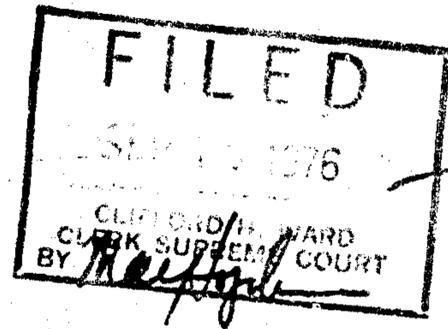


1 VERITY, SMITH, LACY, ALLEN & KEARNS, P.C.
2 902 Transamerica Building
3 Tucson, Arizona 85701
4 (602) 623-6961

5 MUSICK, PEELER & GARRETT
6 One Wilshire Boulevard, Suite 2000
7 Los Angeles, California 90017
8 (213) 629-3322



9 Attorneys for CYPRUS PIMA MINING COMPANY

10 IN THE SUPREME COURT OF THE STATE OF ARIZONA

11 FARMERS INVESTMENT COMPANY,)
12 a corporation,)
13)
14 Appellant,)

15 v.)

16 ANDREW L. BETTWY, as State Land)
17 Commissioner, and the STATE LAND)
18 DEPARTMENT, a Department of the)
19 State of Arizona, and PIMA MINING)
20 COMPANY, a corporation,)
21)
22 Appellees.)

NO. 11439-2

23 FARMERS INVESTMENT COMPANY,)
24 a corporation,)
25)
26 Appellant,)

MOTION FOR REHEARING
AND EXTENSION OF TIME TO
FILE MEMORANDUM IN SUPPORT

27 v.)

28 THE ANACONDA COMPANY,)
29 a corporation; AMAX COPPER MINES,)
30 INC., THE ANACONDA COMPANY as)
31 partners in and constituting)
32 ANAMAX MINING COMPANY, a)
partnership,)
Appellees.)

33 CITY OF TUCSON, a municipal)
corporation,)
Appellant,)

34 v.)

35 ANAMAX MINING COMPANY, and DUVAL)
CORPORATION and DUVAL SIERRITA)
CORPORATION,)
Appellees.)

1 The appellee, Cyprus Pima Mining Company (referred to
2 in previous pleadings as Pima Mining Company) and referred
3 to herein as "Cyprus Pima," pursuant to Rule 9(a) of the
4 Rules of the Supreme Court, does hereby petition the court
5 for a rehearing on the decision filed in the above-entitled
6 case on August 26, 1976.

7 The grounds for rehearing are more particularly specified
8 as follows:

9 I. The majority opinion has directly overruled a
10 previous decision of this court in *State v. Anway*, 87 Ariz.
11 206, 349 P.2d 774 (1960), and has adopted the dissenting
12 opinion of Justice Phelps therein that water may only be
13 applied to the soil to which it is subjacent, 349 P.2d at
14 780.

15 II. The majority opinion has overruled its rulings in
16 *Jarvis v. State Land Department*, 106 Ariz. 506, 479 P.2d 169
17 (1970), and *Jarvis v. State Land Department*, _____ Ariz. _____,
18 550 P.2d 227 (1976), by rejecting the concept of a water
19 basin and the right of user belonging to the owners overlying
20 the common supply, 479 P.2d at 173.

21 III. The majority opinion appears to have abrogated the
22 rule enunciated in *Jarvis II* by not recognizing the right of
23 water users to purchase agricultural lands and permit the
24 consumptive use to be applied to other lands or for other
25 non-agricultural activities.

26 IV. The majority opinion in referring to the "well sites"
27 of Anamax (p.3), and stating that water may not be pumped from
28 one "parcel" and transported to another (p.14), has not estab-
29 lished any ascertainable standard as to what will constitute a
30 use "on the land" from which it was taken.

31 V. The appellee, Cyprus Pima, in order to comply with the
32 decision of the majority as written, may simply reconstruct the

1 existing wet milling circuit adjacent to its water wells,
2 which relocation would have no effect on the amount of
3 groundwater withdrawn.

4 VI. The majority opinion has overruled its decision in
5 *Neal v. Hunt*, 112 Ariz. 307, 541 P.2d 559 (1975), by assuming
6 damage to FICO as a result of the pumping of Anamax without
7 requiring a well-by-well analysis of what will constitute
8 damage, 541 P.2d at 565-66.

9 A memorandum in support of the above grounds has not
10 been attached hereto because time has not permitted a through
11 presentation of the complex issues involved herein, and
12 appellee Cyprus Pima does hereby request the court to allow
13 until the close of business on October 12, 1976, within
14 which to file a memorandum in support of this Motion.
15 Attached hereto is a Stipulation whereby the appellant and
16 appellee Cyprus Pima have agreed that appellee Cyprus Pima
17 shall have until the close of business on September 27,
18 1976, or until such later date as the court shall order,
19 within which to file a memorandum in support of this Motion.

20 Respectfully submitted this 8th day of September, 1976.

21 VERITY, SMITH, LACY, ALLEN
22 & KEARNS, P.C.
23 902 Transamerica Building
24 Tucson, Arizona 85701

25 By John C. Lacy
26 John C. Lacy

27 and

28 MUSICK, PEELER & GARRETT
29 One Wilshire Boulevard, Suite 2000
30 Los Angeles, California 90017

31 By Gerald G. Kelly
32 Gerald G. Kelly

Attorneys for Appellee Cyprus
Pima Mining Company

1 Copies of the foregoing
2 mailed this *on* day of
September, 1976, to:

3 Mark Wilmer
4 Snell & Wilmer
5 3100 Valley Bank Center
Phoenix, Arizona 85073

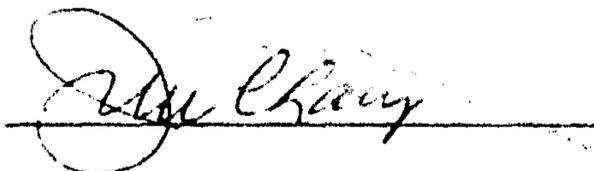
6 Bruce E. Babbitt
7 Attorney General
200 State Capitol
Phoenix, Arizona 85007

8 Thomas S. Chandler
9 Chandler, Tullar, Udall & Richmond
10 1110 Transamerica Building
Tucson, Arizona 85701

11 James D. Webb
12 P.O. Box 5547
Tucson, Arizona 85703

13 Calvin H. Udall
14 Fennemore, Craig, Von Ammon & Udall
100 West Washington, Suite 1700
Phoenix, Arizona 85003

15 Burton M. Apker
16 Evans, Kitchel & Jenckes, P.C.
363 North First Avenue
17 Phoenix, Arizona 85003

18 
19 _____

20

21

22

23

24

25

26

27

28

29

30

31

32

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

ss:

I Antonio Bucci hereby certify:
Name

That I am Reference Librarian, Law & Research Library Division of the Arizona State
Title/Division

Library, Archives and Public Records of the State of Arizona;

That there is on file in said Agency the following:

Arizona Supreme Court, Civil Cases on microfilm, Film #36.1.764, Case #11439-2, Supreme Court Instruments, Part One, Motion for Rehearing and Extension of Time to File Memorandum in Support, pages 332-335 (4 pages)

The reproduction(s) to which this affidavit is attached is/are a true and correct copy of the document(s) on file.

Antonio Bucci
Signature

Subscribed and sworn to before me this 12/12/05
Date

Etta Louise Muir
Signature, Notary Public

My commission expires 04/13/2009
Date

