



# Arizona House of Representatives House Majority Research MEMORANDUM

Kathi Knox  
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Legislative Research Analyst,  
Natural Resources and Agriculture Committee

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**To:** JOINT LEGISLATIVE AUDIT COMMITTEE  
**Re:** Grazing Best Management Practices Advisory Committee  
**Date:** September 20, 2006

Attached is the final report of the sunset review of the Grazing Best Management Practices Advisory Committee, which was conducted by the House of Representatives Natural Resources and Agriculture and Senate Natural Resources and Rural Affairs Committee of Reference on September 1, 2006.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona  
The Honorable Janet Napolitano

President of the Senate  
Senator Ken Bennett

Speaker of the House of Representatives  
Representative Jim Weiers

Senate Members  
Senator Jake Flake, Cochair  
Senator Marsha Arzberger  
Senator Timothy S. Bee  
Senator Robert Blendu  
Senator Robert Cannell

House Members  
Representative Russ Jones, Cochair  
Representative Cheryl Chase  
Representative Ann Kirkpatrick  
Representative Tom O'Halleran  
Representative Kyrsten Sinema

Arizona Department of Environmental Quality  
Department of Library, Archives & Public Records  
Auditor General

Senate Republican Staff  
Senate Research Staff  
Senate Democratic Staff  
Senate Resource Center

House Majority Staff  
House Research Staff  
House Democratic Staff  
Chief Clerk

## COMMITTEE OF REFERENCE REPORT:

### GRAZING BEST MANAGEMENT PRACTICES ADVISORY COMMITTEE

#### *Background*

Pursuant to Section 41-2953, Arizona Revised Statutes, the Joint Legislative Audit Committee (JLAC) assigned the sunset review of the Grazing Best Management Practices Advisory Committee to the Senate Natural Resources and Rural Affairs and the House of Representatives Natural Resources and Agriculture Committee of Reference.

The Grazing Best Management Practices Advisory Committee was established by the Legislature in 1997 to develop and recommend voluntary best management practices for discharges to navigable streams. Recommendations are to be made to the Director of the Arizona Department of Environmental Quality (ADEQ). The Legislature charged the committee with periodically re-examining, evaluating and proposing modifications to grazing best management practices.

#### *Committee of Reference Sunset Review Procedures*

The Committee of Reference held a public hearing on September 1, 2006, to review the ADEQ response to the sunset factors as required by A.R.S § 41-2954, subsections D and F, and to receive public testimony (*See Attachment 4*). Testimony was received from Jim Buster, ADEQ legislative liaison; Shelly Tunis, Yuma Fresh Vegetable Association; Rick Lavis, Arizona Cottongrowers' Association; and Bas Aja, Arizona Cattlemen's Association.

#### *Committee of Reference Recommendations*

**The Committee of Reference recommended that the Grazing Best Management Practices Advisory Committee be combined with the Agricultural Best Management Advisory Committee for Concentrated Animal Feeding Operations (CAFO) and be continued for five years. Continuation legislation will address the issues raised during the committee of reference discussions.**

## SUNSET REPORT REQUIREMENTS

### Pursuant to Section 41-2954 subsection F, Arizona Revised Statutes

*\*\*\* Note: The following answers are a summary of the information provided by the Arizona Department of Environmental Quality (ADEQ). Please see Attachment 2 for the complete ADEQ response to the sunset factors required by A.R.S. § 41-2954 subsections D and F.*

**I. An identification of the problem or need that the advisory committee is intended to address.**

According to ADEQ, polluted runoff from nonpoint sources is the largest source of pollution in Arizona's impaired streams, rivers and lakes. Grazing livestock near Arizona's waterbodies can impact water quality by eroding streambanks. This erosion causes increased sedimentation, turbidity and nutrients that affect aquatic wildlife. In addition, there may be increases in coliform bacteria, a direct threat to public health. Implementation of voluntary best management practices will help reduce these impacts of polluted runoff and help cleanse Arizona's impaired waterbodies.

**II. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of the advisory committee and its anticipated accomplishments.**

The Grazing Best Management Practices Advisory Committee made recommendations that culminated in GRRC's approval of R18-9-501, otherwise known as the Surface Water Quality General Grazing Permit. The committee has finished its work.

**III. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflicts with other such agencies.**

No conflicts appear to exist.

**IV. An assessment of the consequences of eliminating the advisory committee or of consolidating it with another agency.**

The Legislature should eliminate this committee since its work is complete. If additional issues should arise ADEQ has an extensive stakeholder process at which the cattle industry can bring whomever they like to advocate for their concerns. ADEQ contemplates no substantive changes on these issues in the foreseeable future. If, however, changes are needed, the agency would use its stakeholder process to bring together affected parties for their input and expertise.

*Attachments*

1. Letter from Rep. Russ Jones to ADEQ requesting information.
2. Sunset factors pursuant to A.R.S § 41-2954, subsections D and F.
3. Meeting Notice.
4. Minutes of Committee of Reference Meeting.

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COMMITTEES:  
NATURAL RESOURCES AND  
AGRICULTURE,  
VICE-CHAIRMAN  
COUNTIES, MUNICIPALITIES AND  
MILITARY AFFAIRS  
TRANSPORTATION

DISTRICT 24

June 20, 2006

Stephen Owens  
Director, ADEQ  
1110 W. Washington St.  
Phoenix, AZ 85007

Dear Director Owens:

The sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, provides a system for the Legislature to evaluate the need to continue the existence of state agencies. During the sunset review process, an agency is reviewed by a legislative committee of reference. On completion of the sunset review, the committee of reference recommends to continue revise, consolidate or terminate the agency.

The Joint Legislative Audit Committee has assigned the sunset review of the **Grazing Best Management Practices Advisory Committee** to the committee of reference comprised of members of the House of Representatives Natural Resources and Agriculture Committee and the Senate Natural Resources and Rural Affairs Committee.

Pursuant to A.R.S. § 41-2954, the committee of reference is required to consider certain factors in deciding whether to recommend continuance, modification or termination of an agency. Please provide your response to those factors as provided below:

1. The objective and purpose in establishing the agency.
2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.
3. The extent to which the agency has operated within the public interest.
4. The extent to which rules adopted by the agency are consistent with the legislative mandate.
5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.
6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.

7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.
8. The extent to which the agency has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.
9. The extent to which changes are necessary in the laws of the agency to adequately comply with these factors.
10. The extent to which the termination of the agency would significantly harm the public health, safety or welfare.
11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.
12. The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

Additionally please provide written responses to the following:

1. An identification of the problem or the needs that the agency is intended to address.
2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.
3. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.
4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

In addition to responding to the factors in A.R.S. § 41-2954, please provide the committee of reference with a copy of your most recent annual report. Your response should be received by **August 1, 2006** so we may proceed with the sunset review and schedule the required public hearing. Please submit the requested information to:

Kathi Knox, Majority Research Staff  
Arizona House of Representatives  
1700 West Washington  
Phoenix, AZ 85007

Thank you for your time and cooperation. If you have any questions, please feel free to contact me at 6902-926-5273 or Kathi Knox, the House of Representatives Natural Resources and Agriculture Committee Analyst, at 602-926-5480.

Sincerely,



Russell Jones, State Representative  
Chair, Natural Resources and Agriculture Committee of Reference

cc: Joan Card  
Don Butler

Herb Guenther  
Dean Sander



Janet Napolitano  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • <http://azdeq.gov>



Stephen A. Owens  
Director

August 9, 2006

The Honorable Russell L. Jones  
House of Representatives  
1700 W. Washington  
Phoenix, Az. 85007

Dear Chairman Jones:

Enclosed you will find the sunset review report for the Grazing Best Management Practices Advisory Committee. After consultation with the Agricultural Community, ADEQ recommends that pursuant to ARS §41-2954 the legislature sunset these committees established by ARS §49-202.01. This committee met several times in 2000 and convened a public hearing on January 8, 2001 to discuss its General Permit proposal.

The Governor's Regulatory Review Council approved the Surface Water Quality General Grazing Permit, rule R18-9-501, on April 3, 2001 and it was filed with the Secretary of State's Office on April 5, 2001.

The committee has finished its work. If rule changes affecting Arizona agriculture become appropriate in the future, ADEQ plans to use its long-standing and effective stakeholder process and that process will include whomever the cattle industry chooses to bring to the table. The agency, however, does not believe the rules need changing in the foreseeable future.

The agency looks forward to the meeting on August 24<sup>th</sup> when we can discuss this issue with the committee. If you have any questions before then, please do not hesitate to give me a call at (602)771-2204.

Sincerely,

*Patrick J. Cunningham*  
Patrick J. Cunningham

For

Northern Regional Office

1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004  
(928) 779-0313

Southern Regional Office

400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

**SUNSET REPORT REQUIRED PURSUANT TO § 41-2954, ARIZONA REVISED STATUTES FOR THE GRAZING BEST MANAGEMENT PRACTICES ADVISORY COMMITTEE**

**1. The objective and purpose in establishing the advisory committee.**

The Grazing Best Management Practices Advisory Committee was established by the Legislature in 1997 to develop and recommend voluntary best management practices for discharges to navigable streams to the Director of the Arizona Department of Environmental Quality (ADEQ). The Legislature charged the committees with periodically re-examining, evaluating and proposing modifications to grazing best management practices.

**2. The effectiveness with which the advisory committee has met its objective and purpose and the efficiency with which it has operated.**

The Grazing Best Management Practices Advisory Committee, established under ARS § 49-202.01, met several times during 2000. The committee developed four voluntary best management practices for persons engaged in livestock grazing. The practices, ranging from managing grazing activities, installing rangeland improvements and implementing land treatment, have the goal of maintaining soil cover and preventing accelerated erosion, nitrogen discharges and bacterial impacts to surface waters above natural background amounts to help achieve surface water quality standards.

The committee's activities ultimately culminated in the Surface Water Quality General Grazing Permit, R18-9-501.

**3. The extent to which the advisory committee has operated within the public interest.**

The committee recommended voluntary best management practices which it determined to be the most practical and effective means of reducing or preventing the non-point source discharge of pollutants into navigable waters by grazing activities. The Governor's Regulatory Review Council (GRRC) adopted R18-9-501 on April 3, 2001. It was filed with the Secretary of State's Office and became effective on April 5, 2001.

**4. The extent to which rules adopted by the agency are consistent with the legislative mandate.**

In adopting voluntary grazing best management practices, ARS § 49-202.01 (C) required the committee to consider:

1. The availability and effectiveness of alternative technologies.
2. The economic and social impacts of alternative technologies on grazing and associated industries.

3. The institutional considerations of alternative technologies.
4. The potential nature and severity of discharges from grazing activities and their effect on navigable waters.

The rule is open-ended enough to allow an operator under the provisions of a General Permit to make decisions based on the above considerations. Of course, the ultimate goal of the General Permit is to require livestock operators to achieve Surface Water Quality Standards. The rule allows this to be done in the most efficient and cost-effective way as long as Surface Water Quality Standards are met. The Governor's Regulatory Review Council also found the rule to be consistent with legislative intent.

5. **The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

The Grazing Best Management Practices Advisory Committee met under the Open Meeting Law and held a public hearing on January 8, 2001 to discuss the proposed General Permit. In addition, GRRC found that all comments on the proposed rule had been adequately addressed.

6. **The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.**

The committee has not met since January 8, 2001.

7. **The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

According to ARS § 49-261 through 49-265, the Attorney General's Office may enforce violations of water quality standards.

8. **The extent to which the advisory committee has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mission.**

None.

9. **The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this subsection.**

ADEQ had adopted rules based on input from the advisory committees in the 1990s. Since that time ADEQ has relied on its extensive stakeholder process to reach the agricultural community and will continue to do so. One example is the pesticide rules adopted in 2005. No changes in the law appear necessary at this time.

**10. The extent to which the termination of the advisory committee would significantly harm the public health, safety or welfare.**

The advisory committee effectively finished its mission with GRRC's approval of the proposed rule on April 3, 2001 and when the agency filed the rule with the Secretary of State's Office two days later on April 5, 2001. The agency does not foresee changes in the rule at this time; therefore, termination of the Grazing Best Management Practices Advisory Committee would not harm the public health, safety, or welfare.

**11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.**

No complaints have arisen as a result of this rule. If complaints arose, the agency has a stakeholder process it uses when issues arise.

**12. The extent to which the advisory committee has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.**

Stakeholders met in a series of meetings in 2000, culminating with a public hearing on January 8, 2001 and a GRRC hearing on April 3, 2001. ADEQ does not believe the issue of using a consultant to propose the General Permit rule was ever discussed. ADEQ feels the stakeholder process uses input from the people most affected by rule changes and that the input of these volunteers is critical in promulgating an effective rule.

### **ADDITIONAL QUESTIONS**

**I. An identification of the problem or the needs that the agency is intended to address.**

According to ADEQ, polluted runoff from non-point sources is the largest source of pollution in Arizona's impaired streams, rivers and lakes. Grazing livestock near Arizona's waterbodies can impact water quality by eroding streambanks. This erosion causes increased sedimentation, turbidity and nutrients that effect aquatic wildlife. In addition, there may be increases in coliform bacteria, a direct threat to public health. Implementation of voluntary best management practices will help reduce these impacts of polluted runoff and help cleanse Arizona's impaired waterbodies.

**II. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of the advisory committee and its anticipated accomplishments.**

The Grazing Best Management Practices Advisory Committee made recommendations that culminated in GRRC's approval of R18-9-501, otherwise known as the Surface Water Quality General Grazing Permit. The committee has finished its work.

**III. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.**

No conflicts appear to exist.

**IV. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.**

The Legislature should eliminate this committee since its work is complete. If additional issues should arise, ADEQ has an extensive stakeholder process at which the cattle industry can bring whomever they like to advocate for their concerns. ADEQ contemplates no substantive rule changes on these issues in the foreseeable future. If, however, changes are needed, the agency would use its stakeholder process to bring together affected parties for their input and expertise.

Interim agendas can be obtained via the Internet at <http://www.azleg.state.az.us/InterimCommittees.asp>

## ARIZONA STATE LEGISLATURE

### INTERIM MEETING NOTICE OPEN TO THE PUBLIC

SENATE NATURAL RESOURCES AND RURAL AFFAIRS AND HOUSE OF REPRESENTATIVES NATURAL RESOURCES AND AGRICULTURE COMMITTEE OF REFERENCE FOR THE SUNSET HEARING OF:  
GRAZING BEST MANAGEMENT PRACTICES ADVISORY COMMITTEE  
AGRICULTURAL BEST MANAGEMENT PRACTICES ADVISORY COMMITTEES

**Date:** Friday, September 1, 2006

**Time:** 2:00 P.M.

**Place:** HHR 3

#### AGENDA

1. Call to Order
2. Opening Remarks
3. Grazing Best Management Practices Advisory Committee
  - Presentation
  - Public Testimony
  - Discussion
  - Recommendations by the Committee of Reference
4. Agricultural Best Management Practices Advisory Committees
  - Presentation
  - Public Testimony
  - Discussion
  - Recommendations by the Committee of Reference
5. Adjourn

#### Members:

Senator Jake Flake, Co-Chair  
Senator Marsha Arzberger  
Senator Tim Bee  
Senator Robert Blendu  
Senator Robert Cannell

Representative Russ Jones, Co-Chair  
Representative Cheryl Chase  
Representative Ann Kirkpatrick  
Representative Tom O'Halleran  
Representative Kyrsten Sinema

8/25/06  
jmb

**People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032, TDD (602) 926-3241.**

ARIZONA STATE LEGISLATURE  
Forty-seventh Legislature – Second Regular Session

SENATE NATURAL RESOURCES AND RURAL AFFAIRS AND HOUSE OF  
REPRESENTATIVES NATURAL RESOURCES AND AGRICULTURE COMMITTEE  
OF REFERENCE FOR THE SUNSET HEARING OF:  
GRAZING BEST MANAGEMENT PRACTICES ADVISORY COMMITTEE  
AGRICULTURAL BEST MANAGEMENT PRACTICES ADVISORY COMMITTEES

Minutes of Meeting  
Friday, September 1, 2006

House Hearing Room 3 -- 2:00 p.m.

CoChairman Jones called the meeting to order at 2:07 p.m. and attendance was noted by the secretary.

**Members Present**

Senator Tim Bee	Representative Kyrsten Sinema
Senator Robert Blendu	Senator Jake Flake, Co-Chair
Senator Robert Cannell	Representative Russ Jones, CoChair
Representative Cheryl Chase	

**Members Absent**

Senator Marsha Arzberger	Representative Tom O'Halleran
Representative Ann Kirkpatrick	

**Speakers Present**

Kathi Knox, Majority Research Analyst  
 Jim Buster, Legislative Liaison, Arizona Department of Environmental Quality (ADEQ)  
 Shelly A. Tunis, Legislative Liaison, Yuma Fresh Vegetable Association  
 Rick Lavis, Vice-President, Arizona Cotton Growers  
 Bas Aja, Legislative Liaison, Arizona Cattlemen's Association

CoChairman Jones thanked everyone for their patience and perseverance since the last meeting which was short a quorum. Good use was made of the time since then as a stakeholders' meeting was held which produced some good ideas. Testimony will be heard by two different individuals today.

Kathi Knox, Majority Research Analyst, stated that the sunset review process is an evaluation tool used to determine if agencies should be continued. Every agency or commission is required

to go through a review at least every ten years. Sunset reviews are based on a sunset audit prepared by the Auditor General's office, or, as in this instance, the committee of reference (COR). The COR is required to submit a sunset committee review report containing recommendations. The legislative staff will then prepare legislation if continuation is recommended and draft a report. The legislation would be introduced in the 2007 session to continue the agencies beyond the termination date of July 1, 2007.

Jim Buster, Legislative Liaison, Arizona Department of Environmental Quality (ADEQ), stated that, since the agencies have not met for a while, the position of ADEQ is not to continue the agencies. In speaking to some of the members and stakeholders, such as Bas Aja, while waiting for a quorum last week, a compromise was reached to collapse the two committees into one.

Mr. Buster believes they have the compromise to bring together the effective stakeholders, the regulators and industry members. He recommended Bas Aja and C.B. "Doc" Lane for the advisory committee. No major changes are foreseen in the near future. In terms of nitrogen application, the final report was made in 1998 and those issues are not surfacing. He noted that Joan Card, Director, Water Quality Division, is present to answer questions (Attachments 1 and 2).

CoChairman Jones mentioned that staggered terms were originally established so all the knowledge and experience of the committee is not lost at the same time. He is not sure that is in the draft and asked if it is a good idea to include staggered terms. Mr. Buster said the stakeholders are not adamant on that issue and did not include staggered terms. The committees have not met in a while. The requirement for a certain number of Republicans and Democrats was removed because it is difficult to fill those positions. The new committee may not meet in the next five years and perhaps a sunset of five years is needed as Mr Aja suggested; however, even though staggered terms is a good idea, he does not believe it is necessary in this case.

Senator Blendu asked why both committees should not be sunset if the committee that will be established will not meet in the foreseeable future.

Senator Flake answered that the Grazing Best Management Practices Advisory Committee was established about eight years ago because of strong objections he had with a ruling by the Environmental Protection Agency (EPA). At that time meetings were being held around the state about nitrogen in the ground due to cattle grazing. He attended a meeting in Flagstaff where he heard things he could not believe. It was almost to the point that in order to comply with the regulations, the cattle would have to be diapered. He did not say anything in the meeting but spoke later with the Director of ADEQ who did not know the substance of the meetings. Because of the ridiculous things that were said, the Grazing Best Management Practices Advisory Committee was formed so everything would have to go through the committee. Senator Flake said there does not seem to be anything on the horizon at present, but with EPA something could come up any time. He believes it is important to retain the committee in order to counteract these types of problems, and he believes it can be of assistance to ADEQ.

Senator Blendu said he would like to have this explanation on record so these kinds of policies come through the Legislature as opposed to a fiat from an agency. CoChairman Jones agreed. He said he sees it is more as a contingency committee, and, due to the lengthy time it takes to go through the rule-making process, there is an advantage in that it is already in place. Hopefully, the committee will never have to meet, but it will be available to take care of any issues if it is necessary.

Shelly A. Tunis, Legislative Liaison, Yuma Fresh Vegetable Association, stated that in 1986 the Legislature decided that nitrogen fertilizer used in farming operations needed to be regulated in the State of Arizona so Best Management Practices (BMP) was adopted. Also, in 1986 the Legislature created ADEQ. One of the reasons the Legislature created best management practices on nitrogen fertilizer was because there was no experience of what ADEQ would do since it did not previously exist. Now, 20 years later, it is known what ADEQ does with nitrogen fertilizer (Attachment 3). ADEQ has not changed the rules since 1991. There is no outcry from the public or industry to change these rules which seem to be working, and, in the interim, the Legislature adopted a procedure with more input from stakeholders in the rule-making process. All that leads to the conclusion that issues related to nitrogen fertilizer and best management practices in farming operations have been settled and stakeholders have had enough input in the ADEQ process over the past couple of years. For that reason, the Yuma Fresh Vegetable Association supports the sunset of the Agricultural Best Management Practices Advisory Committees.

Mr. Jones asked Ms. Tunis' opinion about melding the two committees. Ms. Tunis stated she has no opinion about the part relating to cattle. Senator Flake asked if it would provide the necessary protection even though it is a larger committee with representations of the livestock industry and agriculture. Ms. Tunis said she understands there are no agricultural people on the draft committee, only livestock personnel.

Rick Lavis, Vice-President, Arizona Cotton Growers Association, stated he is present to second the positions stated, especially Senator Flake's position. This is the first time in 25 years he can remember being in favor of a sunset, and, in this case, it is absolutely justifiable. He was here when the 1986 act was passed which was done for a number of reasons. The environmental community believed farmers were using an excessive amount of nitrogen fertilizers on crops and could be polluting groundwater. The possibility of producing "blue babies" was brought out in the legislative process resulting in the creation of the BMPs and the request to create a statutory reference on these issues. The issue before this committee is not nitrogen fertilizer, but whether the structure created in 1986 is still appropriate. Mr. Lavis said he does not believe so, and therefore, supports the sunset of the Agricultural Best Management Practices Advisory Committee. The Legislature required in statute that rules be produced on nitrogen fertilizer. As an issue for groundwater contamination, he referred to a report produced in 1991 by the University of Arizona and read the following into the record.

"The spatial distribution of the wells testing above the 10 mg standard does not present any clear association with human activities which may be responsible for

these elevated nitrate levels. Intensive agricultural areas, as well as with locations with no agriculture at all, have shown elevated nitrate levels in well water.”

“Contributions of nitrates can come from multiple sources, including mineralized soil, organic matter, geological deposits, septic tanks, sewage-treatment plants, concentrated animal operations, and agricultural applications of nitrogen fertilizer.”

He stated that the conclusion of the report is that it is almost impossible to find where those intensive nitrates might be.

Mr. Lavis continued by saying that the last issue was the “blue babies.” The presence of excessive nitrates in drinking water is the most serious for bottled-fed infants less than 6 months old whose immature digestive systems are unable to properly metabolize nitrates. Bacteria in an infant’s stomach converts nitrates to nitrites that react with hemoglobin to form methemoglobin, a condition referred to as methaemoglobinaemia. This molecule is unable to carry oxygen, so symptoms of oxygen starvation begin to occur. Because oxygen starvation causes a bluish discoloration of the body, it is commonly referred to as “blue baby disease” which is potentially fatal but very easy to treat if diagnosed. The number of incidences is very difficult to determine because it is not a disease that is routinely reported to public health agencies. As of the date of the 1991 report no confirmed cases resulting from agriculture contamination were reported in Arizona.

Mr. Lavis said maybe the 1986 act was ahead of the realities because nothing has been seen since and ADEQ has not raised the issue. There have also been no reported instances by the public health system. He believes it is unnecessary to have a BMP committee in place as there are other structures to handle any cases should they occur.

Senator Cannell said it seems that the main argument is there are other methods to deal with this. One could get to a point technologically where nitrogen could be traced to the source, whether from farming or elsewhere. Mr. Lavis said that the most important thing is that it is not related directly to agriculture.

Bas Aja, Legislative Liaison, Arizona Cattlemen’s Association, said he supports the sunset of the nitrogen fertilizer committee and combination of the other two (Attachment 4). Regarding Mr. Lavis’ testimony about the “blue baby” syndrome, etc. and how things have changed, the most important regulation he has seen relating to nitrogen fertilizer came about because of a very tragic incident, the Oklahoma City bombing. Now it is important to trace fertilizer to where it is being used and who has it. It is also being used to produce electricity and methane, and the Japanese have even produced gasoline from manure. There are still a few federal laws coming down the pike so he would like to see a committee in place in case the state has to address some federal rules.

Mr. Aja said he would also be remiss if he did not thank the ADEQ for working with the stakeholders.

Senator Flake asked his opinion as to five-year terms versus the ten-years. He believes five years works.

CoChairman Jones asked if there is any reason to include staggered terms if the committee recommends a five-year continuation. Mr. Aja answered that it would probably be better to have continuity, so 5-year terms would be fine in this case. If 10 years was recommended, there should be some staggering.

**Senator Flake moved the adoption of the proposed language that was distributed that combines the best management practices issues relating to livestock, into one advisory committee instead of two. This would be for a period of 5 years and provide for staggered terms for committee members and allow any current members to complete their terms. The motion carried.**

**Senator Flake moved the reconsideration of the above motion. The motion carried.**

**Senator Flake moved the adoption of the proposed language that was distributed that combines the best management practices issues relating to livestock, into one advisory committee instead of two. This would be for a period of five years. The motion carried.**

**Senator Flake moved that the Nitrogen Fertilizer Best Management Practices Advisory Committee be allowed to terminate. The motion carried.**

The CoChairman instructed staff to prepare legislation to make these changes and draft the COR report for next session.

Without objection, the meeting adjourned at 2:40 p.m.



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Pat Hudock, Committee Secretary  
September 7, 2006

(Original minutes, attachments and tape on file in the Office of the Chief Clerk)