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ACTION _____

STATE LAND DEPARTMENT OF THE STATE OF ARIZONA

BEFORE THE BOARD OF APPEALS

IN THE MATTER OF APPEAL OF APPRAISAL OF APPLICATION TO PURCHASE GROUNDWATER NO. 21-102152 IN THE AMOUNT OF $85 PER ACRE-FOOT, WITH A MINIMUM ANNUAL REMOVAL OF 80 ACRE-FEET FOR A TOTAL MINIMUM ANNUAL ROYALTY OF $6,800 FOR A TERM OF TEN YEARS ON STATE LAND DESCRIBED AS: SECTION 17, TOWNSHIP 13 NORTH, RANGE 9 WEST, YAVAPAI COUNTY, ARIZONA **A.B. NO. 997**	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER for A.B. Nos. 997 through 1001**
IN THE MATTER OF APPEAL OF APPRAISAL OF APPLICATION TO PURCHASE GROUNDWATER NO. 21-102153 IN THE AMOUNT OF $85 PER ACRE-FOOT, WITH A MINIMUM ANNUAL REMOVAL OF 80 ACRE-FEET FOR A TOTAL MINIMUM ANNUAL ROYALTY OF $6,800 FOR A TERM OF TEN YEARS ON STATE LAND DESCRIBED AS: SECTION 29, TOWNSHIP 14.5 NORTH, RANGE 8 WEST, YAVAPAI COUNTY, ARIZONA **A.B. NO. 998**	

IN THE MATTER OF APPEAL OF APPRAISAL OF APPLICATION TO PURCHASE GROUNDWATER NO. 21-102154 IN THE AMOUNT OF $85 PER ACRE-FOOT, WITH A MINIMUM ANNUAL REMOVAL OF 80 ACRE-FEET FOR A TOTAL MINIMUM ANNUAL ROYALTY OF $6,800 FOR A TERM OF TEN YEARS ON STATE LAND DESCRIBED AS:

SECTION 1, TOWNSHIP 15 NORTH, RANGE 9 WEST, YAVAPAI COUNTY, ARIZONA **A.B. NO. 999**

IN THE MATTER OF APPEAL OF APPRAISAL OF APPLICATION TO PURCHASE GROUNDWATER NO. 21-102155 IN THE AMOUNT OF $85 PER ACRE-FOOT, WITH A MINIMUM ANNUAL REMOVAL OF 80 ACRE-FEET FOR A TOTAL MINIMUM ANNUAL ROYALTY OF $6,800 FOR A TERM OF TEN YEARS ON STATE LAND DESCRIBED AS:

SECTION 11, TOWNSHIP 15 NORTH, RANGE 9 WEST, YAVAPAI COUNTY, ARIZONA **A.B. NO. 1000**

IN THE MATTER OF APPEAL OF APPRAISAL OF APPLICATION TO PURCHASE GROUNDWATER NO. 21-102156 IN THE AMOUNT OF $85 PER ACRE-FOOT, WITH A MINIMUM ANNUAL REMOVAL OF 80 ACRE-FEET FOR A TOTAL MINIMUM ANNUAL ROYALTY OF $6,800 FOR A TERM OF TEN YEARS ON STATE LAND DESCRIBED AS:

SECTION 24, TOWNSHIP 15 NORTH, RANGE 9 WEST, YAVAPAI COUNTY, ARIZONA **A.B. NO. 1001**

APPELLANT: CYPRUS BAGDAD COPPER CORP.

Pursuant to proper notice and A.R.S. § 37-215, the above captioned matters were consolidated and came before the Board of Appeals on December 18, 1997 in Room 321, 1616 West Adams, Phoenix, Arizona. The issue on appeal was whether the appraisals for the five applications to purchase groundwater, captioned above, reflected the true value of the water.

The State Land Department ("Department") was present and represented by Karen E. Baerst, Assistant Attorney General. The Appellant was present and represented by Attorney Lauren J. Caster. Terri Skladany, Assistant Attorney General from the Solicitor General's Office, was present and represented the Board.

The Board read and considered its file and the evidence presented in this matter. Based on this record, the Board makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The Appellant's Applications to Purchase Groundwater Nos. 21-102152, 21-102154, and 21-102155 are intended to secure the right to purchase groundwater to supplement the municipal water supply of the Town of Bagdad, Arizona. Application No. 21-102153 is intended to secure the right to purchase groundwater to supplement the water supply to a trailer park located approximately four miles north of the Town of Bagdad. Application No. 21-102156 is intended to secure the right to purchase groundwater to supplement the industrial water supply of Appellant's mining operation near the Town of Bagdad.

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2. None of the wells from which groundwater would be withdrawn pursuant to Appellant's Applications Nos. 21-102152 through 21-102156 is located within an Active Management Area. The groundwater to be withdrawn pursuant to these Applications would not be used in an Active Management Area. The relative locations of the wells to each other and to the Town of Bagdad are shown on the Appellant's Exhibit No. 1 submitted prior to the hearing.

3. The production capacities of the wells from which water would be withdrawn pursuant to Applications Nos. 21-102153 through 21-102156 have declined over time from their initial estimated production capacities. This is believed to be due to the fact that they are drilled into fracture zones in rock formations rather than into large alluvial aquifers. Pumping from these wells normally must be suspended from time to time to allow the fracture zones to recharge with groundwater.

4. The average depth of the wells from which groundwater would be withdrawn pursuant to Applications Nos. 21-102153 through 21-102156 is 478 feet. The depth of the well from which groundwater would be withdrawn pursuant to Application No. 21-102152 is 473 feet.

5. The Appellant's Application to Purchase Groundwater No. 21-102152 seeks to purchase groundwater from one well located at the Skunk Canyon (also known as "Skunk Wash") well site. That well site is located in Section 17, Township 13 North, Range 9 West.

6. The Department recognized several notable features related to the Skunk Canyon application: (i) the well is located approximately eight miles southwest of the central

business district of Bagdad, (ii) the Applicant intended to use water extracted from this well to contribute to Bagdad's back-up water supply, (iii) before the water can be used, the successful bidder would have to construct a pipeline to transport the water from the well site to the points of treatment and use, and (iv) the application requested the right to purchase a minimum of 80 acre feet of groundwater per year for a ten-year term.

7. The Department appraised the market value of the water from the Skunk Canyon location at $85.00 per acre foot.

8. The Appellant's appraisal concluded that the value of the water from the Skunk Canyon location to be $35.00 per acre foot. The factors that the Appellant's appraisal considered were: (i) the excellent location of the well near Highway 97, (ii) the six mile distance from the well to a power source and the eight mile distance from the well to the point of use, (iii) the improvements needed to use this water would cost one million dollars, (iv) the fact that the point of withdrawal and place of use are outside an Active Management Area, and (v) due to the relative remoteness of this water source from other potential water uses, the lack of market demand for water from this water source.

9. The Appellant's Application to Purchase Groundwater No. 21-102153 seeks the right to purchase groundwater from two wells located at the Sycamore well site. That well site is located in Section 29, Township 14½ North, Range 8 West.

10. The Department recognized several notable features related to the Sycamore application: (i) the wells are located approximately five miles southeast of Bagdad, (ii) the Applicant will use the groundwater for domestic, municipal, and industrial purposes, (iii) the water is transported to the points of treatment and use by delivery pipelines, and (iv) the

application requested the right to purchase a minimum of 80 acre feet of groundwater per year for a ten-year term.

11. The Department appraised the market value of the water from the Sycamore location at $85.00 per acre foot.

12. The Appellant's appraisal concluded that the value of the water from the Sycamore location to be $65.00 per acre foot. The factors that Appellant's appraisal considered were: (i) the excellent location of the well site and (ii) the requirement of a short power and delivery system, (iii) the fact that the points of withdrawal and place of use are outside an Active Management Area, and (iv) due to the relative remoteness of these water sources from other potential water uses, the lack of market demand for water from these water sources.

13. The Appellant's Application to Purchase Groundwater No. 21-102154 seeks the right to purchase groundwater from one well located at the Contreras well site. That well site is located in Section 1, Township 15 North, Range 9 West.

14. The Department recognized several notable features related to the Contreras application: (i) the well is located approximately seven miles northeast of Bagdad, (ii) the Applicant uses the water for domestic, municipal, and industrial purposes, (iii) the water is transported to the points of treatment and use by a delivery pipeline, and (iv) the application requested the right to purchase a minimum of 80 acre feet of groundwater per year for a ten-year term.

15. The Department appraised the market value of the water from the Contreras location at $85.00 per acre foot.

16. The Appellant's appraisal concluded that the value of the water from the Contreras location to be $35.00 per acre foot. The factors that appellant's appraisal considered were: (i) the poor access to the well and (ii) the need for approximately eleven miles of power and delivery system to the point of use, (iii) the fact that the point of withdrawal and place of use are outside an Active Management Area, and (iv) due to the relative remoteness of this water source from other potential water uses, the lack of market demand for water from this water source.

17. The Appellant's Application to Purchase Groundwater No. 21-102155 seeks the right to purchase groundwater from one well located at the Urie well site. That well site is located in Section 11, Township 15 North, Range 9 West.

18. The Department recognized several notable features related to the Urie application: (i) the well is located approximately five miles north of Bagdad, (ii) the Applicant uses the water for domestic, municipal, and industrial purposes, (iii) the water is transported to the points of treatment and use by a delivery pipeline, and (iv) the application requested the right to purchase a minimum of 80 acre feet of groundwater per year for a ten-year term.

19. The Department appraised the market value of the water from the Urie location at $85.00 per acre foot.

20. The Appellant's appraisal concluded that the value of the water from the Urie location to be $35.00 per acre foot. The factors that Appellant's appraisal considered were: (i) the poor access to the well and (ii) the need for approximately seven miles of power and delivery systems to the point of use, (iii) the fact that the withdrawal and place of use are

outside an Active Management Area, and (iv) due to the relative remoteness of this water source from other potential water uses, the lack of market demand for water from this water source.

21. The Appellant's application to Purchase Groundwater No. 21-102156 seeks the right to purchase groundwater from two wells located at the Warm Springs well site. That well site is located in Section 24, Township 15 North, Range 9 West. Water from these wells is transported by means of a pipeline system that is wholly separate from the system carrying water from wells from which groundwater would be withdrawn under Applications Nos. 21-102153 through 21-102155.

22. The Department recognized several notable features related to the Warm Springs application: (i) the well is located approximately five miles north of Bagdad, (ii) the Applicant uses the water for domestic, municipal, and industrial purposes, (iii) the water is transported to the point of use by a delivery pipeline, and (iv) the application requested the right to purchase a minimum of 80 acre feet of groundwater per year for a ten-year term.

23. The Department appraised the market value of the water from the Warm Springs location at $85.00 per acre foot.

24. The Appellant's appraisal concluded that the value of the water from the Warm Springs location to be $30.00 per acre foot. The factors that Appellant's appraisal considered were: (i) the poor access to the wells, (ii) the need for approximately five miles of power and delivery systems to the point of use, (iii) the water contains radiochemical contaminants in concentrations that exceed drinking water standards, (iv) the limitation that the water can be used only for industrial purposes, (v) the fact that the points of withdrawal

and place of use are outside an Active Management Area, and (vi) due to the relative remoteness of these water sources from other potential water uses, the lack of market demand for water from these water sources.

25. When the Department learned of the existence of radiochemical contaminants at Warm Springs, it amended the appraisal of the market value of the water from these wells to $75.00 per acre foot.

26. The Appellant's geologist, Dr. Phil Blacet testified that the Appellant has been looking for water to supply Bagdad for the last 40 years and that the water from the State land offers a good back-up water supply to Bagdad's approximately 2,000 residents. Dr. Blacet noted that the water from the wells on State land provides approximately 15% of the City's water needs and, without this back-up system, the community would be at risk if the main water system became inoperable.

27. The Appellant has leased the State land on which the wells are located since the 1960's. Prior to the most recent appraisals, the Appellant paid $35.00 per acre foot for water extracted at each of the wells.

28. In arriving at its appraisal for each of the applications, the Department evaluated nine pending or actual sales or leases of water in California, Oklahoma, Colorado, and Arizona. The transactions occurred between 1992 and the present and had a value range from a low of $65.00 per acre foot to a high of $135.00 per acre foot. Likewise, the amount of water sold or leased ranged from less than one acre foot to 200,000 acre feet and some of the transactions encompassed surface water sales, rather than groundwater sales.

29. The Department adjusted the comparables and assigned them weight according

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to their similarity to the wells at issue.

30. The Department did not evaluate the location differences among the wells because it determined that location was not a true adjustment factor. The Department concentrated its focus on the value of the water. The Appellant maintained that the location of the water sources was a factor in evaluation.

31. The Department did not consider extraction costs in setting value because it viewed extraction as a cost of doing business and did not have a basis on which to estimate the extraction cost because the successful bidder and the use it would make of the water would not be known until auction. The Appellant maintained that the cost of developing and making use of the groundwater from the well sites mentioned in the Applications must be considered in determining the value of the water because those costs diminished the demand for water from those water sources, thus driving downward the value of the water to prospective buyers.

32. The parties generally agreed that in recent history competition to purchase groundwater from the Department is rare, resulting in less consideration of the market as a factor in value. The parties generally agree that the key elements to determine water value are the water's quality, quantity, and location.

33. The Appellant maintained that those prior purchases of groundwater in Active Management Areas that afforded the purchasers the right to withdraw groundwater pursuant to the Department's own Type 2 Grandfathered Groundwater Right as well as the right to purchase the groundwater itself, were of little value as comparable sales for these Applications. Absent the ability to withdraw under the Department's own Type 2 Right, the successful bidder would have had to acquire its own Type 2 Right in order to be able to

withdraw groundwater from State Trust Lands in those instanes. In the Appellant's view, the ability to rely on the Department's own Type 2 Right undoubtedly conferred a benefit on the purchaser in those transactions. The purchaser under these Applications, in contrast, may withdraw groundwater from State Trust Lands without securing any grandfathered groundwater right or groundwater withdrawal permit of any kind. The Department did not regard this distinction as a relevant factor in determining the market value estimate of groundwater under these Applications. Similarly, the Appellant maintained that the fact that the points of withdrawal and the places of use of the groundwater being purchased under these Applications are outside an Active Management Area makes the groundwater to be purchased pursuant to these Applications worth less than groundwater purchased in transactions involving pumping within an Active Management Area. The Department disagreed.

34. Between December of 1996 and November of 1997, the Department conducted three public auction water sales of water valued and sold at $85.00 per acre foot and two public auction water sales of water valued and sold at $90.00 per acre foot.

35. There are few true comparables on which to evaluate these applications. Therefore, the appraisals are necessarily very subjective.

Conclusions of Law

1. Section 28 of Arizona's Enabling Act, 36 U.S. Stat. 557, 568-79, Act of June 1910, requires that products of State land "shall be appraised at their true value, and no sale or disposal thereof shall be made for a consideration less than the value so ascertained." *See also* Ariz. Const. Art. 10, § 8.

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2. In Arizona, water "is a thing of value directly derived from land to be considered a product of the land within the meaning of the Constitution and Enabling Act." *Farmers Investment Co. v. Pima Mining Co.*, 111 Ariz. 56, 58, 523 P.2d 487, 489 (1974).

Discussion

The standards to be applied in evaluating the true market value of the water that is the subject of these applications are: quality, location, usage, and quantity. Although the Department and the Appellant have compiled complete appraisal reports for all of the applications, the Board is concerned about the reasonableness of the appraisals in view of the standards that should be applied and the significant disparity in value between the Department's appraisals and the Appellant's appraisals. Both the Department's appraiser and the Appellant's appraiser have sound appraisal experience and have completed between 12 and 20 water appraisals. Curiously, the disparity between the Department's and Appellant's appraised values approximates 80%. Such disparity reflects the subjectivity of these evaluations. Thus, our charge is to establish a rational basis for the value of the water accounting for the economic reasonableness of each transaction, the differences in water quality and water sources, and the prior comparable sales.

The dilemma in placing great weight on the Department's 1996-97 water sales is that most purchasers have made a significant investment to develop the well sites, are in need of the water, and thus will not freely abandon the leases. Therefore, the limited Department water sales preceding the appraisals' date of value, although correctly used as comparables, should not unduly weight the value on these applications.

Therefore, the Board finds the value of water for each of the applications at issue is

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as follows:

A.B. 997 (Skunk Canyon): $50.00 per acre foot because the well adjoins a highway and therefore has a superior location.

A.B. 998 (Sycamore): $75.00 per acre foot because it has a good location and acceptable potable water quality. Although the Department priced the water at $85.00 per acre foot, the Board finds that the Department priced the water too high because it did not account for the difference in location with the other Department sales which the Department viewed as comparable. This location should have had a downward adjustment in value because the water was not in an AMA requiring water rights for withdrawal.

A.B. 999 (Contreras): $65.00 per acre foot because it is not readily accessible, is the worst location, and is a significant distance from the point of use.

A.B. 1000 (Urie): $65.00 per acre foot because of its lack of accessibility and distance from the point of use.

A.B. 1001 (Warm Springs): $45.00 per acre foot because it is unpotable water. Although this water does not meet current standards for drinking, it has a current commercially beneficial use to the Appellant and has potential for other uses.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law, and Discussion, it is hereby ordered sustaining the appeals challenging the appraisals on A.B. 997 through 1001 and setting the value of the water as follows:

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A.B. 997 (Skunk Canyon):	$50.00 per acre foot
A.B. 998 (Sycamore):	$75.00 per acre foot
A.B. 999 (Contreras):	$65.00 per acre foot
A.B. 1000 (Urie):	$65.00 per acre foot
A.B. 1001 (Warm Springs):	$45.00 per acre foot

This Decision is subject to rehearing or review pursuant to A.R.S. § 41-1092.09 and A.A.C. R12-5-2315. An aggrieved party may file a motion for rehearing or review within thirty days after service of this administrative decision. The motion for rehearing or review shall be in writing and shall meet the requirements in A.A.C. R12-5-2315(C). Pursuant to A.R.S. § 41-1092.09, an aggrieved party is not required to file a motion for rehearing or review of the Board's decision in order to exhaust its administrative remedies. Judicial review of the Board's decision is subject to the time restrictions and procedures in A.R.S. § 41-1092.10.

DATED: January 20, 1998

James M. Webb

JAMES M. WEBB, CHAIRPERSON

A copy of the foregoing was mailed on January 22, 1998 by certified mail, return receipt requested, to:

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. . .

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Copies were sent on January 22, 1998 by interagency mail to:

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By Carol Holtorf

PDC000705

security entitled to indemnity under section 90 for damages caused by its unlawful entry of hotel room at direction of hotel manager); RESTATEMENT § 90, cmt. a.

Although Cella Barr does not dispute that it contracted with the Glassmans to perform an environmental audit, it alleged that Cohen, acting as the Glassmans' agent, directed the audit, attaching in support the jury verdict finding Cohen to be 37% at fault, twice the liability of Cella Barr. Cohen maintains that Cella Barr cannot recover under this theory because Cella Barr was independently negligent. *Cf. Schweber Electronics v. Natural Semiconductor Corp.*, 174 Ariz. 406, 410, 850 P.2d 119, 123 (App.1992) (indemnity in chain-of-distribution case requires distributor or retailer to have no independent negligence).

Section 90 applies only when the agent has done "an authorized act" in the manner directed by the principal. RESTATEMENT OF RESTITUTION § 90, cmt. b. Here, Cella Barr never alleged in its complaint that the Glassmans, acting through their agent Cohen, authorized Cella Barr to negligently conduct an environmental audit of the plating facility. In any event, Cella Barr could not be liable if it had properly conducted the study; it is liable for its negligent performance of the audit. In other words, Cella Barr incurs liability because of its own negligence in conducting the environmental audit, not because of Cohen's direction on behalf of the Glassmans. Thus Cella Barr is not entitled to indemnity under section 90.

[14, 15] Additionally, the record fails to establish that the Glassmans placed Cella Barr under the direct supervision of Cohen and that Cella Barr acted reasonably pursuant to Cohen's direction in performing the audit. Although Cella Barr pled in its complaint that Cohen was acting as the Glassmans' agent and that the environmental audit was conducted at Cohen's direction, Cohen replied that no employment relationship existed between him and Cella Barr, and that Cella Barr was merely "an independent contractor hired to conduct an environmental audit/study on behalf of Glassman, *not* ... Cohen." (Emphasis original.) Because Cohen made clear that there was no issue as to whether Cella Barr acted according to Cohen's direction, Cella Barr then was required to establish with admissible evidence that Cella Barr and Cohen were agents of the principal, the Glassmans, and that, under the terms of this relationship, Cella Barr was acting at the direction of Cohen and in the intended manner. Cella Barr, however, merely relied upon the allegations in its complaint and consequently failed to create a factual issue about which reasonable people could disagree. Thus the trial court granted properly Cohen's motion to dismiss.[1]

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court.

TOCI, P.J., and NOYES, J., concur.

868 P.2d 1070

RAIL N RANCH CORPORATION, an Arizona corporation, and Lloyd W. Golder III and Vicki L. Cox Golder, husband and wife, Plaintiffs–Appellants,

v.

M. Jean HASSELL, individually, and as the Arizona State Land Commissioner, and as Trustee of the Arizona School Lands Trust; Arizona State Land Department; Arizona Board of Land Appeals, Defendants–Appellees.

No. 1 CA–CV 92–0065.

Court of Appeals of Arizona,
Division 1, Department B.

Feb. 10, 1994.

Applicant filed complaint seeking judicial review of ruling of the Board of Land Ap-

1. Although the deposition transcripts Cella Barr attached to its motion for reconsideration from the trial court's grant of Cohen's motion to dismiss arguably establish that Cella Barr was acting under Cohen's direction, we are precluded from relying on this evidence as a basis for reversing the trial court. *See GM Development Corporation v. Community American Mortgage Corporation*, 165 Ariz. 1, 4, 795 P.2d 827, 830 (App.1990) (appellate court only considers evidence presented to the trial court when the summary-judgment motion considered).

peals dismissing appeal of State Land Commissioner's order denying application to purchase state school trust land, and applicant also requested special action to order sale to proceed and specific performance of contract to renew its lease, and made various damage claims. The Superior Court, Maricopa County, Cause No. CV 90-31129, Elizabeth Stover, J., affirmed Board's dismissal of claims for lack of jurisdiction, and dismissed all other claims for lack of jurisdiction, and applicant appealed. The Court of Appeals, Jacobson, P.J., held that: (1) Board lacked jurisdiction to review Commissioner's order, and (2) applicant could not join private causes of action with request for judicial review of administrative proceeding.

Affirmed.

1. Administrative Law and Procedure ⟹683, 796

Both trial court and Court of Appeals are free to draw their own legal conclusions in deciding whether agency erred in its determination of the law.

2. Statutes ⟹223.2(.5)

Statutes are to be construed together with related statutes; this rule clearly applies to subsections within same statutory section.

3. Public Lands ⟹54(4)

Board of Land Appeals lacked jurisdiction to review State Land Commissioner's order denying application to purchase state school trust land after Board had lowered appraised value of the land; no "sale proceedings" were underway so as to invoke Board's limited appellate jurisdiction, where Commissioner had not determined that sale of land at Board's reduced appraisal value would be in best interest of state. A.R.S. § 37-236, subds. A-C.

4. Action ⟹43.1

Neither plaintiff nor defendant may join private causes of action with request for judicial review of agency ruling.

5. Appeal and Error ⟹878(6)

In absence of cross appeal, Court of Appeals lacked jurisdiction to modify trial court's judgment, which did not dismiss on the merits. 17B A.R.S. Civil Appellate Proc. Rules, Rule 13(b)(3).

Robert A. Kerry, P.C. by Robert A. Kerry, Tucson, for plaintiffs-appellants.

Grant Woods, Atty. Gen. by Theresa M. Craig, Phyllis R. Hughes and Catherine Stewart, Asst. Attys. Gen., Phoenix, for defendants-appellees.

OPINION

JACOBSON, Presiding Judge.

We are asked in this appeal to determine when an application for sale of state trust land ripens into a "sale proceeding" for the purpose of determining what avenue of review is available to a disappointed sale applicant.

The Commissioner (Commissioner) of the Arizona State Land Department (Department) denied the application of Rail N Ranch Corporation (Rail N Ranch) to purchase 160 acres of state school trust land. Rail N Ranch appealed this decision to the Department's Board of Appeals (Board), pursuant to A.R.S. § 37-236(C). The Board determined that the statute was not applicable and concluded that it had no jurisdiction to consider the Commissioner's order. The Board thus dismissed the appeal.

Rail N Ranch then filed a complaint in superior court seeking judicial review of the Board's ruling. In the same complaint, Rail N Ranch also stated other claims for relief against the Department, the Board, and the Commissioner. On the administrative review claim, the superior court affirmed the Board's dismissal for lack of jurisdiction. It dismissed all the other claims, concluding that it had no jurisdiction to consider them in the judicial review proceeding. This appeal followed.

FACTS AND PROCEDURAL HISTORY

For approximately twenty-four years, Rail N Ranch had leased 160 acres of state trust land upon which it had built a dam and spillway. The dam leaked despite Rail N

Ranch's repeated efforts over the years to repair it. When the lease of the trust land came up for renewal in 1986, the Department refused to renew the lease on the 15-acre portion that contained the dam and spillway.

Rail N Ranch then applied to purchase the 15 acres. The application was later amended to include the entire 160 acres after the Department refused to sell the 15 acres alone. For more than three years, the application languished, apparently because the Commissioner had difficulty obtaining an appraisal at a price he would be willing to recommend for sale of the property.

Finally, on May 31, 1989, the Department sent Rail N Ranch a notice of appraisal, informing it that the Commissioner had appraised the 160 acres at $4000 per acre and had appraised the value of the improvements at $880,748. The notice contained a statement explaining that the "appraisal is not a final determination of the merits of the application." The notice also advised Rail N Ranch that it had a right to appeal the appraisal to the Board or that it could expedite the processing of the application by waiving appeal of the appraisal.

Accompanying the notice of appraisal was a letter from the Department that contained duplicate information about the right to appeal or waive the right. The letter advised Rail N Ranch of surveys that were required and of advertising costs that would have to be paid and, then, stated as follows:

> When the above requirements have been met, and if the Board of Appeals approves the application, then a public auction will be scheduled.

Rail N Ranch appealed the appraised value to the Board. After a hearing, the Board reduced the appraisal value to $1400 per acre. The Board also accepted a stipulation that increased the appraised value of the improvements to $1,034,815. Ten days later, the Commissioner sent Rail N Ranch a letter advising that a sale at the $1400 per acre price was not in the best interest of the trust and that he intended to deny the application. The Commissioner indicated that he would consider a new application at a future date based on a new appraisal if both sides could reach agreement on land value.

Rail N Ranch responded by making a demand that the Commissioner proceed with the sale of the 160 acres at the appraised value of $1400 per acre. It enclosed a survey of the property and a check for $2500 for the estimated advertising costs.

The Department rejected Rail N Ranch's check. The Commissioner then issued a formal order denying the application to purchase the state trust land. That order provided, in relevant part:

> Prior to the issuance of this order, no decision to sell had yet been made by the Land Department as any such decision was deferred pending the Board's determination on value. In evaluating at this time whether a sale at the value set by the Board would be in the best interest of the trust, the Land Department has considered information that land values have been increasing in the area where the parcels are located.... It is not in the best interest of the trust to sell the parcels at the value set by the Board of Appeals because of the likelihood that a greater return would be achieved for the trust by deferring any sale of these lands to a later time.
>
> Based on the foregoing, it is determined that a sale of this land is not in the best interest of the Trust at this time.
>
> Therefore, IT IS ORDERED that Application to Purchase No. 53-93111 is hereby denied.

(Footnote omitted.)

Rail N Ranch appealed to the Board, taking the position that the Commissioner's order had been made pursuant to A.R.S. § 37-236, which provides, in part:

> (B) If the commissioner receives information which indicates a change in the circumstances regarding the benefits to the trust but prior to the acceptance of a final bid at the public auction, the commissioner may cancel the sale proceedings.
>
> (C) A person adversely affected by a decision to terminate a sale pursuant to subsection B of this section may appeal such decision to the board of appeals pursuant to § 37-215.

Before the Board, the Department argued that the Commissioner's order was not a cancellation of sale proceedings under A.R.S. § 37-236(B) and, therefore, the Board lacked jurisdiction pursuant to subsection (C) to review the Commissioner's decision because it was not "a decision to terminate a sale." The Board dismissed the appeal.

Rail N Ranch then filed a complaint in superior court seeking judicial review of the Board's determination that it had no jurisdiction. In this same complaint, it filed other claims for relief, including a request for special action to order the sale to proceed, a request for specific performance of a contract to renew the lease, and various damage claims. The superior court dismissed all of these claims for lack of jurisdiction, concluding that they had been improperly joined with the request for judicial review of the administrative proceeding. On the administrative review claim, the superior court affirmed the Board's determination that it lacked jurisdiction to review the Commissioner's decision. The court concluded that the Commissioner had not made the necessary determination that the sale would be in the best interest of the state and, therefore, no "sale proceedings" were under way so as to invoke subsections (A) and (B) of A.R.S. § 37-236. This appeal followed.

STANDARD OF REVIEW

[1] The issues presented in this appeal are strictly questions of law, mainly pertaining to statutory construction. Questions of statutory interpretation involve questions of law. *Siegel v. Arizona State Liquor Bd.*, 167 Ariz. 400, 401, 807 P.2d 1136, 1137 (App. 1991). Both the trial court and this court are free to draw their own legal conclusions in deciding whether an agency erred in its determination of the law. *Carley v. Arizona Bd. of Regents*, 153 Ariz. 461, 463, 737 P.2d 1099, 1101 (App.1987).

WAS THE SUPERIOR COURT CORRECT IN UPHOLDING THE BOARD'S DISMISSAL OF THIS APPEAL FROM THE COMMISSIONER'S DENIAL OF THE SALES APPLICATION FOR LACK OF JURISDICTION?

Generally, the Department is to administer all laws relating to state lands. A.R.S. § 37-102(A). The Commissioner is the executive officer of the Department. A.R.S. § 37-131(A). Moreover, the Commissioner has the authority to make the ultimate administrative decisions for the Department in matters pertaining to state lands, A.R.S. § 37-132, subject to judicial review pursuant to the Administrative Review Act, A.R.S. §§ 12-901 *et seq.* A.R.S. § 37-134.

However, in certain limited circumstances, the Board is given appellate review of the Commissioner's decisions. One of these circumstances arises under subsection (B) of A.R.S. § 37-236, when the Commissioner cancels a sale proceeding prior to the acceptance of a final bid at public auction. That decision is appealable to the Board.

Rail N Ranch's basic contention is that the Board's limited appellate jurisdiction was invoked under the circumstances presented here. The Department argues that no sale proceedings within the meaning of the statute were pending to invoke A.R.S. § 37-236(B). As a corollary, the Department argues that the Commissioner's denial of the application was simply an administrative order that must be appealed directly to the courts pursuant to the Administrative Review Act. To resolve this issue, we must determine the meaning of the words "sale proceedings" as used in subsection (B) of A.R.S. § 37-236.

[2] Subsection (A) of A.R.S. § 37-236[1] discusses the circumstances under which the

1. A.R.S. § 37-236(A) provides:
Upon completion of the appraisal, *if the department determines that the interests of the state will not be prejudiced by sale of the land*, or when application for purchase was made by the lessee of agricultural land entitled to compensation for improvements on the land appraised, within sixty days after the time for taking an appeal expires and no appeal is taken, *or if an appeal is taken and the decision is against appellant*, within sixty days after the decision is received, the department shall order the sale of the lands to the highest and best bidder therefor at public auction held at the county seat of the county wherein the land or the major portion thereof is located, and the

Department "shall order the sale of the lands to the highest and best bidder therefor at public auction...." It is well-settled that statutes are to be construed together with related statutes. *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970). This rule clearly applies to subsections within the same statutory section. When A.R.S. § 37-236 is read as a whole, it is reasonable to conclude that the language in (B) regarding cancellation of the sale proceedings refers back to the language in (A) regarding the Department's ordering of the sale of lands at public auction. Under such a construction, the Commissioner does not cancel "sale proceedings" within the meaning of the statute until a sale at public auction has been ordered or until the Department has been legally required to order such a sale under the circumstances described in subsection (A).

[3] In our opinion, the sale application in this case had not progressed to the point where a sale at public auction had been ordered. When the Commissioner sent notice of the appraised value to Rail N Ranch, he advised that no determination of the merits of the application had been made yet. At best, the communications from the Commissioner indicated he would be willing to recommend sale at the appraised value he had adopted, $4000 per acre. He gave no indication that he would recommend a sale if the appraised value was lowered to $1400 per acre through appeal. At no time after the Board lowered the appraised value of the land did the Commissioner make a determination that a sale of the land at that value would be in the best "interest of the state," as required by A.R.S. § 37-236(A).

A.R.S. § 37-236(A) describes several circumstances in which the Department is required to order the sale of lands at public auction. One is where no appeal is taken after an appraisal has been completed and the Department has determined that the interests of the state will not be prejudiced by sale of the land. Another is where appeal is taken and the decision is "against appellant" (the party seeking review of the Commissioner's appraisal). Here, the Commissioner's appraisal was reduced; thus, the decision was not "against" appellant. In our opinion, the statutory scheme required the Commissioner to decide anew whether a sale at that reduced value was in the best interest of the state. No such determination was forthcoming.

Instead, the Commissioner's order was a determination that a sale was not in the best interest of the state. Such a denial of the sale application was rendered before a "sale proceeding" had ever been ordered and was reviewable by the courts under the Administrative Procedure Act, not under A.R.S. § 37-236(C).

Rail N Ranch argues that such an interpretation will render § 37-215(E) meaningless. Under this statutory provision, the Department would have been allowed to appeal the Board's appraisal ruling to the courts pursuant to the Administrative Review Act. Rail N Ranch argues that the Department therefore should have been required to sell the land at the appraised value as determined by the Board, or to appeal that decision.

We disagree. If the Commissioner feels that the best interest of the state is served by a sale at the present time but not at the appraisal set, he may choose to appeal to the courts in order to have the appraisal value raised. If, however, he believes that the sale at the appraised value is not advantageous to the state at this time, he may simply deny the application for sale. To say that the Commissioner has to proceed with the sale where he chooses not to appeal would render meaningless the language in A.R.S. § 37-236(A), which requires a determination of best interest. We believe that this construction is the only way to give some effect to both of these statutory provisions.

Rail N Ranch argues that a different result is mandated by the case of *Bettwy v. Black Canyon Greyhound Park, Inc.*, 119 Ariz. 227, 580 P.2d 365 (App.1978). In that case, this court required the Department to go through with a sale of state land where

department shall give notice of the sale by advertisement. (Emphasis added.)

the Commissioner's appraisal had been reduced by the Board and no appeal had been taken to the courts.[2]

We disagree. *Bettwy* is distinguishable from this case. In *Bettwy*, there was evidence that the Commissioner had made an unqualified decision to sell the land both before the appeal of the appraisal to the Board and after the Board reduced the appraised value. In fact, the Deputy Commissioner approved the reduced value set by the Board. Moreover, in *Bettwy*, no issue had been raised concerning whether the statute requires a sale where an appeal to the Board is taken and the decision is in favor of the appellant but the Commissioner subsequently determines that the sale is not in the best interest of the state. We therefore do not find *Bettwy* controlling.

Rail N Ranch also argues that it was misled by the Department into thinking the Commissioner was canceling sale proceedings within the meaning of A.R.S. § 37-236. It argues that, because it pursued a timely appeal and merely pursued it in the wrong forum, it should be entitled to some kind of relief.

We find no misleading conduct by the Commissioner. The Commissioner made it clear in the notice of the appraisal that he was not yet approving sale of the land. Even when he denied the application, he again pointed out that no decision to sell had ever been made. Moreover, that notice indicated that "if the board of appeals approves the application," the sale would proceed. No such approval was ever given. Under these circumstances, no misleading conduct occurred. Also, we note that Rail N Ranch is not precluded from starting the process over again with a new application.

We conclude that no "sale proceedings" had been instituted and, therefore, the Board correctly determined that it had no jurisdiction to review the Commissioner's order denying the application. We need not consider the separate argument that, even if the Commissioner had determined to sell the land, no sale proceedings could be underway because there had been no approval of the sale by the Board pursuant to the requirement of A.R.S. § 37-132(A)(7).[3] We therefore express no opinion on this issue.

WAS IT PROPER FOR THE SUPERIOR COURT TO DISMISS THE OTHER CLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION?

The superior court determined that, because its jurisdiction had been invoked to review an administrative ruling, it had no jurisdiction to consider other private causes of action in the same proceeding, relying upon *Madsen v. Fendler*, 128 Ariz. 462, 626 P.2d 1094 (1981). In *Madsen*, the Arizona Supreme Court held that a party could not assert a private cause of action in a suit for administrative review of an agency decision pursuant to the Administrative Review Act, A.R.S. §§ 12-901 *et seq.* *Id.* at 465-66, 626 P.2d at 1097-98. In *Madsen*, a defendant had attempted to file a cross-claim in the administrative judicial review proceeding. The supreme court upheld the superior court's determination that it could not consider the cross-claim, concluding as follows:

2. At the time *Bettwy* was decided, A.R.S. § 37-236 did not contain the provisions that were added as subsections (B) and (C), in apparent response to the *Bettwy* decision. *See* Laws 1981, ch. 1, § 12.

3. For many years A.R.S. § 37-132(A)(7) read as follows:

A. The commissioner shall:

* * * * * *

7. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state, but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals pursuant to section 37-213.

A.R.S. § 37-213 was the statute that established the Board.

In 1989 the statute was modified by citing to 37-214 instead of 37-213. *See* Laws 1989, ch. 171, § 1. A.R.S. § 37-214 is a statute setting forth a procedure for the Board to follow in approving sale or lease of land for urban or self-contained community development. Therefore, Rail N Ranch had some basis for arguing that approval by the Board is not needed unless use of the land for these purposes is involved.

In 1992 the statute was again amended, this time providing that "any such sale shall first be approved by the board of appeals" and deleting reference to any other statute. *See* Laws 1992, ch. 190, § 1.

> Judicial review of administrative action is a limited review and relates only to the issues, questions ... or parties ... open to review under the Administrative Review Act. The Superior Court is limited to the questions properly raised before the administrative hearing and limited to the parties who are part of the hearing or who have been served and notified and could have been a part of that hearing.

Id. at 466, 626 P.2d at 1098.

[4] Rail N Ranch argues that nothing in the *Madsen* case prevents a plaintiff from joining private causes of action with a request for judicial review of an administrative proceeding. We disagree and find that the prohibition against joining private causes of action with a request for judicial review of an agency ruling applies equally to plaintiffs and defendants. We find no basis for making a distinction. Thus, we conclude that the superior court properly determined that these other claims should also be dismissed for lack of subject matter jurisdiction.

The Department, however, is not content to have us merely uphold the superior court's determination that it lacked subject matter jurisdiction to consider these other claims. The Department asks us to also rule that these other claims should be dismissed on the merits on the basis that Rail N Ranch's failure to timely appeal the administrative rulings to the superior court bars any further relief.

[5] A.R.S. § 37-133 provides that, where no appeal is taken through the Administrative Review Act from decisions rendered by the Commissioner, pursuant to the powers and duties conferred upon him, the decisions shall be final and conclusive. It is possible that, under this statute, some, if not all, of the claims Rail N Ranch has attempted to bring would ultimately fail. However, we make no such determination as to each of the individual claims in this case. This court lacks jurisdiction to do so because of the Department's failure to file a cross-appeal. In order to dismiss these claims on the merits, we would have to modify the trial court's judgment, which did not dismiss on the merits. Rule 13(b)(3), Arizona Rules of Civil Appellate Procedure, provides in relevant part that "[t]he appellate court may direct that the judgment be modified to enlarge the rights of the appellee or to lessen the rights of the appellant only if the appellee has cross-appealed seeking such relief." In the absence of a cross-appeal, therefore, we have no jurisdiction to modify the judgment to reach the merits, which would impermissibly expand appellees' rights.

For the foregoing reasons, we affirm the judgment of the trial court dismissing Rail N Ranch's claims for lack of subject matter jurisdiction.

LANKFORD and CONTRERAS, JJ., concur.