

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

FARMERS INVESTMENT COMPANY,)
a corporation,)
)
Plaintiff,)
)
vs.) No. 116542
)
THE ANACONDA COMPANY, et al.,) FICO'S SUPPLEMENTAL
) MEMORANDUM RE COMMERCIAL
) LEASE NO. 906
Defendants.)

The point was advanced on oral argument that Commercial Lease No. 906 should be construed as a mineral lease since water could be considered a "mineral" and hence subject to the "mineral lease" exception stated in Section 28 of the Enabling Act and related constitutional and statutory provisions. While it is true that under certain circumstances and fact situations water may be classified as a mineral, it is clear that this is not the fact under the instant facts and circumstances.

The language of the Supreme Court in State Land Department v. Tucson Rock and Sand Co., 107 Ariz. 74, 481 P.2d 867 in relation to the claim that rock and gravel should be classified as mineral is equally dispositive of this claim as to water. The Court said:

"It is clear that the Arizona Legislature, almost from statehood, has construed the words of the Enabling Act, 'other products of land', as including sand, stone and gravel, and has not included sand, stone and gravel within the leasing of minerals.

"Appellee relies on the language of A.R.S. § 27-251 et seq., formerly § 11-1601 et seq., and in particular § 11-1601, A.C.A. 1939, 1952 Cum.Supp. The statutory scheme by which minerals can be removed from State lands is that a discoverer of a valuable mineral deposit may

locate it as a mineral claim. The locator is then given a preferred right to a mineral lease covering each claim. . . ." 107 Ariz. at 77

A further review of Article 3, Title 27, A.R.S. discloses that the legislature plainly did not consider water a mineral subject to a "mineral lease" and, equally importantly, that the lease in question was not issued in conformity with the state statutes governing lease of state lands for mineral claims since the Enabling Act only exempts leases for "mineral purposes" if made "in such manner as the Legislature of Arizona may prescribe."

A re-reading of Murphy v. State, 65 Ariz. 338, 181 P.2d 336 refreshes the recollection as to the stern purpose the Congress had in drafting our Enabling Act inspired by loose practices and scandals in other states. It makes it clear that the various phrases employed were intended to cover every possible evasive disposition which might be attempted of these trust lands contrary to the intent of the Congress.

" * * shall be by the said State held in trust, to be disposed of in whole or in part only in the manner herein provided * * "

"Said lands shall not be sold or leased in whole or in part except to the highest bidder * * "

" * * nor shall any sale or contract for the sale of any timber or other natural product of such lands be made * * "

(Certainly the fact that the lease granted PIMA the right to take and convert to its own use and benefit 1000 gallons of water for 1 cent (or \$3.25 per acre foot) would qualify to most legal minds a sale or disposition of the water.)

"All lands, leaseholds, timber and other products of the land, before being offered

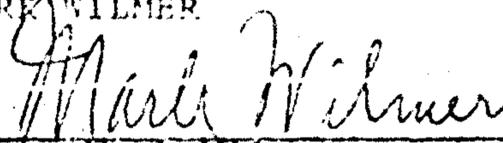
shall be appraised at their true value,
and no sale or other disposal thereof
shall be made * * *

"Every sale, lease, conveyance, or contract
of or concerning any of the lands hereby
granted or confirmed, or the use thereof or
the natural products thereof not made in
substantial conformity with the provisions
of this Act shall be null and void * * "

We respectfully assert the Motion is valid and
should be granted.

Respectfully submitted,

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MARK WILMER


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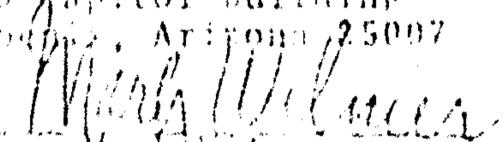
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