



THE UNIVERSITY OF ARIZONA  
COOPERATIVE EXTENSION

## Natural Resource Users Law & Policy Center

A collaboration between the  
James E. Rogers College of Law and  
the College of Agriculture & Life Sciences

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### MEMORANDUM

From: George Ruyle, Jeff Eisenberg  
Natural Resources Users Law and Policy Center (NRULPC)  
School of Extension, College of Agriculture and Life Sciences

The AVCA contacted the NRULPC for help in finding ways to eliminate hurdles to conducting prescribed burns in Arizona. The AZ Department of Forests and Fire Fighting convened a meeting of stakeholders in Phoenix on September 12 for the purpose of identifying the issues that are most important for putting in place a regulatory framework to support the conduct of prescribed fires. The group agreed that the most important of these hurdles is the lack of insurance to cover any damage or injuries that may result from such a fire. While there are companies that would carry out prescribed burns in the state today, the desire to make the practice more widely accessible and managed by Arizonans requires a broader, more systematic response.

To meet this goal, two issues need to be addressed. First, legislation should be enacted defining the scope of liability for landowners and burn bosses responsible for carrying out a prescribed burn. Second, insurance companies have to be willing to write the policies.

Draft legislation is set forth below. The scope of the draft is purposefully narrow because it is only intended to complement a somewhat comprehensive regulatory scheme already on the books in the Arizona Administrative Code, Title 18, Chapter 2, Article 15, "Forest and Range Management Burns". Apart from suggesting a standard for liability, the language focuses on defining authority and responsibility for conducting prescribed burns on private lands.

A question presented during the stakeholder meeting was whether statutory language setting forth a standard of liability for conducting prescribed burns would run afoul of Article 18, Section 6 of the Arizona constitution which bars abrogation of rights of action to remedy personal injury or property damage. The answer is no. Nothing about the language below limits any lawsuit to recover for damages. A claim for negligence could succeed upon a showing that the applicable state rules for prescribed burns were not followed.

#### **Draft Ideas for Authority for Prescribed Burns on Private Land**

- A private landowner or the landowner's designee who has been trained by the ADEQ to conduct prescribed burns is not liable in civil damages for acts or omissions made in good faith resulting in damage or injury caused by fire or smoke resulting from prescribed burns they conduct on the landowner's own property and in compliance with applicable state laws and local ordinances, unless, such private landowner's or designee's acts or omissions are grossly negligent or willful and wanton.

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- A private landowner or landowner's designee may conduct prescribed burns on that person's land after undergoing training required under state law. (R18-2-1512)
- The private landowner or landowner's designee shall submit a prescribed burn plan that limits the burn to a defined area and which otherwise meets the applicable procedural and substantive requirements under state law (R-18-2-1504).
- A private landowner or landowner's designee shall obtain all necessary authorizations to conduct a prescribed burn on that person's land from local, state, and federal entities.

Cc: Bill Boyd, Department of Forests and Fire Fighting