

## **ARTICLES FOR 8-10-17 ROUNDUP**

### **BRNOVICH TO LEAD CWAG EXECUTIVE COMMITTEE**

PHOENIX - Arizona Attorney General Mark Brnovich was selected as the new Chairman of the Conference of Western Attorneys General (CWAG) during the annual Summer Meeting held in San Francisco. One of Brnovich's top priorities as CWAG Chair will be data privacy and cybersecurity initiatives.

"I am honored to have been selected to lead this outstanding organization," said Attorney General Mark Brnovich. "I look forward to working together with my colleagues to combat the growing threat of cyberattacks and help safeguard consumer information."

Brnovich will serve as CWAG Chair through July 2018. CWAG is a non-partisan organization comprised of attorneys general from 15 western states, three Pacific territories, and 13 associate member states. CWAG's primary function is to provide a forum for the western state attorneys general to cultivate knowledge, cooperate on subjects of mutual concern, and coordinate actions and programs which improve the quality of legal services available to CWAG members and their constituencies.

Members include Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The Conference also includes the Pacific jurisdictions of American Samoa, Commonwealth of the Northern Mariana Islands, and Guam.

### **ATTORNEY GENERAL JACKLEY RECEIVES NATIONAL LEADERSHIP AWARD FROM FOUNDATION FOR ADVANCING ALCOHOL RESPONSIBILITY**

PIERRE, S.D. - Today, the Foundation for Advancing Alcohol Responsibility (Responsibility.org) announced the recipients of its 2017 Leadership Awards. Attorney General Marty Jackley was one of eight Attorneys General to be recognized for strong leadership to prevent drunk driving and underage drinking and promote teen driver safety. Jackley was joined by Colorado Attorney General Cynthia Coffman, District of Columbia Attorney General Karl Racine, Montana Attorney General Tim Fox, North Carolina Attorney General Josh Stein, Oregon Attorney General Ellen Rosenblum, Pennsylvania Attorney General Josh Shapiro and Wisconsin Attorney General Brad Schimel.

"The national leadership award is a strong recognition for all of South Dakota's law enforcement community that serves to prevent underage drinking and to make our roads safe from impaired driving. I want to thank the Foundation for Advancing Alcohol Responsibility for its continuous work in the fight against underage drinking and drunk driving," said Jackley.

Attorney General Jackley was recognized today for his willingness to champion comprehensive impaired driving legislation and to nationally promote South Dakota's evidence-based 24-7 Sobriety Program.

The Foundation for Advancing Alcohol Responsibility (Responsibility.org) is an independent, national not-for-profit that leads the fight to eliminate drunk driving and underage drinking and is funded by the following distillers: Bacardi U.S.A., Inc.; Beam Suntory Inc.; Brown-Forman; Constellation Brands, Inc.; DIAGEO; Edrington; Hood River Distillers, Inc.; and Pernod Ricard USA, dedicated to developing and implementing programs that guide a lifetime of conversations around alcohol responsibility and offering proven strategies to stop impaired driving. To learn more, please visit [www.responsibility.org](http://www.responsibility.org).

## **COLORADO ATTORNEY GENERAL CYNTHIA H. COFFMAN ANNOUNCES SENIOR STAFF APPOINTMENTS**

Denver – Today Colorado Attorney General Cynthia H. Coffman announced the appointments of Melanie J. Snyder to Chief Deputy Attorney General, and Leora Joseph to Chief of Staff. These appointments follow the departure of previous Chief Deputy, David Blake, who recently accepted an opportunity in private practice.

“David has been an extremely valuable member of my leadership team, and has provided exceptional legal and policy advice on some of the most complex issues facing the State of Colorado,” said Attorney General Coffman. “I am grateful for his service to our office, and the people of Colorado, and I wish him all the best in his future endeavors.”

Newly appointed Chief Deputy Attorney General Snyder has been with the Office of the Attorney General since 2008. Snyder has provided general counsel advice and representation in litigation and on appeal to a number of State clients on a variety of complex issues. Prior to serving as Chief of Staff, Snyder was the Deputy Attorney General of the Revenue & Utilities Section. Before joining the office, she practiced commercial litigation in large and small firms in Denver. Snyder received her J.D. degree from the University of San Diego School of Law and B.A. degrees in Political Science and Psychology from the University of Arizona.

“Melanie has been a stellar Chief of Staff, and her knowledge of the Office of the Attorney General is unparalleled,” said Coffman. “I know that her experience and expertise will make her an exceptional Chief Deputy, and I am grateful for her willingness to take on this critically important role.”

Newly promoted Chief of Staff Joseph is a recent addition to the Office of the Attorney General, having joined the team during the transition process. Joseph received her law degree from McGill University Law School and has 20 years of experience as a criminal prosecutor. Joseph served as a Chief Deputy District Attorney in both Boston and the Denver Metro area.

“Leora has brought a wealth of experience to the office, and will be a huge asset to our team,” said Attorney General Coffman. “Her lifelong commitment to public service, and her extensive management experience makes her uniquely prepared to take on the role of Chief of Staff. I am excited that she has chosen to join our team in this leadership position.”

The staffing changes will be effective August 7, 2017.

## **FORMER CHIEF DEPUTY ATTORNEY GENERAL FOR THE STATE OF COLORADO JOINS SQUIRE PATTON BOGGS**

(DENVER – August 01, 2017) – Squire Patton Boggs is pleased to announce that Chief Deputy Attorney General for the State of Colorado David Blake has joined the firm as a partner in Denver and will lead the firm's State Attorneys General Practice Group. The addition of Mr. Blake adds significant depth and experience to the firm's growing State Attorneys General Practice.

Colorado Governor John Hickenlooper said, "Blake is a smart and talented lawyer. We have appreciated his counsel and have benefitted from his relationship with our office. We wish him continued success."

Mr. Blake served as Colorado Attorney General Cynthia H. Coffman's top advisor on all legal, management, press and policy matters and directly oversaw the consumer protection and criminal justice sections. His role included oversight of approximately 270 attorneys, with a combined caseload of involving hundreds of enforcement actions, prosecutions and investigations. He also acted as the intergovernmental liaison for the department, including working with the Colorado General Assembly on myriad policy and legislative issues, and coordinated legal policy on behalf of the Attorney General.

Mr. Blake previously served as Deputy Attorney General for Legal Policy and Government Affairs for Colorado Attorney General John Suthers, wherein he was responsible for working with state lawmakers and other state officials on issues of interest to the Office of the Attorney General. Before that, he was the Assistant Solicitor General for the Colorado Department of Law.

Prior to moving to Colorado in 2010, Mr. Blake spent 14 years with the US Department of Justice. At the Justice Department, he served as a national security lawyer, a Special Assistant US Attorney, a civil litigator defending habeas corpus claims of detainees at Guantanamo Bay, a congressional liaison and was integral in national security policy development post September 11, 2001.

"State attorneys general are often ground-zero for affirmative regulation and multistate investigations that can affect virtually every industry and major policy area," said Ed Newberry, global managing partner – Public Policy, Strategic Advocacy. "David's extensive experience and deep relationships with current and former attorneys general, as well as his contemporaries on both side of the aisle brings even greater depth and leadership to this increasingly important area of the law."

Commenting on his move, Mr. Blake said, "Squire Patton Boggs's integrated public policy and broad practice expertise, coupled with its already strong state attorneys general practice, were an attractive combination that offer unique insight to clients seeking solutions to their critical business issues. The firm has a strong reputation in Denver, Washington DC and globally and I'm exciting to be joining."

Mr. Blake has an undergraduate degree from Virginia Tech and earned his J.D. from George Mason Law in 2007, where he also served as an adjunct professor for several years. He is also member of both the Colorado and District of Columbia bar.

## **ATTORNEY GENERAL LAXALT LEADS STATES IN FILING FRIEND OF THE COURT BRIEF CHALLENGING FEDERAL OVERREACH ON GROUNDWATER RIGHTS**

Carson City, NV – Nevada Attorney General Adam Paul Laxalt led a ten state coalition of attorneys general in filing a friend-of-the-court brief in the U.S. Supreme Court defending the ability of state governments to effectively regulate groundwater usage within their state. The brief urges the Court to review a recent Ninth Circuit decision that concluded, in conflict with multiple state-court decisions, that the federal government has broadly reserved rights to groundwater that preempt long-established state-law regulations. As Nevada’s brief explains, the Ninth Circuit’s ruling threatens serious disruption not only to settled expectations in the Western States like Nevada, but also to states across the nation.

“Western states like Nevada are particularly impacted by the current uncertainty of groundwater rights created by this recent Ninth Circuit decision,” said Laxalt. “By filing this brief, my office encourages the Supreme Court to take the necessary steps to clarify the States’ groundwater rights and to ensure Nevada’s best interests are being protected from unnecessary and unwarranted federal interference. As I have consistently demonstrated throughout my tenure as Nevada’s attorney general, my office stands ready to defend our state from unlawful federal overreach regardless of the source.”

The Coachella Valley Water District and Desert Water Agency are public water agencies that regulate and provide water in the Coachella Valley of Riverside County, California. These public water agencies primarily rely on groundwater reserves to supply water to public and private entities in their jurisdiction, including the City of Palm Springs. The Agua Caliente Band of Cahuilla Indians is a federally recognized Indian tribe with a reservation of land in the Coachella Valley. Like other public entities in the Coachella Valley, the Tribe has purchased water for its needs from the public water agencies, and has not historically pumped groundwater for its own use. In 2013, however, the Tribe brought suit in federal court claiming that, as part of its federal reservation of land, it has a priority right to use groundwater in the Coachella Valley. Relying on Supreme Court cases involving implied reservations of surface water rights, the Ninth Circuit Court of Appeals held that a priority right to use groundwater under federal reserved land is also included as an implied right with the reservation, and that that right necessarily preempts state water law, even if there is no evidence that anyone ever used or expected to use groundwater when the federal reservation was made. Nevada’s brief explains how the Ninth Circuit’s decision creates significant uncertainty for all states, which have historically controlled water resources within their state. The brief encourages the Supreme Court to clarify whether the federal reserved water right doctrine extends to groundwater and, if so, under what circumstances, so as to provide guidance to all states, including Nevada, on how to manage their groundwater resources.

Nevada is joined by the following states in the filing of this brief: Arizona, Arkansas, Idaho, Nebraska, North Dakota, South Dakota, Texas, Wisconsin, and Wyoming.

## **SETTLEMENT AGREEMENT RECOGNIZES STATE OWNERSHIP OF KOTSINA RIVER**

(Anchorage, AK) – The Alaska Department of Law announced today that it has reached agreement with Ahtna, Inc. on the State’s ownership of a critical part of the Kotsina River riverbed. The settlement agreement will result in a court judgment that clarifies ownership of the Kotsina River delta and ensures continued public access to the shore lands of the Copper and Kotsina Rivers into the future.

“It has always been the State’s position that the Kotsina River is navigable in this area,” said Attorney General Lindemuth. “This settlement recognizes that fact and provides continued public access to the rivers. I appreciate Ahtna’s willingness to settle these matters and avoid an unnecessary and expensive trial.”

The settlement stems from a lawsuit brought by Ahtna in 2008 that challenged a Department of Transportation (DOT) material site and sought to prohibit camping and the launching of boats within a DOT right-of-way. In defense against Ahtna’s claims, the State asserted ownership of the relevant lands underlying the Kotsina River because the river was navigable. In 2012, the State received favorable rulings from the superior court regarding the material site and right-of-way issues. In those orders, the court found (1) overnight camping in a rest area within the right-of-way and boat launching from the access road are allowed; and (2) DOT can continue to operate the material site located within the Kotsina River delta. The only issue remaining in the case was whether the Kotsina River is navigable, which means the State owns the land underlying the river. Ahtna and the State have now agreed that the Kotsina River is navigable-in-fact from its confluence with the Copper River upstream eight river miles, and this is reflected in the settlement agreement. Other terms within the settlement agreement include:

Ahtna will not appeal the two court orders in favor of the State;

Fixed boundaries defining ownership of the delta;

Continued access to the fish wheels on state-owned land;

Ahtna will grant DOT easements to build and maintain dikes to protect the right-of-way, material site, and public access; and

DNR will grant Ahtna two easements to provide access to Ahtna property on the other side of the river and to build dikes to protect its access routes.

## **AG REYES ANNOUNCES UTAH SUPREME COURT DECISION IN GARFIELD COUNTY V. UNITED STATES OF AMERICA**

SALT LAKE CITY July 27, 2017 – In an opinion filed on July 26, the Utah Supreme Court agreed with the State of Utah and some of its Counties in their dispute against the federal government about the State’s ownership of historic roads across federal land. As federal law allows, the State and its Counties sued the United States to obtain title to more than 10,000 such roads—roads still used today for recreation, ranching, sightseeing, hunting, and fishing, among other things. But the United States, joined by the Southern Utah Wilderness Alliance, argued that the State’s and Counties’ title claims were untimely based on a provision of Utah law that never had been applied to such claims.

The Utah Supreme Court's opinion rejects the federal government's efforts to paint the State's claims as untimely under Utah law. According to the Court, the United States' and SUWA's arguments "would effectively deprive the State of its" claims to thousands of roads—even roads that have existed and been used for more than 100 years. The Court called that result "completely nonsensical" and "so overwhelmingly absurd that no rational legislator could ever be deemed to have supported" it.

"I applaud the Utah Supreme Court's common-sense decision in this important case," said Utah Attorney General Sean D. Reyes. "The Court correctly recognized the absurdity of the federal government's arguments, which have now added two years of delay and taxpayer expense to the State's efforts to obtain the title to roads that federal law has long promised. I hope the Court's decision convinces the United States now to work collaboratively and quickly with Utah and its Counties to resolve these title claims."

The Utah Supreme Court's opinion is styled *Garfield County v. United States of America*, 2017 UT 41. The case will now go to Utah's federal district court for resolution of the State's and Counties' title claims.

## **FDA ANNOUNCES COMPREHENSIVE REGULATORY PLAN TO SHIFT TRAJECTORY OF TOBACCO-RELATED DISEASE, DEATH AGENCY TO PURSUE LOWERING NICOTINE IN CIGARETTES TO NON-ADDICTIVE LEVELS AND CREATE MORE PREDICTABILITY IN TOBACCO REGULATION**

The U.S. Food and Drug Administration today announced a new comprehensive plan for tobacco and nicotine regulation that will serve as a multi-year roadmap to better protect kids and significantly reduce tobacco-related disease and death. The approach places nicotine, and the issue of addiction, at the center of the agency's tobacco regulation efforts. The goal is to ensure that the FDA has the proper scientific and regulatory foundation to efficiently and effectively implement the Family Smoking Prevention and Tobacco Control Act. To make certain that the FDA is striking an appropriate balance between regulation and encouraging development of innovative tobacco products that may be less dangerous than cigarettes, the agency is also providing targeted relief on some timelines described in the May 2016 final rule that extended the FDA's authority to additional tobacco products. The agency will also seek input on critical public health issues such as the role of flavors in tobacco products.

Tobacco use remains the leading cause of preventable disease and death in the United States, causing more than 480,000 deaths every single year. In addition to the devastating human toll caused mainly by cigarette smoking, tobacco also causes substantial financial costs to society, with direct health care and lost productivity costs totaling nearly \$300 billion a year. A key piece of the FDA's approach is demonstrating a greater awareness that nicotine – while highly addictive – is delivered through products that represent a continuum of risk and is most harmful when delivered through smoke particles in combustible cigarettes.

“The overwhelming amount of death and disease attributable to tobacco is caused by addiction to cigarettes – the only legal consumer product that, when used as intended, will kill half of all long-term users,” said FDA Commissioner Scott Gottlieb, M.D. “Unless we change course, 5.6 million young people alive today will die prematurely later in life from tobacco use. Envisioning a world where cigarettes would no longer create or sustain addiction, and where adults who still need or want nicotine could get it from alternative and less harmful sources, needs to be the cornerstone of our efforts – and we believe it’s vital that we pursue this common ground.”

The FDA plans to begin a public dialogue about lowering nicotine levels in combustible cigarettes to non-addictive levels through achievable product standards. The agency intends to issue an Advance Notice of Proposed Rulemaking (ANPRM) to seek input on the potential public health benefits and any possible adverse effects of lowering nicotine in cigarettes. Because almost 90 percent of adult smokers started smoking before the age of 18 and nearly 2,500 youth smoke their first cigarette every day in the U.S., lowering nicotine levels could decrease the likelihood that future generations become addicted to cigarettes and allow more currently addicted smokers to quit.

“Because nicotine lives at the core of both the problem and the solution to the question of addiction, addressing the addictive levels of nicotine in combustible cigarettes must be part of the FDA’s strategy for addressing the devastating, addiction crisis that is threatening American families,” said Commissioner Gottlieb. “Our approach to nicotine must be accompanied by a firm foundation of rules and standards for newly-regulated products. To be successful all of these steps must be done in concert and not in isolation.”

The FDA is committed to encouraging innovations that have the potential to make a notable public health difference and inform policies and efforts that will best protect kids and help smokers quit cigarettes. To make this effort successful, the agency intends to extend timelines to submit tobacco product review applications for newly regulated tobacco products that were on the market as of Aug. 8, 2016. This action will afford the agency time to explore clear and meaningful measures to make tobacco products less toxic, appealing and addictive. For example, the FDA intends to develop product standards to protect against known public health risks such as electronic nicotine delivery systems (ENDS) battery issues and concerns about children’s exposure to liquid nicotine. It also will provide manufacturers additional time to develop higher quality, more complete applications informed by additional guidance from the agency.

The agency plans to issue this guidance describing a new enforcement policy shortly. Under expected revised timelines, applications for newly-regulated combustible products, such as cigars, pipe tobacco and hookah tobacco, would be submitted by Aug. 8, 2021, and applications for non-combustible products such as ENDS or e-cigarettes would be submitted by Aug. 8, 2022. Additionally, the FDA expects that manufacturers would continue to market products while the agency reviews product applications.

Importantly, the anticipated new enforcement policy will not affect any current requirements for cigarettes and smokeless tobacco, only the newly-regulated tobacco products such as cigars and e-cigarettes. This approach also will not apply to provisions of the final rule for which compliance deadlines already have passed, such as mandatory age and photo-ID checks to prevent illegal sales

to minors. It also will not affect future deadlines for other provisions of the rule, including, but not limited to, required warning statements, ingredient listing, health document submissions, harmful and potentially harmful constituent reports, and the removal of modified risk claims, i.e., "light," "low," or "mild," or similar descriptors.

In order to further explore how best to protect public health in the evolving tobacco marketplace, the agency also will seek input from the public on a variety of significant topics, including approaches to regulating kid-appealing flavors in e-cigarettes and cigars. In particular, the FDA intends to issue ANPRMs to: 1) seek public comment on the role that flavors (including menthol) in tobacco products play in attracting youth and may play in helping some smokers switch to potentially less harmful forms of nicotine delivery; and 2) solicit additional comments and scientific data related to the patterns of use and resulting public health impacts from premium cigars, which were included in the FDA's 2016 rule. Additionally, the agency plans to examine actions to increase access and use of FDA-approved medicinal nicotine products, and work with sponsors to consider what steps can be taken under the safety and efficacy standard for products intended to help smokers quit.

"This comprehensive plan and sweeping approach to tobacco and nicotine allows the FDA to apply the powerful tools given by Congress to achieve the most significant public health impact," said Mitch Zeller, J.D., director of the FDA's Center for Tobacco Products. "Public input on these complex issues will help ensure the agency has the proper science-based policies in place to meaningfully reduce the harms caused by tobacco use."

To complement these larger policy considerations, the FDA plans to issue foundational rules to make the product review process more efficient, predictable, and transparent for manufacturers, while upholding the agency's public health mission. Among other things, the FDA intends to issue regulations outlining what information the agency expects to be included in Premarket Tobacco Applications (PMTAs), Modified Risk Tobacco Product (MRTP) applications and reports to demonstrate Substantial Equivalence (SE). The FDA also plans to finalize guidance on how it intends to review PMTAs for ENDS. The agency also will continue efforts to assist industry in complying with federal tobacco regulations through online information, meetings, webinars and guidance documents.

The FDA, an agency within the U.S. Department of Health and Human Services, promotes and protects the public health by, among other things, assuring the safety, effectiveness, and security of human and veterinary drugs, vaccines and other biological products for human use, and medical devices. The agency also is responsible for the safety and security of our nation's food supply, cosmetics, dietary supplements, products that give off electronic radiation, and for regulating tobacco products.

## **STATEMENT FROM ATTORNEY GENERAL TOM MILLER ON FDA'S NEW TOBACCO PLAN**

DES MOINES -- Attorney General Tom Miller today issued the following statement about the FDA's announcement of a new comprehensive plan to shift the trajectory of tobacco-related disease and death:



“I strongly agree with the major positions taken by the FDA on Friday, July 28, 2017:

1. Favoring harm reduction through e-cigarettes and other non-combustible products is the clear position of the FDA, rather than general opposition to e-cigarettes.
2. A serious effort should be made to reduce the level of nicotine in combustible products.
3. Application deadlines should be moved back to allow for compliance and innovation.
4. A careful look at flavors, including menthol, should be undertaken.

This agenda provides the roadmap for the demise of combustible tobacco products that kill 480,000 Americans each year.”

## **SC FILES \$100 MILLION LAWSUIT AGAINST U.S.**

The South Carolina Attorney General’s Office filed a lawsuit Monday against the federal government to recover \$100 million the U.S. Department of Energy owes the state for failing to meet its promise to remove one ton of plutonium from the Savannah River Site this year.

A case of such magnitude has never been filed by South Carolina against the federal government.

Congress mandated that the U.S. Department of Energy would pay South Carolina \$1 million per day, beginning January 1, 2016, for every day the department failed to remove from the state one metric ton of weapons-grade defense plutonium. The requirement is in place during the first 100 days of each year from 2016 through 2021.

The Department of Energy has failed to process or remove the plutonium or pay the state the \$100 million owed for 2016 or 2017. This lawsuit seeks the recovery of the \$100 million owed for 2017.

The state sought the 2016 payments in the pending case before the federal court in South Carolina, but federal Judge Michelle Childs ruled that the state should file the claim in the U.S. Court of Federal Claims. The State intends to pursue the 2016 money when that matter concludes. The state filed its lawsuit late Monday afternoon for the 2017 monies owed.

The federal government cannot “renege on its obligations” and “leave South Carolina as the permanent dumping ground for weapons-grade defense plutonium,” Attorney General Wilson said in the complaint.

Read more: <http://www.scag.gov/archives/33050#ixzz4pBpeW1Um>