.

18 15. That Notice of Hearing provided that issue was to determine "whether or not  
19 Commissioner Order No. 093-2007/2008, Decision & Order, Conflicting Grazing Lease  
20 Applications, should be reconsidered."

21 16. The Knights presented the testimony of Galyn Knight, their son Traegen Knight,  
22 ASLD Range Section Manager Stephen Williams, and an environmental consultant  
23 Douglas Wolfe. Forest Guardians presented the testimony of its Chief Executive Officer  
24 John Homing and its Restoration Projects Director James Matison. ASLD presented the  
25 testimony of its Natural Resource Division's Director William Dowdle. Each witness'  
26 testimony is summarized below.

27 17. The witnesses were all found to be credible, but issues of reliability and  
28 probative value exist based on the witnesses' respective knowledge of the issues about  
29 which they testified. And, although Mr. Homing and Mr. Matison are judged to have  
30 given credible testimony, that testimony was not always fully consistent with parts of  
Forest Guardians' Statement of Equity. These inconsistencies generally were related to

1 statements in the Statement of Equity that caused Mr. Williams to question whether or  
2 not Forest Guardians was aware of all the applicable laws and rules related to Trust  
3 land.

4 18. The Knights had 91 exhibits entered into evidence (1 through 91). ASLD had 15  
5 exhibits entered into evidence (1 through 15). Forest Guardians had submitted into  
6 evidence color copies of photographs that had been submitted in black and white as  
7 part of ASLD Exhibits 3 and 5.

8 Mr. Traegen Knight's Testimony

9 19. Mr. Traegen Knight ("Traegen") is the Knight's son.

10 20. Traegen was about 1 ½ when his parents acquired the lease on the subject land  
11 and the other land associated with their ranch, and he has been on that land throughout  
12 his life.

13 21. Traegen helped prepare the Knight's Statement of Equity and Response, and  
14 he had read Forest Guardians' Statement of Equity and Response, and Mr. Williams'  
15 Report.

16 22. Traegen received a degree in Agribusiness from Arizona State in 1999; he is the  
17 ranch manager for about 140,000 acres that are under lease to 17 tenants, and he and  
18 his wife own a ranch.

19 23. Traegen spends about 40% of his time operating his own ranch; he visits his  
20 parent's ranch 2 to 3 times a month, and conducts quarterly inspections of the ranches  
21 he manages. Traegen and his wife's ranch is about 40,000 acres, 40 acres of which are  
22 private land, on which they run about 300 cattle, but they are building up to a full  
23 capacity of about 500 head.

24 24. Traegen is licensed as an appraiser in Arizona and New Mexico and holds an  
25 Arizona real estate salesperson's license.

26 25. Traegen is currently doing ranch appraisals and generally has 1 or 2 underway  
27 at a given time. Since 2000, Traegen has toured hundreds of ranches in Arizona and  
28 western New Mexico. Assessing the condition of a ranch is essential in appraising the  
29 value of a ranch and in managing a ranch that is worked by tenants.

30 26. Traegen's opinion of the condition of the subject land is in agreement with Mr.  
Williams' assessment. Traegen's opinion is that Mr. Williams conducted a thorough

1 assessment of both the rangeland and the riparian area, and based on Traegen's  
2 experience with other ranches across the state, the Knight's ranch is in generally good  
3 condition.

4 27. The subject land varies based on the time of year because the late summer  
5 monsoons provide much of the moisture for the land. In assessing the condition of the  
6 land using a photograph, it would be important to know at what time of year that  
7 photograph was taken.

8 28. The Knights have been ranching on the subject land for about 30 years and  
9 hope to continue to do so for 30 to 60 years more. Overgrazing rangeland to sell more  
10 cattle in the short term would lead to the rancher going out of business because the  
11 rangeland health would deteriorate. The Knights manage the ranch so that it will be an  
12 economically viable operation in the future, including reducing the number of cattle if  
13 conditions warrant it.

14 29. Since the mid-1990's Arizona has been in a drought. The drought affects  
15 ranching because there is less forage and less rain hampers rangeland health.

16 30. The Knight ranch consists of about 35,000 to 40,000 acres, and includes the  
17 subject lands, a 160-acre homestead and an additional 10 acres of private land both  
18 adjacent to the subject lands, about 900 acres of private land and another 6,000 acres  
19 leased from ASLD adjacent (to the north) of the subject land, and leases on National  
20 Forest lands. See Knight's Ex. 15 (Maps). Galyn Knight runs the ranch.

21 31. The Knights use the subject land for grazing in the winter and graze the cattle  
22 on the forest service leases in the summer. During the summers there is less activity on  
23 the subject lands than there is during the winter, but the Knights are still traveling on  
24 those lands on a daily basis.

25 32. The Knights run about 200 to 350 head of cattle on the ranch depending on the  
26 time of year. The Knights have reduced the number of cattle in times of drought, but  
27 have not requested a reduced rental fee on their annual reports to ASLD.

28 33. The Knights bought the 160 acre homestead land from Charles Barry and built a  
29 house there. The Knights access their home through a portion of the subject property  
30 and travel to and from the ranch on a regular basis.

1 34. The Knight family has worked with agencies such as the Natural Resource  
2 Conservation Service ("NRCS") to effectively manage the land during the drought.

3 35. About one-half of the subject land has pinion or juniper trees. Traegen's  
4 experience as an appraiser shows that grassland in the area of the subject lease sells  
5 for about \$500 per acre and land with trees for about \$1,200 per acre (in 40 acre  
6 parcels). The higher value lands will typically have trees that are 60 to 100 years old.

7 36. Other resources on the subject land include Indian ruins, fossils, petrified wood,  
8 and sand and gravel. People have tried to steal sand and gravel from the subject land.

9 37. Traegen recognizes that there is a value protecting state trust land that may not  
10 always be measured in today's dollars. The subject land is in the area of Springerville  
11 and there is the potential that the subject land may be developed in the future.

12 38. Because ASLD does not have the resources to patrol all its Trust land, lease-  
13 holders currently provide protection for those lands. Members of the Knight family are  
14 on the subject land every day, whereas Forest Guardians indicates it will have someone  
15 come from Glenwood New Mexico once every two weeks. The trip from Glenwood  
16 requires going through a pass at an elevation of 7,500 to 8,000 feet, which may not  
17 always be possible in the winter.

18 39. In response to ASLD's claim (made in its opening statement) that accepting  
19 Forest Guardians' application would mean \$80,000 more to the trust over ten years,  
20 Traegen's opinion is that that figure did not account for the different levels of oversight  
21 the each party proposed to provide.

22 40. The Knights will have someone on the land everyday and Forest Guardians  
23 proposes to send someone only once every two weeks. Traegen estimates that  
24 employing a person to patrol the land 50% of the time would be \$22,000 per year  
25 (based on the cost of a full time ranch hand) and prevention of the loss of 10 acres of  
26 trees per year would save the trust \$5,000 per year. He acknowledged that these are  
27 not expenses, but rather are related to potential land value.

28 41. The "south water gap" is an area along the Little Colorado River that  
29 encompasses about 3% of the river portion of the subject lands and about 0.3% of the  
30 entire subject land. The south water gap is an area were cattle congregate to drink near  
a road crossing. The area was part of a historic cattle trail dating back to the early

1 1900s, over which as many as 1,500 cattle used to cross. Because of recent changes  
2 in ranch ownership, only the Knight's cattle now cross at that area when going between  
3 the winter and summer ranges. The road is still used, but not as heavily as it was in the  
4 past.

5 42. The south water gap is also referred to as a "trap." There are two traps, the  
6 northern trap is the south water gap and the southern trap is a holding pen. Cattle are  
7 held in that pen once or twice a year as they are moved between the winter and  
8 summer ranges.

9 43. Traegen had seen the Google-Earth photograph provided to ASLD by Forest  
10 Guardians. That photograph shows the area near the two water gaps. Traegen has  
11 used satellite photographs in his appraisals. With such photographs depth perception  
12 can be difficult and often the photographs are composites (but he did not know whether  
13 this one was a composite.)

14 44. Traegen did not agree with Forest Guardians' Statement of Equity in which  
15 Forest Guardians characterized Little Colorado River area as mostly void of riparian  
16 vegetation because photographs of the area show that the vegetation in the area is up  
17 over the wheels of a pick-up truck. See Knight's Ex. 14.

18 45. Coyote Creek is along the eastern side of the subject land. There is no public-  
19 road access to that area.

20 46. Forest Guardians did not mention Coyote Creek in its Statement of Equity. The  
21 Knight's Statement of Equity included information about an erosion control project along  
22 Coyote Creek that the Knights participated in with the NRCS and other ranchers. Forest  
23 Guardians' Response included information about that project.

24 Mr. Williams' Testimony

25 47. Mr. Williams is ASLD's Range Section Manager. His duties include supervising  
26 6 managers and working with ASLD's lease administrator. Mr. Williams has a B.S. in  
27 wildlife biology.

28 48. Mr. Williams reports to Mr. Dowdle, who reports to the Deputy Commissioner  
29 Ms. Jamie Hogue, who reports to Commissioner Winkleman.

30 49. Mr. Williams has met the Knights through his involvement with the Arizona  
Cattle Growers Association.

1 50. The Range Section was provided with the parties' Statements of Equity and  
2 Responses and was requested to review these. The process was typical of the  
3 standard process when there are conflicting lease applications, but Mr. Williams also  
4 requested that each applicant provide additional information because he wanted more  
5 clarity about their positions.

6 51. Statements of Equity are filed because, by statute, these are required when  
7 there are conflicting applications and, on a more practical level, because its helps in  
8 determining which applicant will be the best to lease and manage the land.

9 52. The parties submitted their Statements of Equity in May 2006 and Responses in  
10 June 2006. Between June 2006 and May 2007, there were discussions within ASLD  
11 about the parties' equities and how to process the applications. The resolution was to  
12 request more information from each party, which was received in June 2007.

13 53. The Commissioner was involved in discussions with ASLD staff in the early part  
14 of the process.

15 54. Mr. Williams then decided to visit the subject land to gain first-hand knowledge  
16 of the conditions on the land, which he considered a prudent land management  
17 decision. ASLD had no data about the health of the riparian area and Forest Guardians  
18 had made allegations about the riparian- and upland areas' health. Mr. Williams wanted  
19 to see the area for himself.

20 55. Mr. Williams did not consult those in the chain-of-command about the site visit.

21 56. After his site visit, Mr. Williams produced a 39 page report with his analysis of  
22 the parties' Statements of Equity, Responses, replies to ASLD's requests for more  
23 information, and his site assessment. Knight's Ex. 11 (also admitted as ASLD Ex. 10).

24 57. Mr. Williams' Report was prepared to comply with A.R.S. § 37-284 that requires  
25 ASLD to determine which applicant has the best equity to a lease. Mr. Williams  
26 reviewed the Statements of Equity and other material with the intent of weighing the  
27 equities to determine which applicant would be best for the Trust beneficiaries.

#### 28 Mr. Williams' Conclusions

29 58. Mr. Williams' opinion is that the equities in favor of the Knights clearly outweigh  
30 Forest Guardians' offer of additional rent.

1 59. Mr. Williams did not have a dollar figure at which more rent money would  
2 outweigh the Knight's superior equities.

3 60. Mr. Williams' opinion is that the Knight's application was the best overall and  
4 that it was not a close call because the equities were 7 to 2 in their favor and because  
5 the more important or heavily weighted equities of stewardship and commitment are in  
6 favor of the Knights.

7 61. Grazing is currently the highest and best use of the subject property, which is  
8 the case for the foreseeable future. It is important to the Trust and its beneficiaries to  
9 determine which applicant is the most capable steward and best able to manage the  
10 subject property until there is a transition to a higher use than grazing. Mr. Williams'  
11 opinion is that the Knights are the best applicant for that purpose and that the Knights  
12 are more committed to abide by the terms of any lease that is awarded.

13 62. Mr. Williams concluded that Forest Guardians is not a committed applicant and  
14 is not able to provide good stewardship.

15 63. To provide good stewardship a party must have temporal and spatial proximity  
16 to the subject land. The Knights are located close to the land and are on the land on a  
17 daily basis, whereas Forest Guardians is located 40 to 80 miles away and plans to have  
18 someone there only 1 day every 2 weeks.

19 64. Mr. Williams found that Forest Guardians was not a committed applicant that  
20 would abide by the terms of the lease and the applicable statutes, and it was not an  
21 applicant that could provide an appropriate level of stewardship and protection to the  
22 subject lands.

23 65. Mr. Williams acknowledged that because this conflict involves only Forest  
24 Guardians and the Knights, it would be more appropriate to state that Forest Guardians  
25 would not be as good a steward as the Knights, that is to say that Mr. Williams' Report  
26 should be read as a relative measure of the Knights and Forest Guardians, not an  
27 absolute measure.

28 66. ASLD has about 8.8 million acres of rangeland and it relies on its lessees to  
29 protect and monitor the land and to be good stewards. ASLD's leases have a provision  
30 requiring the lessee to protect the land and be a good steward.

1 The Decision and Order

2 67. When Mr. Williams completed his Report, he provided the head of ALSD's  
3 Administrative Procedures Unit Ms. Sedillo a copy of the Report and a binder with the  
4 materials he had considered in his evaluation.

5 68. Ms. Sedillo prepared a draft Decision and Order for the Commissioner, which  
6 was routed through the Land, Title and Contracts Division, the Natural Resources  
7 Division, and the Deputy Land Commissioner.

8 69. The Decision and Order has only administrative facts (or a timeline of events)  
9 and does not have any assessment of Mr. Williams' Report.

10 70. Ms. Sedillo signed a part of the Decision; the Commissioner signed the Order.  
11 Mr. Williams' understanding is that Ms. Sedillo prepared only boilerplate information for  
12 the Commissioner's signature. The information prepared by Ms. Sedillo states that the  
13 offer of higher rent outweighs the other equities.

14 71. Mr. Williams was curious as to why the Commissioner had rejected the Range  
15 Section recommendation to award the lease to the Knights, but he did not ask about the  
16 reasons because he understands that it is the Commissioner's decision to make.

17 72. Mr. Williams did not know whether or not the Commissioner had considered the  
18 Range Section recommendation in making his decision.

19 73. The Commissioner has discretion in determining whether an offer of additional  
20 rent outweighs the equities.

21 74. Mr. Williams' opinion is that the Commissioner ruled as he saw fit and that what  
22 the Commissioner did was not unreasonable.

23 Mr. Williams' Site Visit

24 75. In June 2006 Mr. Williams went to the subject land. Mr. Williams' general  
25 impression was that the riparian area was verdant, green and lush, and that the upland  
26 area had quite a bit of standing vegetation.

27 76. On June 12, 13, and 14 Mr. Williams conducted an assessment of the subject  
28 land and was assisted by ALSD employee Kevin Eldredge. See Knight's Ex. 6 (Mr.  
29 Williams' evaluation notebook).

30 77. To assess the upland areas, Mr. Williams used a protocol accepted by  
rangeland managers to determine rangeland health. Under this protocol, factors related

1 to soils, hydrology, and vegetation are assessed by class or category to determine the  
2 rangeland health or function. Mr. Williams' assessment of the subject land left him with  
3 no concerns about that land. One of the three areas assessed was in the moderate  
4 range, but that is not a cause for concern when other protocols for monitoring the land  
5 are also considered.

6 78. For the riparian area, Mr. Williams used a protocol for riparian areas that is  
7 generally accepted by rangeland managers. The protocol assesses riparian health  
8 based on soil, vegetation, and hydrology.

9 79. Mr. Williams' assessment of the riparian area occurred in two locations that are  
10 shown on Knight's Exhibit 6 (Sites 1 and 2), one site at the north end of the property,  
11 and a photographic reconnaissance of the rest of the river.

12 80. Sites 1 and 2 are the area that Forest Guardians had asserted was mostly void  
13 of riparian vegetation. Mr. Williams referred to this area as "Slade Crossing." Further  
14 upriver (to the north) is referred to as the canyon area. The Slade Crossing area is  
15 about 3% of the part of the Little Colorado River that is on the subject land.

16 81. Knight's Exhibit 14 is photographs of Slade Crossing showing the upper trap  
17 and water trap. These photographs show the riparian area on the subject property. Mr.  
18 Williams did not know when these were taken. Mr. Williams observed that these  
19 photographs show more ground cover than he observed during his site visit.

20 82. Mr. Williams conducted a plant survey using a list of species that would be  
21 expected to be present at the subject site. He did not conduct an exhaustive study, but  
22 focused on the predominant species.

23 83. The riparian area assessment used two checklists: one for a functioning riparian  
24 area and one for a live stream. For Site 1, Site 2 and the canyon area to the north, Mr.  
25 Williams found that riparian area and live stream were in proper functioning condition  
26 with willows, grasses, rushes and sedges that would filter sediment and bind the soil  
27 allowing for bank development.

28 84. In response to ASLD's request for more information, the Knights submitted a  
29 letter from engineer Tom Moody who had been to the subject property and evaluated  
30 the riparian area along the Little Colorado River. See Knight's Ex. 10. Mr. Williams'

1 opinion is that Mr. Moody reached the same conclusion as Mr. Williams with respect to  
2 the stabilization of the banks, which is that these are stable and functional.

3 85. Forest Guardians' Statement of Equity asserts that the riparian area on the  
4 subject land was mostly void of riparian vegetation and that the upland area was not in  
5 good condition, which statements were a potential concern for Mr. Williams. After  
6 conducting the assessment, Mr. Williams and Mr. Eldredge were puzzled by Forest  
7 Guardians allegations about the condition of the area because the banks were  
8 protected and there was a variety of riparian species present.

9 86. In his Report, Mr. Williams wrote that Forest Guardians' statement that the  
10 riparian area was mostly void of riparian vegetation was false. At the hearing Mr.  
11 Williams testified that based on his site visit and assessment he still found that  
12 statement to be false. According to Mr. Williams, Mr. Eldredge did not observe the  
13 problems that Forest Guardians asserted existed at the subject land.

14 87. As part of the plant inventory Mr. Williams and Mr. Eldredge counted about 664  
15 willows in the upstream trap area. These willows had good wood in the stem, indicating  
16 to Mr. Williams that these trees were more that 1 year old when he conducted the on-  
17 site assessment.

18 88. Mr. Williams and Mr. Eldredge engaged in discussion during their assessment  
19 as they determined what scores were appropriate for a given area and there was some  
20 "give and take," but the two were able to reach agreement as the appropriate scores.

21 89. Mr. Williams did not find that there was any reason for concern about the  
22 condition of the riparian land on the subject property. Mr. Williams agreed that it was  
23 possible that Forest Guardians had mistaken human activity at the crossing for the  
24 activity of cattle.

25 90. Mr. Williams conducted an assessment of Coyote Creek using the same  
26 procedures that were used for the Little Colorado River. Because Coyote Creek is  
27 ephemeral this technique is not fully appropriate for the area. Nevertheless, Mr.  
28 Williams was encouraged by his findings because he identified riparian obligate and  
29 facultative wetland species and vegetation was present to the edge of the channel  
30 providing bank protection. Because there was no baseline assessment Mr. Williams

1 could not draw conclusions, but by way of analogy his assessment showed the glass as  
2 half full.

3 Mr. Williams' Assignment of Equities

4 91. Mr. Williams considered equities listed in A.A.C. R12-5-506. Mr. Williams did not  
5 include any equity for the Knights current lease or homestead claim because these are  
6 not listed in A.A.C. R12-5-506.

7 *Equity for homestead*

8 92. Mr. Williams' Report did not have any information related to the Knight's  
9 assertion that they are entitled to a homestead preference. Mr. Williams did not learn of  
10 that assertion until the Knights filed their Notice of Appeal.

11 93. Mr. Williams' opinion is that the Knights do not meet the statutory requirement  
12 for a homestead preference because the Knights did not receive the original patent on  
13 the land. Mr. Williams had not assessed whether or not the Knight's proposed use  
14 could be considered a "personal use."

15 94. Mr. Williams was aware of discussions that occurred within ASLD about this  
16 subject after his Report was issued. Mr. Williams had not received any opinion from the  
17 Attorney General's Office on the subject.

18 *Equity for conservation agreements*

19 95. Although the Knights have entered into conservation agreements with other  
20 agencies, Mr. Williams did not find it appropriate to award the Knights that equity  
21 because Forest Guardians had not had an opportunity to enter such agreements.

22 *Equity for future utility*

23 96. Mr. Williams does not consider future utility or the impact on other ASLD lands  
24 to be germane and assigned no equity.

25 *Equity for Mr. Williams' recommendation*

26 97. Mr. Williams did not consider his own recommendation in favor of the Knights as  
27 an equity in their favor.

28 *Equity for access*

29 98. Mr. Williams did not find that either party had earned an equity for access to the  
30 subject property. The equity for access is considered based on access to the subject  
property and not based on access within the subject property. Mr. Williams would have

1 a concern if Forest Guardians did not have access to Coyote Creek but it intended to  
2 make improvements to that Creek.

3 *Equity for goals/objective/intended uses*

4 99. Mr. Williams determined that the Knights should be awarded the equity for  
5 goals/objective/intended uses.

6 100. Mr. Williams was concerned about Forest Guardians' statement (in its  
7 Statement of Equity) that it would not allow any extractive uses on the subject land if  
8 awarded the lease. This restriction would be a violation of the statutes, rules and  
9 ASLD's lease.

10 101. Mr. Williams found that Forest Guardians did not provide any objectives in its  
11 Statement of Equity.

12 *Equity for management strategy*

13 102. Mr. Williams determined that the Knights should be awarded the equity for  
14 management strategy because Forest Guardians did not make a persuasive case that  
15 the land needed rest and restoration. The Knights had a long term strategy that would  
16 allow the site to meet its productive potential. See Knight's Ex. 11.

17 103. Forest Guardians made allegations that the Knights had been a bad manager,  
18 which Mr. Williams believed warranted that Forest Guardians prove those allegations  
19 and it did not.

20 104. Each case is unique, but it is possible that a goal of rest and restoration would  
21 be appropriate for some lands but is not required on these lands.

22 *Equity for additional rent*

23 105. Mr. Williams found that Forest Guardians should be awarded the Equity for  
24 additional rent because it expressed a willingness to pay \$10.00 per AUM, which is  
25 more than the Knight's were willing to pay.

26 *Equity for rangeland condition, health and trend*

27 106. Mr. Williams determined that the Knights should be awarded the equity for  
28 rangeland condition, health and trend based on documentation showing that the  
29 Knights have a long history of working on their own and working with other resource  
30 agencies and partners to meet the goals and objectives of the management plan.

107. Mr. Williams found that Forest Guardians had made a number of allegations related to the condition of the subject property, but Forest Guardians did not provide any documentation of its own in support of its allegations.

108. In his report Mr. Williams wrote that he had serious concerns about Forest Guardians' interpretation of the data submitted by the Knights. Mr. Williams also wrote that Forest Guardians did not acknowledge that land conditions might be the result of factors other than cattle grazing, which Mr. Williams found indicated either a flawed understanding of the processes that could affect the land or a deliberate disregard of those processes.

#### *Equity for improvements*

109. Mr. Williams determined that the Knights should be awarded the equity for the improvements on the subject land. There are two components to this equity: payment to the existing leaseholder and maintaining the improvements.

110. Mr. Williams found that Forest Guardians had only a conditional willingness to repay the Knights for the existing improvements, based in part on who had paid for those improvements. According to the Knights the existing improvements are valued at about \$548,000. No other values were provided to ASLD.

111. Forest Guardians' Statement of Equity shows that it intends to request permission to remove improvements that do not meet Forest Guardians' view of what is appropriate for the land. This statement caused Mr. Williams concern because it shows that Forest Guardians apparently was not aware of the statutory requirements with respect to improvements.

112. In his Report, Mr. Williams wrote that the removal of improvements can make land less valuable for grazing.

113. If a new lessee and an old lessee cannot agree on the value of the improvements, ASLD will appraise the value. Mr. Williams' recollection was that this process is given in the statutes. A lease will not be awarded until any dispute over the value of improvements is resolved.

#### *Equity for Experience*

114. Mr. Williams determined that the Knights should be awarded the equity for experience.

1 115. Forest Guardians did not submit any information to show that it has any  
2 experience with management of the upland range land that comprises about 95% of the  
3 subject property and Forest Guardians' focus was on the riparian area that is only 5% of  
4 the subject property.

5 116. Forest Guardians has one other state lease of about 162 acres (the Telles  
6 lease). That lease was awarded for the purpose of allowing the land to undergo rest  
7 and restoration. The Knight's experience on the subject land far exceeds Forest  
8 Guardians' experience even considering its New Mexico leases.

9 *Equity for protection*

10 117. Mr. Williams determined that the Knights should be awarded the equity for  
11 protection. There was a considerable difference between the Knights and Forest  
12 Guardians on this equity because the Knights have multiple family members and  
13 employees making multiple trips on the subject land every day, whereas Forest  
14 Guardians proposes to have someone on the land only once every two weeks.

15 118. Mr. Williams' opinion is that some of the equities are more important than others  
16 and the equity for protection is an important one.

17 119. The Knights have reported instances of dumping on the subject land to the  
18 Apache County Sherriff resulting in the dumper being apprehended. Trash on the land  
19 impacts the value because there is a cost to clean it.

20 120. Mr. Dowdle estimated that a large incident would cost about \$2,135 to clean and  
21 a smaller incident about \$1,215, with cost difference based on any need for equipment.  
22 Mr. Williams did not think the Range Section had requested that Mr. Dowdle provide the  
23 information related to the cost of cleaning up dumping; he could not recall making such  
24 a request.

25 121. In weighing the equities, Mr. Williams considered these costs against the  
26 prospect of higher rent. Mr. Williams agreed that this analysis was applicable to value  
27 the better protection of other Trust assets such as the wood on the subject property.

28 The Appraised Rental Rate

29 122. The subject property is rated for 87 animal units ("AU"), meaning that the lessee  
30 could put 87 AUs on the land every month, 1044 AUs for one month, or any other  
combination not exceeding 12 times 87 or 1044 AU Months ("AUM") in one year.

1 123. The current rate paid by the lessee is \$2.40 per AUM. The rate has gone down  
2 in the last two or three years, but there have been times when the rate was less than \$1  
3 per AUM.

4 124. The rate is established through an appraisal conducted by a commission that is  
5 appointed by the Governor. ASLD has about 8.8 million acres of grazing land. Mr.  
6 Williams did not know what percentage was leased, but there are about 1,250 leases.  
7 The lease rate is the same for each lease (i.e., \$2.40 per AUM as set by the appraisal)  
8 but there are about 10 or 11 instances in which a conflict has increased the actual rent  
9 paid for a lease.

10 Other Conflicts and the Telles Lease

11 125. Since 1996 there have been 27 conflicts; most of these conflicts were between  
12 two ranchers.

13 126. In about 10 or 11 conflicts, the result was that more than the minimum rent was  
14 paid. But only the Telles lease went to sealed bid, with all the others being resolved  
15 during the review of equities.

16 127. Mr. Williams evaluated the equities in the Telles' conflict and recommended  
17 that that lease go to sealed bid because neither party had superior equities. The Telles  
18 property was not in good condition when the conflicting lease applications were filed.  
19 The subject property does not have any of the same problems that existed on the  
20 Telles property.

21 128. Forest Guardians was awarded the Telles lease after sealed bids were  
22 submitted.

23 129. After Forest Guardians was awarded the Telles lease a dispute arose over the  
24 value of the improvements. Ms. Telles and her son were unable to provide documents  
25 showing that they were entitled to reimbursement and Forest Guardians was not  
26 required to make any payment.

27 130. Mr. Williams was not aware of any instances in which Forest Guardians had  
28 violated the statutes or its lease for the Telles property.

29 131. The Telles lease was for 24 AUM. Forest Guardians bid was for \$84 per AUM,  
30 which means the total bid was 24 times \$84.

Mr. Horning's Testimony

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132. Mr. Horning is the Chief Executive Officer of Wild Earth Guardians and was also CEO of Forest Guardians. He has been CEO for about 6 years and on the staff for about 14 years. Mr. Horning's duties include setting strategic direction, fund raising, and engaging the Board of Directors.

133. Forest Guardians' goals have not changed since Forest Guardians became Wild Earth Guardians.

134. Forest Guardians was formed in 1989. Its mission is to protect and restore wild rivers and wildlife. It has about 4,500 members, most of whom are located in the 4-corners area.

135. Forest Guardians has 15 full-time and 3 part-time employees. One full-time employee is based in Chandler Arizona; all other employees are based in New Mexico and Colorado.

136. Forest Guardians derives its income from members' dues, philanthropy, and state and federal grants.

137. With respect to grazing habitats, Forest Guardians works to protect habitats and conserve species. The primary issue for Forest Guardians is to protect rivers and streams. These are biologically important and are often damaged by livestock.

138. Forest Guardians applied for leases on 3 ASLD parcels in 1997 and has applied for other leases since then. Of the 3 lease applications that Forest Guardians submitted in 1997, 2 were subsequently withdrawn by Forest Guardians. These applications were withdrawn based on lots of factors, including the cost of improvements and the cost to fence in the checker-boarded area.

139. The third application Forest Guardians filed in 1997 resulted in it being awarded the Telles lease of about 171 acres near the Babocomari River. The *Forest Guardians v. Wells* matter concerned issues related to that lease. See 201 Ariz. 255 (2001).

140. During the bid process for the Telles lease, there was an irregularity in that Forest Guardians' bid was opened illegally or improperly and new bids were submitted. In 2004 Forest Guardians was awarded the lease and is in compliance with the terms of the lease.

1 141. Forest Guardians has 5 or 6 leases totaling about 5,000 acres in New Mexico  
2 (Mr. Horning did not know the exact number). Forest Guardians is in good standing with  
3 the New Mexico State Land Office. In about 1996, New Mexico issued a notice of non-  
4 compliance, but Forest Guardians fenced the area at issue to come into compliance.  
5 Forest Guardians has worked to restore land in New Mexico.

6 142. Forest Guardians determined to bid on the instant lease by using GIS maps to  
7 identify areas with values about which it cares about (i.e., streams), getting information  
8 from ASLD as to when the lease was due to expire, and assessing the site.

9 143. Mr. Matison conducted the site visit for Forest Guardians. Mr. Horning has never  
10 been on the subject property.

11 144. Forest Guardians conducted no studies of the upland area of the subject land.

12 145. Mr. Horning was not aware of whether or not the subject land contained  
13 petroglyphs, fire wood, Native American sites or dinosaur sites.

14 146. Forest Guardians expressed to ASLD that it would be interested in leasing only  
15 the riparian area of the subject property, but that it would lease the entire parcel if  
16 required.

17 147. Forest Guardians submitted two lease applications for the subject land, one that  
18 covered the entire parcel and one that covered only 1199 acres, primarily along the  
19 Little Colorado River. Included with the lease applications was Forest Guardians'  
20 renewed request that ASLD split the parcel into two leases.

21 148. Initially Forest Guardians did not know that there was riparian habitat at Coyote  
22 Creek, and its interest was limited to the area along the Little Colorado River.

23 149. Mr. Horning had reviewed Forest Guardians' Statement of Equity, but the  
24 Statement of Equity was prepared and certified by Mr. Matison. Mr. Horning did not  
25 know whether or not Forest Guardians has submitted to ASLD any authorization  
26 allowing Mr. Matison to sign Forest Guardians' Statement Equity.

27 150. Forest Guardians' management goal for the land at issue is the same goal  
28 Forest Guardians has for all lands, namely to restore the riparian wetland to optimal  
29 ecological condition. Forest Guardians will develop a management plan if it is allowed  
30 to restore the subject land.

1 151. In its Response to the Knights' Statement of Equity, Forest Guardians wrote that  
2 its intention was for the land to undergo long-term rest from grazing.

3 152. If Forest Guardians is awarded the subject lease, its intent is to hold that lease  
4 in perpetuity and to keep cattle off the land in perpetuity, assuming it has the financial  
5 resources to do so.

6 153. Forest Guardians is not interested in the subject land just for the short term, but  
7 rather it intends to keep the lease as long as it can to protect the values that it hopes to  
8 see come about on the landscape.

9 154. Forest Guardians' purpose in obtaining the Telles lease was to protect the river  
10 channel in that area, which is a sensitive cottonwood habitat.

11 155. Forest Guardians' intent is to protect the Telles land in perpetuity. Mr. Horning  
12 understands that livestock interests may subsequently bid for this land.

13 156. The Forest Guardians' Statement of Equity states that Forest Guardians does  
14 not believe it must pay for improvements that were funded with state or federal grant  
15 money. Forest Guardians intends raise the issue in the valuation process. But if Forest  
16 Guardians is awarded the lease, it will reimburse the Knights to the extent that ASLD  
17 determines Forest Guardians is required to do so.

18 157. Forest Guardians currently has the resources to reimburse the Knights for their  
19 reported value of about \$548,000, but that is not to say that Forest Guardians will not  
20 contest that reported value.

21 158. Of the 5 or 6 leases Forest Guardians holds in New Mexico, it has paid for  
22 improvements only once, which were about \$15,000.

23 159. Forest Guardians knows that it will be required to fence off the Knights' 160 acre  
24 parcel and that there is no vehicle access on three sides of those 160 acres. Forest  
25 Guardians has not estimated the cost to construct that fencing.

26 160. Forest Guardians' staff and members will provide oversight of the lands if Forest  
27 Guardians receives the lease. Forest Guardians would provide more oversight if it was  
28 told by ASLD that it was not providing sufficient oversight.

29 161. Forest Guardians understands that it has an obligation to protect the land from  
30 vandals and illegal dumping, and that it would be obligated to cleanup anything dumped  
on the land.

1 162. Forest Guardians understands that it must maintain the existing improvements  
2 and is committed to do so. Forest Guardians would obtain ASLD's permission before  
3 modifying or removing any existing improvements.

4 163. To the extent allowed by law, Forest Guardians will lock the non-public roads  
5 because open gates invite problems.

6 164. Forest Guardians' website shows that Forest Guardians is working to eliminate  
7 livestock grazing from public lands. But according to Mr. Horning, this is not an official  
8 policy of Forest Guardians, although he would also not say that Forest Guardians is  
9 opposed to this goal. See Knight's Ex. 29.

10 165. Forest Guardians is part of a coalition that proposes buying-out grazing leases.  
11 See Knight's Ex. 30.

12 166. Forest Guardians has characterized grazing in the southwest as "absurd." See  
13 Knight's Ex. 34.

14 167. Forest Guardians has on its website a newspaper article showing that Forest  
15 Guardians opposes grazing on public lands, but that is not a uniform policy with respect  
16 to all public lands. See Knight's Ex. 41.

17 168. Forest Guardians issued a press release about the subject property in which it  
18 states that it has requested that the Commissioner remove the land along the Little  
19 Colorado River from use as grazing. The press release quotes Mr. Matison as saying  
20 that "Cows and streams just don't mix[,] " which is a statement that Mr. Horning agrees  
21 with. See Knight's Ex. 44.

22 169. Forest Guardians will abide by the terms of any lease that it is awarded.

#### 23 Mr. Matison's Testimony

24 170. Mr. Matison is Forest Guardians' Restoration Projects Director, a position he  
25 has held since about 2002. Mr. Matison has a B.S. in Regional Development focusing  
26 on urban areas, and has attended workshops related to restoration of riparian areas.

27 171. Mr. Matison's duties include organizing and carrying out restoration projects,  
28 and grant writing. A typical project might include removing non-native vegetation and  
29 planting woody riparian vegetation.

30 172. Mr. Matison prepared and certified Forest Guardians' Statement of Equity and  
the Response to the Knight's Statement of Equity. See ASLD Exs. 3 and 5.

1 173. In evaluating whether to apply for the lease, Mr. Matison obtained a GIS map  
2 from ASLD and overlaid data on perennial streams. Mr. Matison then went to the  
3 subject land and looked around. Based on the land condition and its proximity to  
4 Wenima Wildlife Refuge and the Little Colorado River, Mr. Matison determined that  
5 Forest Guardians should apply for the lease.

6 174. Mr. Matison visited the subject property in the spring of 2005 and again in  
7 August 2005. ASLD Exhibit 3 is copies of photographs that Mr. Matison took on his  
8 second site visit. Because his camera did not work he took no photographs on the first  
9 visit.

10 175. Mr. Matison viewed about  $\frac{1}{2}$  to  $\frac{3}{4}$  mile of the Little Colorado River along the  
11 subject property. Mr. Matison estimated that the entire length of the Little Colorado  
12 River along the subject property is about 1 to 2 miles, but he did not disagree when told  
13 that it was 2.6 miles.

14 176. During his two site visits Mr. Matison did not go more than about a quarter mile  
15 from the riparian area; he agreed that he had been on only about 5% of the subject  
16 land and that he had not seen any of the upland area.

17 177. At the time Forest Guardians filed its original application, Mr. Matison was aware  
18 that Coyote Creek crossed the subject property.

19 178. Mr. Matison gave his opinions of the condition of the subject land, but these  
20 opinions are accorded no appreciable weight. Mr. Matison had never been on the  
21 upland area and Mr. Matison did not demonstrate that he has knowledge of the ecology  
22 related to riparian areas that is sufficient to assist the ALJ as the trier of fact. Mr.  
23 Matison acknowledged that he has very little or no formal training in this area. Mr.  
24 Matison was not aware of the 6 categories for wetland plant referenced in Mr. Williams'  
25 report, and he did not know the meaning of the terms "obligate," "facultative wetland,"  
26 "facultative upland," or "facultative" all of which were terms used in Mr. Williams' Report.

27 179. Mr. Matison had read Mr. Williams' report and accepts that Mr. Williams was  
28 competent to conduct the assessments presented in that Report. Mr. Matison was not  
29 familiar with the protocol used by Mr. Williams' in his assessment of the subject lands.  
30

1 180. Mr. Matison testified that he conducted an assessment using the Rapid Stream  
2 Riparian Assessment Protocol, but he did not present the results to ASLD and did not  
3 have a copy of those results at the hearing.

4 181. Mr. Matison's opinion is that the riparian area of the subject land lacked a major  
5 riparian woody component. At that elevation, he would expect to see cottonwoods,  
6 willows, cattails and rushes. Mr. Matison did not do a plant inventory for the subject  
7 property, but he did do a visual inventory. Mr. Matison did not see any willows during his  
8 visual inventory.

9 182. Mr. Williams' report shows that the riparian area had about 660 willows  
10 (seedlings and saplings). Seedlings are typically in their first growing season and  
11 saplings are typically less than 3 inches in diameter. When asked why Mr. Williams  
12 would have reported over 600 willows, Mr. Matison surmised that Mr. Williams may  
13 have been in areas that Mr. Matison was not, but Mr. Matison was not sure where Mr.  
14 Williams had done the inventory.

15 183. Mr. Matison's opinion is that the deficiencies he believes exist are due to cattle  
16 grazing.

17 184. In the Statement of Equity, Mr. Matison wrote that the area was mainly void of  
18 riparian vegetation, which Mr. Williams found to be false. Mr. Matison testified that he  
19 did not mean the land was totally void, but rather that there was not any large woody  
20 vegetation (i.e., mainly void means mainly void, not totally void).

21 185. Mr. Matison did not agree that the riparian areas outside the river canyon were  
22 in good shape and did not recall that Forest Guardians had so stated in its Response to  
23 the Knight's Statement of Equity. Mr. Matison did not know if the northern part of the  
24 riparian area along the Little Colorado River required restoration because he had not  
25 been in that area because assess was too difficult.

26 186. If awarded the lease, Forest Guardians would rest the land from grazing and  
27 actively restore the land. Forest Guardians has done this on leased land in New  
28 Mexico. See ASLD Ex. 5 (photographs of New Mexico).

29 187. Forest Guardians does not want to allow cattle back along the Little Colorado  
30 River regardless of any restoration that may occur and, if Forest Guardians has the

1 financial resources to do so, it will keep cattle of the Little Colorado River riparian land  
2 forever.

3 188. Forest Guardians is willing to pay the Knights for the existing improvements if  
4 ASLD determines that Forest Guardians must pay, but Forest Guardians intends to  
5 assert that it is not required to pay for improvements that were funded with state or  
6 federal grants. Forest Guardians' Statement of Equity is either incorrect or incomplete  
7 to the extent that it states that Forest Guardians will not reimburse the Knights for  
8 improvements funded by such grants. See ASLD Ex. 3, at question 12.

9 189. Forest Guardians' Statement of Equity shows that it will remove existing  
10 improvements that do not meet its land management objectives. See ASLD Ex. 3, at  
11 question 13. Mr. Matison was not aware of Mr. Williams' opinion that state law requires  
12 the leaseholder to maintain those improvements, but Forest Guardians will comply with  
13 state law and would seek ASLD's approval before making any changes to  
14 improvements.

15 190. Forest Guardians never intended to lock public roads on the subject property  
16 and the reference to locking roads that is in Forest Guardians' Statement of Equities  
17 applies to non-public roads.

18 191. In its Statement of Equity, Forest Guardians stated that it would not allow  
19 extractive uses, but according to Mr. Matison that means only that Forest Guardians will  
20 not make any extractive uses. Forest Guardians would not oppose extractive uses on  
21 the subject land if those uses are required by ASLD.

22 192. The only vehicle access to Coyote Creek is through private land. Forest  
23 Guardians has conducted restoration work and fencing in other areas in which there  
24 was no access by road.

25 193. Mr. Matison reviewed the monitoring data that the Knights have for the subject  
26 property and found that data incomplete. But Mr. Matison does not believe that  
27 monitoring is required by law and his opinion is that it is not required as a practical  
28 matter.

29 194. Mr. Matison has been involved with Forest Guardians' restoration efforts at the  
30 Telles property on the Babocomari River, but was not involved prior to the lease being  
issued.

1 195. Forest Guardians has been monitoring and doing erosion control work on the  
2 Telles property, starting from the uplands and working toward the river. It has also  
3 expanded a stock tank. Forest Guardians has spent about \$12,000 to \$15,000 on these  
4 improvements. Originally the plan called for trees to be planted, but evaluations are  
5 underway and it may be that none are actually planted.

6 196. Forest Guardians' restoration work at the Telles property is not intended to  
7 improve that land for grazing, and Forest Guardians' intent is that the Telles property  
8 never again be used for grazing.

9 Mr. Galyn Knight's Testimony

10 197. Mr. Knight graduated from A.S.U. with a degree in farm and ranch management.  
11 He first went in the Air Force, then he worked as an Extension Agent for the U. of A.,  
12 and he worked on his father in law's ranch prior to purchasing his ranch.

13 198. The Knight Ranch consists of the subject land, an ASLD lease adjacent to the  
14 north, and Forest Service's leases used as summer range. The Knights purchased the  
15 lease for the subject lands in 1978. The subject land is used only for livestock  
16 operations.

17 199. The Knights have 3 sons, all of whom, with their wives, are involved with the  
18 family ranch. The sons and their wives all have degrees in fields related to agribusiness  
19 or ranching.

20 200. Mr. Knight believes that he and his wife Roxanne are good stewards of the  
21 subject land because they live there, they have been ranching on the land for 30 years  
22 and, with their children, they intend to continue to ranch for the next 60 years or until a  
23 better use for the land arises. A rancher that overgrazed the land would go out of  
24 business; a rancher raises grass and markets it through cattle.

25 201. Mr. Knight agreed with Mr. Williams' statement that the highest and best use for  
26 the subject land at this time is grazing.

27 202. The Knights were not willing to increase their offer of rent during the submission  
28 of equities because, as Mr. Williams testified, the minimum bid amount is the going rate  
29 and Mr. Knight did not believe that they should be singled out to pay more than that.  
30 The Knights have submitted a sealed bid.

1 203. Mr. Knight estimates that the improvements on the subject land are worth about  
2 \$548,000. When the Knights bought the ranch in 1978 they paid Mr. Slade \$245,000 for  
3 the entire ranch. At that time the ranch consisted of 170 acres of private land, the lease  
4 at issue, a corral, a large water storage tank, and one of the Forest Service allotments.

5 204. Some of the improvements have been made through the NRCS or other  
6 agencies; these include part of the cost to improve Coyote Creek, a solar powered  
7 pump, and 50% of the cost for 1 mile of fencing.

8 205. Mr. Knight responded to Mr. Matison's testimony about a photograph that Mr.  
9 Matison thought showed fencing in disrepair. See ASLD Ex.3. But photograph actually  
10 shows a gate at the downstream end of the water gap. The gate was purposefully left  
11 open because the cattle were at the summer range. Because the area shown is by a  
12 gate, there will be less forage than in other areas, but Mr. Knight's opinion is that with a  
13 good rain the forage in that area would recover.

14 206. Knight's Exhibit 14 is photographs that Ms. Knight took in October 2006,  
15 whereas the photographs from Forest Guardians were taken in July. Mid-July through  
16 mid-October is the growing season. Mr. Knight's opinion is that the photographs do  
17 show riparian vegetation in the form of willows and sedges that over-hang the banks of  
18 the Little Colorado.

19 207. In Mr. Knight's opinion, it is generally not possible to tell from a photograph  
20 whether or not rangeland is in good condition; it would require an extremely good  
21 photograph to so. It would be important to know what time of year the photograph was  
22 taken because the plants could be dormant or have been grazed, but when the  
23 monsoon hits the forage will grow.

24 208. Forage is what ranchers harvest and sell in the form of cattle. The main forage  
25 production results from the summer rains and those rains vary in space (i.e., the storms  
26 are localized). The grass on the subject land is primarily blue gamma grass.

27 209. Mr. Knight did not see how Mr. Matison could have formed an opinion as to the  
28 condition of the subject land without having been on it.

29 210. Mr. Knight has been through the entire Little Colorado River portion of the  
30 subject land, but it is very difficult to get through because it is narrow with a lot of woody

1 shrubs. A person could probably get through on horseback if they stayed in the river  
2 itself.

3 211. The Little Colorado flows more heavily in the spring than the summer and  
4 sometimes dries up around June. Springerville has a wastewater treatment plant about  
5 five miles upstream of the subject land and there is a joke that during the summer water  
6 only flows in the Little Colorado when people's toilets are flowing.

7 212. The Knight ranch is divided by fences into 19 pastures about half of which are on  
8 the subject property. The Knights do allow cattle to graze along the Little Colorado  
9 River, but not too heavily.

10 213. If the subject lease is lost, the ranch will not be able to operate as it now does  
11 because that land represents about one-half the carrying capacity. Better management  
12 is possible with a larger amount of land (e.g., a pasture that received little or no rain one  
13 year could be rested for two years spring seasons).

14 214. The limiting factor on the number of cattle is the winter range, which is primarily  
15 the ASLD land (both the subject land and the ASLD land to the north). Consequently, if  
16 the subject lease is lost the Knight's operations will be reduced by about one-half.

17 215. In times of drought the Knights will reduce the number of cattle they run. This  
18 has happened about three times, but the summer storms are localized so even in a  
19 state-wide drought a given parcel may still be getting good rain, and even in times of  
20 good rain a parcel may not get enough.

21 216. During the winter, the majority of the grazing occurs on ASLD land, but is also  
22 on the Knight's private land and sometimes on leased private land. The land usage  
23 depends on forage conditions because they do not want to overgraze. The private land  
24 includes their sons' ranches and Ms. Knight's father's ranch.

25 217. Cattle are driven between the winter and summer ranges over a historic trail.  
26 The trip is about 40 miles one way and takes 4 days. The Forest Service leases allow  
27 grazing from May 16<sup>th</sup> through October 31<sup>st</sup>. The number of cattle driven varies, but  
28 ranges from about 200 to 300, with 225 to 240 being typical.

29 218. The Forest Service leases allow more AUMs than the ASLD leases, and the  
30 Forest Service allows other family members to graze their cattle on the land. The

Knights pay about \$1.40 to \$1.60 per AUM for the Forest Service allotments. These are leased on a ten year term.

219. The ASLD lease adjacent to the north of the subject land is rated for 84 AUs (1008 AUM). ASLD rates the land at 8 head per section.

220. The Telles lease is rated for 24 AUM.

221. Mr. Knight could not recall when the Knights entered their first conservation agreement with the NRCS, but he guessed that it was in the early 1980s.

222. The Knights have entered agreements with the NRCS to make improvements along Coyote Creek and have conducted erosion control work along that Creek.

223. The Knights have also done conservation work with the Governor's open space commission and the Arizona Department of Agriculture.

224. The Knights have been monitoring the ranch for several years, but have done so in steps. Because the riparian area appeared to be the area with the least problems that was given a low priority.

225. The Knight's son Deric worked with Mr. Moody on projects with the NRCS, Game and Fish, and Springerville, including riparian restoration and the Knights hired Mr. Moody to determine whether or not the riparian area on the subject property required any work. Mr. Moody produced a report showing that the riparian area had no problems. Mr. Moody's report was provided to Mr. Williams, who testified about his review of that report.

226. Mr. Knight's opinion is that in addition to the equities that Mr. Williams considered, additional equities should be awarded to the Knights for reasons including: their continued use will positively impact the surrounding Trust lands and future income on the subject lands; they have invested in the land; they have a homestead right; they have a preferred right of renewal as the current lessee; and because ASLD's staff recommended that the Knights be awarded the lease.

227. The Knights have protected the value of the subject land by running off people that were attempting to take sand and gravel or wood. Mr. Knight has picked up trash off the subject land.

228. Mr. Knight's opinion is that the additional rent of about \$7,500 offered by Forest Guardians would not be enough the pay for the oversight and protection being provided

1 by the Knights as they have several people out on the subject land every day and one  
2 should consider the cost of the gas to travel the land and the cost for the time of these  
3 people.

4 229. The Knights run their business on a fiscal year.

5 230. Cattle are sold throughout the year; the number varies but it is about 165 to 185  
6 per year. The price also varies but in 2007 it was about \$525 per cow.

7 231. The ranch is profitable most years. Without looking it up, Mr. Knight estimated  
8 that it made \$3,500 last year. Some years the profit is \$20,000 to \$30,000, but there  
9 have been years with \$10,000 to \$15,000 in losses. The price of cattle does influence  
10 this, but expenses can have a bigger impact on profit and loss.

11 232. The Knights also operate a hotel in Springerville. The hotel is operated under  
12 the K5 LLC; the ranch is not part of that LLC. The Knights file one tax return for the  
13 ranch and the LLC, but as to all the details Mr. Knight would need the input of his  
14 accountant.

15 233. The Knights pay property taxes including those for improvements made on the  
16 ASLD land. The entire tax bill for the ranch last year was \$1,200 to \$1,500, but the bill  
17 does not break out the various categories of land.

18 234. The two trap areas that Traegen testified about total about 2 acres.

#### 19 Mr. Wolfe's Testimony

20 235. Mr. Wolfe is president of Renaissance Environmental Consultants LLC. He has  
21 a B.S. and M.S. in geology, and does consulting work in environmental geology. He  
22 also does independent research for several museums including the Mesa Southwest  
23 Museum and the Prescott Natural History Museum and runs an educational consulting  
24 business.

25 236. Mr. Wolfe met the Knights in the 1980s when completing his master's research.  
26 He has been on the land every few years since then.

27 237. Knight's Exhibit 7 is an August 12, 2006 letter from Mr. Wolfe to the Land  
28 Commissioner expressing concerns about a potential change in ownership of the land  
29 based on its scientific value and use for research. Mr. Wolfe still holds the opinions  
30 expressed in that letter.

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238. The subject land is located along the shore of an inland sea that existed in the past and is an area that is an anchor point for the understanding of fossils from a narrow time period. It is also rich in Native American sites. The resources are irreplaceable from a scientific perspective and once disturbed these cannot be put back.

239. Roxanne Knight has an acute interest in what researchers such as Mr. Wolfe are doing and she understands and supports the work.

240. Although the land is close to Springerville, Mr. Wolfe has noticed that the land has stayed in good condition over the years. The area is known to have the fossil resources and Mr. Wolfe's opinion is that the Knight's presence in the area is important. That presence will help keep people more honest and help protect the fossils from even the well meaning people that tend to go to these sites to look for fossils in the belief that they are furthering science.

241. Mr. Wolfe expressed concerns that Forest Guardians' assessment of the subject land was unduly harsh without providing sufficient context about the geology and geomorphology of the Little Colorado River. The mineral content in the area can have a detrimental affect on vegetation in parts the riparian area. Mr. Wolfe appreciates what Forest Guardians is doing but he does not think its analysis was scientifically sound, although he was not prepared to refute any of the specifics.

242. Mr. Wolfe acknowledged that he lacked the knowledge to make a judgment about whether the land is overgrazed, but he has never been there and thought "oh my gosh" what are they doing.

243. Mr. Wolfe's opinion, both as a scientist and a citizen, is that you could not get a better group of land managers than the Knight family. In his opinion, if there were specific issues on which improvement was required the Knights would engage in discussion and work to rectify those areas.

Mr. Dowdle's Testimony

244. Mr. Dowdle is the Director of ASLD's Natural Resources Division, a position he has held since 2000. He has been with ASLD since 1997 and was manager of the Natural Resource Conservation and Environmental Resources and Trespass sections. He received his degree in Agriculture in 1971.

1 245 Mr. Dowdle's duties include oversight of six ASLD sections including the  
2 Range Section. As a Division Director, Mr. Dowdle reports to Deputy Commissioner  
3 Jamie Hogue.

4 246. Mr. Dowdle had read Mr. Williams' Report and found that there was nothing  
5 wrong with the Report and that it was well written. Mr. Dowdle had not read the  
6 Statements of Equity or other information that the parties submitted.

7 247. Mr. Williams is a good employee and a good Range Manager. Mr. Dowdle  
8 would have no reason to disbelieve Mr. Williams if he reported that the riparian and  
9 upland areas on a parcel were in good condition.

10 248. Mr. Dowdle testified last; he was present for most of the hearing and he  
11 acknowledged that he did not hear any evidence that would show that the subject land  
12 is damaged or that it is in need of rest and restoration.

13 249. Mr. Dowdle discussed the Report with Mr. Williams but only after it was  
14 written. He did not discuss Mr. Williams' Report with Ms. Sedillo or Commissioner  
15 Winkleman, but he did discuss it briefly with Deputy Commissioner Hogue. Once the  
16 Appeal was filed, Mr. Dowdle was no longer allowed to discuss the matter with the  
17 Commissioner.

18 250. Mr. Dowdle provided information to Mr. Williams on the cost of cleaning up  
19 trash dumped on state land. Mr. Dowdle believes that this cost should be considered in  
20 evaluating the applications and there is a value to the Trust in preventing dumping  
21 that is above just the cost of clean up.

22 251. Mr. Dowdle initially testified that ASLD should consider the value of land  
23 protection and stewardship when considering the highest offer, but subsequently  
24 clarified that rent is the only factor in the "highest" offer and all other factors go the best  
25 use.

26 252. ASLD has 1,200 grazing leases covering about 8.4 million acres on which it  
27 received about \$2 to \$2.5 million in revenue last year. ASLD receives more than the  
28 minimum rent on about 10 or 11 leases.

29 253. Mr. Dowdle understands that Forest Guardians' intended use for the subject  
30 land is to restore that land to the condition it was in prior to livestock grazing and that  
Forest Guardians' goal is not to improve that land to make it better for grazing

1 254. Mr. Dowdle's opinion is that Forest Guardians and the Knights do not want to  
2 lease the subject land for the same purpose. Mr. Dowdle was also of the opinion that in  
3 the case of the Telles lease, Forest Guardians' planned use of rest and restoration was  
4 not the same purpose for which the Telles wanted to use the land (i.e., cattle grazing).

5 255. The basic rule with respect to conflicting lease applications when the Telles  
6 lease was awarded is the same as the rule now in place.

7 256. Mr. Dowdle was not aware of any leases other than the Forest  
8 Guardians/Telles lease in which there was a non-grazing use.

9 257. In the Telles matter, Mr. Williams recommended that the matter go to bid  
10 because neither party had the better equities.

11 258. At the expiration of the both the Telles lease and the subject lease, people  
12 that want to use the land to graze cattle will be allowed to submit lease applications.

13 259. The highest bidder may not be awarded the lease at issue, and the Knights  
14 will be given a chance to match Forest Guardians' bid.

15 260. Mr. Dowdle estimates that there have been 22 or 23 conflicting lease  
16 applications since 1996.

17 261. The Commissioner is not required to follow the recommendation of the  
18 Range Section. The Land Commissioner has a duty to act in the best interest of the  
19 Trust.

20 262. When asked, Mr. Dowdle said he agreed with the statement that this matter  
21 is unique because ASLD staff (Mr. Williams) had determined that the equities were  
22 strongly in the Knight's favor and recommended that the lease be awarded to the  
23 Knights, but the Commissioner chose to put the lease out for bid anyway.

24 263. Mr. Dowdle did not know what factors other than higher rent the  
25 Commissioner considered in determining that it was in the best interest of the Trust to  
26 put the lease out for bid, and he could base an opinion on only the Commissioner's  
27 Decision and Order. Mr. Dowdle acknowledged that it would be fair to say that the  
28 Decision and Order's Statement of Facts were all administrative in nature.

29 264. When asked if the record before the ALJ had any facts other than the  
30 Decision and Order on which the ALJ could evaluate how the Commissioner applied his  
discretion, Mr. Dowdle testified that he was not aware of any such facts.

1 265. The Commissioner may use the Range Section recommendation, his  
2 personal knowledge and any other information he obtains in making a decision.

3 266. Mr. Dowdle did not know if Commissioner Winkleman had consulted with  
4 others in making his decision and he did not have personal knowledge of what the  
5 Commissioner considered in his evaluation of this matter.

6 267. Mr. Dowdle heard the Commissioner say that he had read Mr. Williams'  
7 Report. He could not say whether the Commissioner had read the Statements of Equity  
8 and other information, but he assumes that the Commissioner did.

9 268. Mr. Dowdle's opinion is that the Decision and Order shows that the  
10 Commissioner considered the Statements of Equity and Mr. Williams' Report in  
11 reaching his decision to put the matter to bid. The ALJ finds that this opinion may be in  
12 error. As noted above, the Commissioner signed only the Order portion of the Decision  
13 and Order and the Order shows only that the Commissioner considered Ms. Sedillo's  
14 Recommendation. But even if the ALJ has too narrowly construed the Commissioner's  
15 Order and that Order was intended to subsume Ms. Sedillo findings, as Mr. Dowdle  
16 acknowledged, there are no facts on which to evaluate the Commissioner's decision.

17 269. Based on his knowledge of Commissioner Winkleman, Mr. Dowdle believes  
18 that the Commissioner did follow the applicable statutes and rules in making his  
19 decision.

20 270. The Commissioner was made aware that there was a conflict as soon as the  
21 applications were received. Commissioner Winkleman attended a few meetings at  
22 which he became fully aware of the issue.

23 271. Mr. Dowdle was not surprised when he read the Decision and Order  
24 because previous meetings gave him a sense of how the Commissioner would rule.

25 272. Mr. Dowdle acknowledged that Mr. Williams had assigned more equities to  
26 the Knights than he assigned to Forest Guardians. Mr. Dowdle agreed that some of the  
27 equities are more important than others.

28 273. There is no formula by which the Equities are added.

29 274. Mr. Dowdle did not know what the Commissioner would have done if the  
30 Knights had offered more rent during the review of equities.

1 275. Mr. Dowdle could not say at what point the balance of equities would  
2 outweigh an offer of more rent.

3 276. Mr. Dowdle's opinion is that the equities listed at A.A.C. R12-5-506(D)(2) and  
4 (D)(7) are related to stewardship of the land.

5 277. Mr. Dowdle's opinion is that ASLD does not consider a current leaseholder's  
6 preferred right of renewal unless that leaseholder matches a competing applicant's bid.

7 278. Mr. Dowdle's opinion is that the homestead right under A.R.S. § 37-284(D)  
8 only applies to a person that originally received a patent on that land. But he  
9 acknowledged that he could not say whether the homestead right would apply to the  
10 widow or children of such an original patentee.

### 11 CONCLUSIONS OF LAW

12 1. The burden of proof at an administrative hearing falls to the party asserting a claim  
13 or right, which is the Knights given that they filed the appeal. The standard of proof on  
14 all issues is that of a preponderance of the evidence. See A.A.C. R2-19-119.

15 2. "A preponderance of the evidence is such proof as convinces the trier of fact that  
16 the contention is more probably true than not." Morris K. Udall, Arizona Law of Evidence  
17 § 5 (1960). A preponderance of the evidence is "[e]vidence which is of greater weight or  
18 more convincing than the evidence which is offered in opposition to it; that is, evidence  
19 which as a whole shows that the fact sought to be proved is more probable than not."  
20 Black's Law Dictionary 1182 (6<sup>th</sup> ed. 1990).

21 3. The Commissioner is subject to the same fiduciary obligations as any private  
22 trustee and required to use reasonable care and skill to preserve the trust property and  
23 to make the property productive. See *Forest Guardians v. Wells*, 201 Ariz. 255 (2001).

24 4. The Commissioner is required to consider and accept the highest and best bidder.  
25 What is highest is decided arithmetically; what is best is a mixed question of fact and  
26 law on which the Commissioner has considerable discretionary decision-making power.  
27 See *Forest Guardians*.

28 5. In determining which bid will advance the interest of the Trust, the Commissioner's  
29 discretion cannot operate in a void, but rather the Commissioner must examine the  
30 facts and exercise fact-based discretion. See *Forest Guardians* (citing *Brown v. City of  
Phoenix*, 77 Ariz. 36).

1 6. Although the Commissioner has discretion in how he weighs or balances the  
2 equities, that discretion does not allow the Commissioner to make a decision that is  
3 without support of the evidence, or is contrary to the evidence, or is the result of  
4 misapplication of the law. *See Manning v. Perry*, 48 Ariz. 425 (1936).

5 Highest Bid

6 7. The preponderance of evidence shows that Forest Guardians has offered the  
7 highest bid. The Knights argue that a dollar value should be added to their bid to  
8 account for the additional protection that they offer, but this is not consistent with *Forest*  
9 *Guardians*. To the extent the Knights do offer additional protection that should be  
10 considered in assessing the best bid.

11 Best Bid

12 8. ASLD asserts that the Commissioner ordered the lease be put out to bid because  
13 the Knight's equities do not outweigh Forest Guardians' equities plus Forest Guardians'  
14 offer of more rent. According to ASLD, the Knights and Forest Guardians offer roughly  
15 equal stewardship equities that cancel out and the only equity that clearly favors the  
16 Knights is the recommendation of the ASLD staff.

17 9. The evidence does not support ASLD's position because, based on the equities  
18 considered by Mr. Williams, the preponderance of evidence shows that the Knights  
19 would be the better stewards. The preponderance of evidence also shows that the  
20 Knights have the superior equities overall. Mr. Williams provided credible testimony that  
21 it was not even a close call at 7 for the Knights and 2 for Forest Guardians and, 1 of  
22 Forest Guardians' equities was the offer of more rent. The preponderance of evidence  
23 also shows that the Knights prevailed on the more important equities, including  
24 protection, because they live and work nearby, they have several people on the subject  
25 land daily and they make personal contact with people that come on the land, whereas  
26 Forest Guardians intends to have a person there only once every two weeks.

27 10. Because the Commissioner's decision is not supported by the evidence and, based  
28 on ASLD's understanding of his decision, is actually counter to the evidence presented,  
29 that decision should not be upheld. *See Manning*.

### The Commissioner's Discretion

1 11. ASLD asserts that the Commissioner should not be required to provide more  
2 support for his decision when the reasoning is obvious from the Commissioner's Order  
3 and is in the best interest of the Trust.  
4

5 12. In the Order, the Commissioner provides only that he has considered the Review  
6 Officer's Recommendation and he does not provide any other facts in support of his  
7 decision. As Mr. Dowdle testified, there are no facts in the record on which the  
8 Commissioner's exercise of discretion can be evaluated.

9 13. Although Ms. Sedillo wrote in her Conclusions of Law that she had carefully  
10 considered the Range Section's analysis, the Statements of Equity and Forest  
11 Guardians' offer of more rent, she provides no analysis and merely restates a portion of  
12 A.R.S. § 37-284(B) to the effect that there were no equities sufficient to outweigh more  
13 rent.

14 14. A.R.S. § 37-284(B) directs ASLD to award the lease to the party with the best right  
15 and equity and allows ASLD to request bids if neither party has superior equities that  
16 outweigh an offer of additional rent. That statute's purpose is to ensure that the lease is  
17 issued to the applicant with the superior equities, although the best interests of the  
18 Trust are paramount. See Commissioner's Decision & Order, Conclusions of Law (*citing*  
19 *Manning*).

20 15. Because the preponderance of evidence shows that the Knights' equities are  
21 superior to Forest Guardians' equities, the Knights should be issued the lease unless  
22 Forest Guardians' offer of more rent outweighs the Knight's equities. A decision to do  
23 otherwise would defeat the purpose of A.R.S. § 37-284(B) and, consequently, would be  
24 a misapplication of the law that could not be upheld. See *Manning*.

25 16. Although the Commissioner concluded that the Knight's equities do not outweigh  
26 the additional rent, his decision is presented in a factual void (i.e., there are no facts in  
27 the record on which to determine why he reached that conclusion). This is counter to  
28 *Forest Guardians'* requirement that the exercise of discretion must be fact-based.  
29 Without facts to show that A.R.S. § 37-284(B) has been properly applied there is an  
30 insufficient basis on which to conclude that the Commissioner's Order is in the best  
interest of the Trust.

1 17. The Commissioner's reasoning is not obvious from the Order and the facts in  
2 evidence do not show that the decision is in the best interest of the Trust.

3 18. Forest Guardians argues that the Commissioner would have violated his duty as  
4 trustee if he had not put the lease out for bid in an effort to raise more money for the  
5 Trust. But A.R.S. § 37-284(B) directs ASLD to award the lease to the party with the best  
6 right and equity and allows ASLD to disregard an offer of higher rent.

7 19. There is insufficient evidence on which to conclude that the Commissioner would  
8 have breached his duty by awarding the Knights the lease without bidding.

9 Forest Guardians' Intent to Improve the Land

10 20. Forest Guardians asserts that in addition to paying more rent than the Knights, it  
11 will improve the land making it more valuable for future grazing.

12 21. Forest Guardians' intention is to improve the ecological function of the land, but  
13 there was no substantial evidence adduced to show that any work by Forest Guardians  
14 in furtherance of that goal would actually increase the value of the land for grazing.

15 There was evidence showing that Forest Guardians has improved land in other areas,  
16 but none of that evidence demonstrated that Forest Guardians' improvements have  
17 made those parcels more valuable for cattle grazing. Moreover, to the extent the former  
18 condition of those lands is in the record, those lands were severely degraded and in  
19 need of restoration, which is not the case with the subject land. And to the contrary, the  
20 preponderance of evidence shows that the subject land is in good condition with the  
21 uplands being well managed from a rangeland-health perspective and the riparian area  
22 and live stream functioning properly.

23 22. There is insufficient evidence on which to conclude that Forest Guardians will  
24 improve the land making it more valuable for grazing.

25 23. Forest Guardians argues that Mr. Williams is requiring Forest Guardians to prove  
26 that the land needs restoration and, as such, is imposing a burden on Forest Guardians  
27 that is not imposed on other applicants for grazing leases.

28 24. The issue arose because Forest Guardians provided that restoration of the land  
29 was one of its management goals and made assertions that the land was in need of  
30 restoration, which assertions were in conflict with the Knight's application. Mr. Williams  
evaluated Forest Guardians' assertions as part of his assessment of the parties'

1 equities and there was no evidence adduced to show that in evaluating Forest  
2 Guardians' application Mr. Williams imposed a burden on Forest Guardians that is  
3 different than the burden on other lease applicants.

4 25. Forest Guardians argues that it should not matter whether Forest Guardians has  
5 established that the land requires restoration. But in his evaluation of the equities, Mr.  
6 Williams found that it did matter and Forest Guardians presented no factual basis or  
7 legal authority to show that Mr. Williams was wrong.

#### 8 Forest Guardians' Qualifications as a Bidder

9 26. The Knights argue that Forest Guardians is not a qualified bidder under A.R.S. §  
10 37-284(B) and *Forest Guardians* because Forest Guardians has not demonstrated that  
11 the subject land needs restoration or that it would actually restore the land to improve  
12 grazing. The Knight's argument is premature because the part of A.R.S. § 37-284(B) on  
13 which they rely applies after bids have been submitted.

14 27. It does appear, however, that Forest Guardians' intention to eliminate cattle grazing  
15 from the subject property and other lands should have been considered by ASLD in  
16 determining whether or not going to bid is in the best interest of the Trust. *See Jeffries*  
17 *v. Hassell*, 197 Ariz. 151, 154 (App. 1999) (detriment to the cattle industry may be  
18 detrimental to the Trust) (citing *Manning*, 428 Ariz. 425, 432-33).

#### 19 Weighing the Equities

20 28. Forest Guardians argues that Mr. Williams did not appropriately weigh the equities  
21 because, in Forest Guardians' view, there should be a sliding scale under which each  
22 party would receive some credit for a given equity. Forest Guardians presented no  
23 factual support or legal authority for this position and, to the contrary, Mr. Dowdle found  
24 no basis on which to fault Mr. Williams' Report.

25 29. Forest Guardians also argued that Mr. Williams erred because he merely tallied the  
26 equities and declared that the one with the most was the winner. But Mr. Williams  
27 testified that some equities were weighed more heavily than others and that in his  
28 opinion the majority of the equities, including the more important ones, favor the  
29 Knights.

30 30. The preponderance of evidence shows that Mr. Williams properly evaluated and  
weighed the parties' equities.

### Preferred Rights

31. The Knights argue that they are entitled to a preferred right because they reside on 160 acres of patented land obtained through the Homestead Act and a preferred right of renewal as the current leaseholder.

32. A preferred right is not an absolute right, but it should be considered as an equity to be considered by ASLD when weighing the equities, not just when the bids have been received. *See Manning*; and *Ehle v. Tenney*, 56 Ariz. 241 (1940).

### Homestead

33. According to the Knights, case law shows that if neither party has the superior equities, then the homestead right tips the balance to the Knight's favor.

34. But the cases cited by the Knights were decided before A.R.S. § 37-284 was modified in 1998 to include consideration of additional rent when neither party has superior equities. Consequently, a homestead right will not automatically tip the balance when neither party has the superior equities.

35. ASLD asserts that the homestead right does not apply to a successor-in-interest such as the Knights. The Knights argue that ASLD's position is not consistent with *Ehle*.

36. Although *Ehle* is not dispositive, it does support the Knight's position, whereas ASLD provides no legal authority to support its position and, because A.R.S. § 37-284 does not expressly include the restriction that ASLD seeks to apply, principles of statutory construction weigh against adopting ASLD's interpretation. *See, e.g., State ex rel. Morrison v. Anway*, 87 Ariz. 206 (1960) (do not expand statute to include restrictions not expressed).

37. ASLD asserts that the Knights have not proven that they have a clear chain of title.

38. Credible testimony demonstrated that the Knights understand and believe that their 160 acres meets the homestead requirement of A.R.S. § 37-284(D). The Knights had submitted into evidence a copy of the Homestead Patent and other documentation showing the chain of title and ASLD did not offer any evidence showing that there are gaps in that chain of title.

39. Forest Guardians argues that the homestead right does not apply to the Knights because theirs is not a personal use and, to the extent that right does apply, it merely allows the Knights to match the highest bid. Forest Guardians offered no evidence or

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legal authority showing that cattle-grazing is not a personal use of land and case law suggests the contrary. *See Ehle*; and *Manning*.

40. The preponderance of evidence shows that the Knight's 160 acres is a homestead that provides an equity that should be considered in their favor.

#### *Right of Renewal*

41. The Knights argue that they are entitled to a preferred right of renewal as the current leaseholder under A.R.S. § 37-291(A). ASLD asserts that A.R.S. § 37-284(B) limits operation of such a right to the opportunity to match the highest bid, at which time the Department may consider extending the preference, but is not obligated to.

42. A.R.S. § 37-291(A) provides that, subject to conditions that are not at issue, the current leaseholder shall have a preferred right at a "reappraised rental." A.R.S. § 37-284(B) allows ASLD to "extend [37-291's] preferred right of renewal to the existing lessee if the existing lessee offers a bid matching the highest bid."

43. Under ASLD's interpretation, "reappraised rental" would mean the same thing as "matching the highest bid" and the two statutes would have no independent effect, which would violate principles of statutory construction. *See, e.g., Vega v. Morris*, 184 Ariz. 461 (1996).

44. The two statutes can, however, be harmonized to give effect to both, which is consistent with principles of statutory construction. *See, e.g., Chaparral Development v. RMED International*, 170 Ariz. 309 (1991). A preferred right is an equity to be weighed in favor of the current leaseholder when the equities are considered, giving effect to A.R.S. § 37-291(A). But a preferred right is not an absolute right and, if neither party has the superior equities and ASLD calls for bids, ASLD will then have discretion to allow the current leaseholder to match the high bid, giving effect to A.R.S. § 37-284(B).

45. The Knight's preferred right of renewal provides an equity that should be considered in their favor when the equities are weighed.

#### Summary

46. Considering only the equities that Mr. Williams assigned to either party, the preponderance of evidence shows that the Knights have the superior equities.

1 47. Considering only the equities that Mr. Williams assigned to either party, the  
2 preponderance of evidence does not show that Forest Guardians' offer of more rent  
3 outweighs the Knight's superior equities.

4 48. The preponderance of evidence shows that the Knights should also be credited  
5 with an equity because they live on a qualifying homestead.

6 49. The preponderance of evidence shows that the Knights should also be credited  
7 with an equity because they are the current leaseholder.

8 50. Because the Knights have the best right and equity to the lease and Forest  
9 Guardians' offer of more rent does not outweigh the Knight's equities, the Knight's  
10 application to renew Grazing Lease No. 05-1662 should be approved.

11 **RECOMMENDED ORDER**

12 **IT IS ORDERED** that Commissioner's Order No. 092-2007/2008 is rescinded; and  
13 **IT IS FURTHER ORDERED** that the Knight's application to renew Grazing Lease No.  
14 05-1662 is approved.

15 Done this day, April 14, 2008

16   
17 \_\_\_\_\_  
18 Thomas Shedden  
19 Administrative Law Judge

20 Original transmitted by mail this  
21 14 day of April, 2008, to:

22  
23  
24 Mark Winkleman, Commissioner  
25 State Land Department  
26 ATTN: Roz Sedillo  
27 1616 West Adams  
28 Phoenix, AZ 85007

29 By 