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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

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FARMERS INVESTMENT COMPANY,
a corporation,

Plaintiff,

vs.

THE ANACONDA COMPANY, a cor-
poration, et al.,

Defendants.

ACTION

No. 116542

CONSENT TO THE MOTION OF PIMA
MINING CO. ENTITLED "MOTION BY
PIMA MINING CO. TO BRING IN AN
ADDITIONAL DEFENDANT"
AND
MOTION FOR LEAVE TO FILE COUNT
FOUR TO THE AMENDED COMPLAINT

FARMERS INVESTMENT COMPANY, a corporation, plaintiff
herein, consents that the Motion of Pima Mining Co. entitled
"Motion by Pima Mining Co. to Bring in an Additional Defendant"
may be granted and moves the Court for leave to amend its amended
complaint by adding Count Four thereto, the original of which is
hereto annexed for the purpose of consideration by the Court and
for filing with the Clerk of the Court if this motion is granted.

This motion is based upon the Memorandum following and
upon the Consent and Entry of Appearance of Andrew L. Bettwy,
State Land Commissioner and the State Land Department of the
State of Arizona, the original of which is filed herewith.

SNELL & WILMER
By Roger W. Perry
Roger W. Perry
Mark Wilmer
Mark Wilmer
Attorneys for Plaintiff
400 Security Building
Phoenix, Arizona 85004

MEMORANDUM IN SUPPORT OF MOTION

This matter is presently pending upon plaintiff's amended complaint filed on or about September 29, 1971 consisting of Counts One, Two and Three. There is presently pending before the State Land Department and the State Land Commissioner a proceeding having for its purpose determination of the question of the validity of certain rights-of-way granted to Pima Mining Co. and also the validity of a certain Commercial Lease described as Commercial Lease No. 906 whereby certain state land was leased to Pima Mining Co. for the purpose of commercial production of groundwater for utilization off of the premises of said leased property.

Plaintiff does not object to a determination of the legal questions involving the validity of the rights-of-way as described in the motion of Pima Mining Co. and believes that under the same reasoning there should be a full determination of all legal questions involving the State Land Department and the State Land Commissioner and accordingly has procured the consent of the State Land Commissioner and the State Land Department to be named forthwith as parties defendant in this action and their consent to the amendment to the complaint adding the Count Four which specifically brings to the attention of the Court the validity of Commercial Lease No. 906.

Inasmuch as defendant Pima Mining Company seeks a determination of some of the legal issues involved before the State Land Department and the State Land Commissioner, plaintiff moves that all of said issues be brought into the current litigation for resolution by the Court.

We believe further statement of reasons or citation of authorities superflous.

Respectfully submitted;

SNELL & WILMER

By *Roger W. Perry*
Roger W. Perry

Mark Wilmer
Mark Wilmer

Attorneys for Plaintiff
400 Security Building
Phoenix, Arizona 85004

COPIES mailed to all counsel
of record this 26th day of
January, 1972:

Mark Wilmer
Mark Wilmer

IV

On December 5, 1966, the State Land Department, acting through its predecessor State Land Commissioner, upon application of Pima Mining Company, issues to said company Commercial Lease No. 906 leasing to Pima Mining Company Lots 1 and 2 and the South one-half, North one-quarter and Southeast one-quarter of Section 2, Township 17 North, Range 13 East, Pima County, constituting all of Section 2, all within the critical groundwater area aforesaid. A copy of this lease is hereto attached as Exhibit I. Pima Mining Company has constructed four large irrigation type water wells within said leased area and has pumped and is now pumping large quantities of groundwater from the groundwater supply subjacent to said state land and transporting the same for use outside of the Sahuarita-Continental Groundwater Area.

V

Plaintiff protested the pumping of groundwater in the critical groundwater area and the transportation of the water so withdrawn for use outside of the critical area by Pima Mining Company informally prior to June, 1969, and formally June, 1969 and continuing thereafter and demanded that such illegal use be terminated.

VI

The lands leased by said Commercial Lease No. 906 are adjacent to the farm lands of plaintiff herein and within the critical groundwater basin which plaintiff depends upon for its agricultural use water.

VII

While defendants State Land Department and Andrew L. Bettwy as State Land Commissioner have considered the protests of plaintiff with respect to the granting of the aforesaid

Commercial Lease and the withdrawal of large amounts of water through the wells constructed within the boundaries of said Commercial Lease, said Andrew L. Bettwy and the State Land Department have permitted said unlawful use by Pima Mining Company to continue but have stated a willingness to cancel said leases in the event of a judicial determination that the same constitutes an unlawful and wrongful exercise of the powers of the State Land Department and of the State Land Commissioner.

VIII

The continued pumping of groundwater from the critical groundwater area and the area adjacent to the farm lands of plaintiff constitutes a trespass upon plaintiff's property rights and a violation of the water law of the State of Arizona. The withdrawal of groundwater from the state land the subject of said Commercial Lease and the transportation of it away from said land constitutes waste and a breach of the provisions and requirements of the Enabling Act, particularly Section 28 thereof and hence a breach of trust on the part of the State of Arizona.

IX

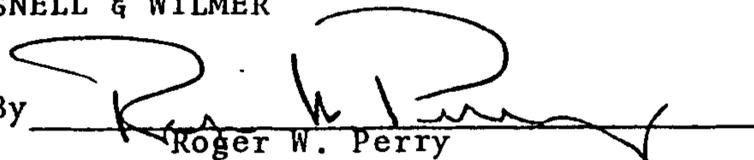
Plaintiff has no plain, speedy and adequate remedy at law.

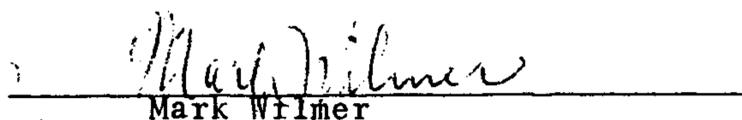
WHEREFORE, plaintiff prays that judgment be entered herein finding and declaring that the aforesaid Commercial Lease No. 906 is an invalid and void lease and that the actions of Pima Mining Company in withdrawing water from the state lands the subject of said lease constitute waste and a wrongful and illegal act as to plaintiff herein; for an injunction restraining and enjoining further trespasses by reason of the use of said Commercial Lease 906; for an order directing the said Andrew L. Bettwy as State Land Commissioner and the State Land Department to cancel said

lease and to take appropriate action to prevent further breach of trust on the part of any utilization of said Commercial Lease No. 906 and the withdrawal of groundwater thereunder for purposes not beneficial to the use of the aforesaid land; and for such other and further relief as may be appropriate.

SNELL & WILMER

By


Roger W. Perry


Mark Wilmer

Attorneys for Plaintiff
400 Security Building
Phoenix, Arizona 85004

checked by _____
to Mailed: DEC 2 1966

Lease No. 906

STATE LAND DEPARTMENT
STATE OF ARIZONA
COMMERCIAL LEASE

COPY

THIS INDENTURE, made and entered into this 24th day of October, 1966,
by and between the State of Arizona, hereinafter called the lessor, and
PIMA MINING COMPANY
of Tucson, State of Arizona, hereinafter called the lessee:

WITNESSETH, that the State Land Commissioner, by virtue of the authority vested in him by law, and in consideration of the application heretofore made, and the covenants and agreements of this lease, hereinafter set forth, has this day leased to the said lessee the State Land, as hereinafter described, subject to any and all indebtedness that may be known to be due or that may be proven to be due hereafter.

TO HAVE AND TO HOLD the same for the period ending the 23rd day of October, 1970, and subject to the conditions and reservations elsewhere set forth herein. The lessee agrees to pay as rental therefor an amount to be determined by the State Land Commissioner each year by an appraisal made by him, or his duly authorized agent, as provided by law. The rental so fixed by the State Land Commissioner will be due and payable annually in advance. \$10.00 per acre or 1¢ per 1000 gallons water removed, whichever is greater, for Lots 1 & 2; S2NE. \$1.00 per acre or 1¢ per 1000 gallons water removed, whichever is greater, for the SE.

IT IS HEREBY COVENANTED AND AGREED by both parties hereto that this lease is issued subject to all the provisions and requirements thereto, which are found in the various Acts of the Legislature of the State of Arizona, the same as though they were fully set forth herein.

IT IS HEREBY FURTHER COVENANTED AND AGREED that all of the covenants, conditions and agreements, included in this lease, shall be, become and are a part of the lease, the same as though set forth in full over the signatures of the contracting parties hereto.

IN WITNESS WHEREOF, the Arizona State Land Commissioner, by virtue of the powers vested in him by law, has caused these presents to be executed by said lessor, at Phoenix, Arizona, on the day and year first above written, and the said lessee has hereunto affixed his signature at the place and on the day and year as set forth herein.

By O. M. Lassen
State Land Commissioner.

(SEAL)

By Louis C. [Signature]
Deputy State Land Commissioner.

Signed in the County of Pima, State of Arizona, on the 15th day of December, 1966

(Signed Here) [Signature]
Lessee.

This lease is issued in duplicate

A-41
A-51

EXHIBIT I

SUPPLEMENTAL CONDITIONS

(A) The lessee will not sub-let or assign the land herein described or this lease without the written consent of the State Land Commissioner, first obtained, and will, upon the expiration of the lease, surrender peaceable possession of the said land.

(B) The lessee will not permit any loss, nor commit or cause any waste in, to or upon said land; nor cut or remove nor allow to be cut or removed any timber or standing trees that may be upon said land, save and except only such as may be necessary for the improvement of said land, (and then only with the written consent of the State Land Commissioner) or for fuel for the domestic use of said lessee; provided that nothing herein shall be construed to permit the cutting of saw timber for any purpose.

(C) That the lessor excepts and reserves out of the grant hereby made, all oils, gases, coal, ores, limestone, minerals, fossils, and fertilizers of every name and description that may be found in or upon the land herein described, or any part thereof.

(D) The lands herein described are subject to the execution by lessor of drilling permits and leases for the purpose of prospecting for, and the extraction of, oil and/or gases.

(E) That the lessor also reserves the right, as provided by law, to grant to the United States rights-of-way and easements over, across or upon the lands embraced in this lease for canals, reservoirs, dams, power or irrigating plants or works, railroads, tramways, transmission lines or other purposes, for irrigation works in connection with any government reclamation project.

(F) That if at any time after the execution of this lease, it is shown to the satisfaction of the State Land Commissioner, that there has been fraud or collusion upon the part of the lessee to obtain or hold this lease at a less rental than its value, or through such fraud and collusion a former lessee of said land has been allowed to escape payment of the rental due for the use of said land by the former lessee, this lease shall be null and void, at the option of the State Land Commissioner, insofar as it relates to the land affected by said fraud or collusion.

(G) That if at any time after the execution of this lease it is shown to the satisfaction of the State Land Commissioner that the lessee herein has misrepresented, by implication or otherwise, the value of the improvements placed upon the land herein embraced by a former lessee, or any other person or persons and the lessee herein not being the owner of said improvements at the time of the execution of this lease, this lease shall be null and void, at the option of the State Land Commissioner, insofar as it relates to the land upon which said improvements are situated.

(H) If the lessee should fail to pay the agreed rental when due, or fail to keep the covenants and agreements herein set forth, the State Land Commissioner, at his option, may cancel said lease or declare the same forfeited in the manner provided by law.

(I) That the State of Arizona shall be forever wholly absolved from any liability for damages which might result to the lessee herein on account of this lease having been forfeited for nonpayment of rentals due thereunder prior to the expiration of the full time for which it is issued.

(J) It is understood by the lessee that the establishment of any water right, or rights, shall be by and for the State of Arizona, and that no claim thereto shall be made by said lessee; such rights shall attach to and become appurtenant to the said land.

(K) If the lessee desires to place improvement on the land described herein the approval of the State Land Commissioner must first be obtained. That the lessee will, on or before the first day of July of each year during the term herein specified, file with lessor a sworn statement setting forth therein the character of improvements constructed on said demised premises and the actual cash value thereof.

(L) That said lessee shall have the right to remove from said demised premises, at the end of the term herein specified or upon the earlier termination thereof, all buildings, structures or improvements of whatever nature placed by it on said premises. Such right to be exercised within thirty (30) days from the date of the end of such term or earlier termination thereof.

(M) That said lessee shall give lessor thirty (30) days' notice in writing in advance of the abandonment of said premises or termination of these presents.

(N) The terms, conditions and covenants of this lease are subject to present laws relating to state lands and the rights of both lessor and lessee hereunder are each and all subject to such modifications as may be consistent with such amendments, revisions or repeals of existing laws as may hereafter be made and no provisions of this lease shall create any vested right in the lessee herein.

(O) Any improvements placed on this commercial lease must conform to existing Laws and Ordinances relative to commercial construction and maintenance in the area where this land is located. Approval granted by regulatory authorities will accompany application to place improvements when filed with the State Land Department.

(P) That the lessor also reserves the right to grant rights-of-way and easements over, across, or upon the lands embraced in this lease for public highways, railroads, tramways, telephone, telegraph, transmission lines, pipe lines, irrigation works, flood control, drainage works, logging and other purposes, and this lease is issued subject to all existing rights-of-ways.

ASSIGNMENT OF LEASE

Phoenix, Arizona,.....

The application of.....
for permission to assign Lease No.....and the application of.....
.....for the assumption of said Lease,
having been duly considered this.....day of....., 19.....
and without waiver of State rights which may exist against the lease assigned, and with this consent not
to be construed as initiating any new rights in assignee of lease, consent is hereby given for the assign-
ment applied for and it is ordered that the said Lease No.....and all rights thereunder be and
are hereby transferred to the said.....

.....
State Land Commissioner.

By.....
Deputy State Land Commissioner.

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