

JACQUELINE PARKER
1700 WEST WASHINGTON, SUITE H
PHOENIX, ARIZONA 85007-2844
PHONE: (602) 926-3375
TOLL FREE: 1-800-352-8404
jparker@azleg.gov
DISTRICT 15



AUSTIN SMITH
1700 WEST WASHINGTON, SUITE H
PHOENIX, ARIZONA 85007-2844
PHONE: (602) 926-3560
TOLL FREE: 1-800-352-8404
asmith@azleg.gov
DISTRICT 29

Arizona House of Representatives
Phoenix, Arizona 85007

April 3, 2024

Via Email and U.S. Mail

Hon. Kris Mayes
Arizona Attorney General
2005 N. Central Ave.
Phoenix, Arizona 85004

Re: Records Request #2 – Recordings of Town Hall Meetings, External Emails Relating to Groundwater & Public Nuisance Issues, and Employee Reimbursement Records

Dear Attorney General Mayes:

We write to you today in our official capacity, as the Chair and Vice Chair of the Ad Hoc Committee on Executive Oversight, to investigate your use of public resources to host “town halls” relating to water policy and your stated interest in bringing public nuisance lawsuits against farmers operating in rural Arizona based on their water usage.¹

Farming is a vital part of our state’s economy.² Arizona is home to almost 17,000 farms. The University of Arizona reported that approximately 95% of Arizona’s farms are family farms, and Arizona has the largest percentage of female farmers (48.7%) of any state in the country.³ Arizona farmers generate more than \$23 billion and employ 162,000 workers.⁴

As you may know, under Arizona’s Agricultural Protection Act (“AAPA”) (also known as Arizona’s “Right to Farm” statutes), “[a]gricultural operations conducted on farmland that are consistent with good agricultural practices and established before surrounding nonagricultural uses

¹ See Brandon Loomis, Arizona Republic, *Attorney general seeking evidence of groundwater overpumping in rural Arizona, may sue*:

<https://www.azcentral.com/story/news/local/arizona-environment/2024/03/29/arizona-attorney-general-may-sue-corporate-farms-overpumping-groundwater/73143798007/>

² United States Department of Agriculture, *State Summary Highlights: 2022*,

https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1_Chapter_2_US_State_Level/st99_2_001_001.pdf, page 1.

³ Valorie Rice, *Arizona Agriculture: Not Your Average Farmers*,

<https://www.azeconomy.org/2019/09/economy/arizona-agriculture-not-your-average-farmers/>.

⁴ Arizona Department of Agriculture, *Guide to Arizona Agriculture*,

https://agriculture.az.gov/sites/default/files/AZDA_GuideToAZAg_2018.pdf, page 8.

are presumed to be reasonable and do not constitute a nuisance unless the agricultural operation has a substantial adverse effect on the public health and safety.” A.R.S. § 3-112(A). Additionally, “[a]gricultural operations undertaken in conformity with federal, state and local laws and regulations are presumed to be good agricultural practices and not adversely affecting the public health and safety.” A.R.S. § 3-112(B).

Putting aside whether your novel lawsuit can be reconciled with the AAPA, we are troubled by your decision to use public resources and host “town hall” meetings to “gather evidence” targeting the agricultural industry and manufacturing a public nuisance lawsuit that could very well result in taxpayers footing the bill. *See* A.R.S. § 3-112(C)(2).

We are also disturbed by allegations that you have conveyed inaccurate information about Arizona’s groundwater code and the scope of your statutory authority—which very clearly does not include crafting water policy for the state on behalf of the Legislature or the Governor. *See* A.R.S. § 45-401(A) (declaring “it is in the best interest of the general economy and welfare of this state and its citizens that the **legislature** evoke its police power” to regulate groundwater) (emphasis added); Brahm Resnik, 12 News, *Saudi farm confusion: Go. Hobbs says AG Mayes has no authority to take action against controversial groundwater pumper*, <https://www.12news.com/article/news/politics/its-very-complex-gov-hobbs-says-ag-kris-mayes-doesnt-have-the-power-to-block-saudi-water-deal/75-1179f6ae-e9ff-43de-b324-af1874156179> (noting Governor Hobbs’ position on Attorney General’s lack of authority to take action against Saudi-owned farm and Attorney General’s potential conflict of interest).

You reportedly stated, “If we have to take this issue to the ballot and let all 7 million Arizonans decide this matter or all of the folks who vote in the next election then that’s what I’m prepared to do.”⁵ To be clear, you have no authority whatsoever to refer any measure to voters for their approval, and publicly advocating for a ballot measure raises questions about your ability to impartially perform any duties required for any future ballot measure relating to groundwater issues. Moreover, Arizona law prohibits using public resources (including personnel, monies, materials, buildings, vehicles, etc.) to influence an election. *See* A.R.S. § 16-192. We urge you to retract your false statements, revisit the statutory responsibilities and powers of your office, and discontinue using public resources to make campaign speeches in violation of Arizona law.

Pursuant to this legislative investigation, and alternatively under the Arizona Public Records Act, A.R.S. § 39-121, *et seq.*, please provide us with the following records no later than **April 16, 2024**:

1. Recordings or transcripts of all town hall meetings conducted in 2023 and 2024 during which any groundwater or public nuisance issues were solicited or discussed.
2. Copies of all emails sent between October 1, 2023, and April 3, 2024, from you or any employee of your office to any email address domain other than @azag.gov that contain

⁵ Madison Thomas, *Attorney General Kris Mayes visits Cochise County to discuss groundwater supply*, <https://www.kgun9.com/news/community-inspired-journalism/cochise-county/attorney-general-kris-mayes-visits-cochise-county-to-discuss-groundwater-supply>

any of the following terms: “groundwater”, “farm”, “pumping”, “public nuisance”, “nuisance”, “town hall”, “agriculture”, “agricultural”, “dairy”, “listening session”, or “wells.”

3. Copies of all records, including emails, orders, and receipts, regarding any employee’s or vendor’s request for reimbursement of expenses, whether approved or not, for travel, lodging, food, or any other expense relating to town halls on groundwater or public nuisance issues. For any approved expense, include the funding source.

We further request an index of records that have been withheld and the reasons the records or categories of records have been withheld. *See* A.R.S. § 39-121.01(D)(2). Feel free to include any other relevant information that you believe would address our concerns.⁶

At this time, we are not requesting your testimony on this subject, but if you wish to testify, please let us know and we will work with your schedule to arrange a Committee hearing.

Respectfully,



Jacqueline Parker
Chair, Committee on Executive Oversight



Austin Smith
Vice-Chair, Committee on Executive Oversight

⁶ For additional information regarding the House’s standard investigative protocols, please visit:
<https://www.azhouse.gov/alispdfs/AZHouseInvestigativeProtocols.pdf>.