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CLIFFORD H. WARD
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BY

5 Attorneys for Respondent
6 Pima Mining Company

7
8 IN THE SUPREME COURT OF THE STATE OF ARIZONA
9

10
11 FARMERS INVESTMENT COMPANY,
12 a corporation,

13 Petitioner,

14 v.

15 THE STATE LAND DEPARTMENT,
16 a Department of the State
of Arizona; et al.,

17 Respondents.

NO. 11439

REPLY OF PIMA MINING
COMPANY TO OBJECTION TO
MOTION FOR REHEARING

18
19 This Honorable Court's Rule 9 does not expressly provide
20 for replies being made to objections to motions for rehearing.
21 Therefore, under ordinary circumstances, Respondent would not
22 deign to file a reply to Petitioner's objection to Respondent's
23 Motion for Rehearing.

24
25 The circumstances here, though, are not ordinary. Peti-
26 tioner has made an argument regarding Petitioner's water operations
27 which argument is founded upon a mistaken factual premise. This
28 error of fact and erroneous argument cannot be allowed to be the
29 basis of any action by this Court which would cripple the operation
30 of Respondent, would result in innocent workmen losing their jobs
31 and would result in the State and its trusts being deprived of
32 revenues in violation of the purpose of the Enabling Act. There-

1 fore, Respondent is obliged to file a Reply to Petitioner's
2 Objection to the Motion for Rehearing, but will confine itself
3 in doing so solely to the question of whether Pima needs the uses
4 under Commercial Lease 906 to continue its present operations
5 which benefit the state and its trusts.

6
7 Petitioner has argued that Pima does not need the uses
8 under Lease 906 in order to operate, implying that Pima's wells 12
9 and 14, or others, suffice for this purpose. It should be obvious
10 that Pima must need the uses granted under Lease 906 or Pima would
11 not be willing to pay the State money for water which could be
12 supplied via Pima's fee lands. In any event, the facts are as
13 follows:

14
15 After water is extracted from Pima's various wells, it
16 is forwarded to two booster pumping stations, each of which has a
17 maximum capacity of only 5,500 gallons per minute. Booster Station
18 No. 2, as well as its appurtenant tanks, pipes, etc., is upon the
19 land subject to Lease 906. This Booster Station No. 2 services
20 five of Pima's said wells, four of which are those on the land
21 subject to Lease 906, the other being well No. 14 located on fee
22 land of Pima.

23
24 The present decision of this Court renders the entire
25 Lease 906 "null and void." The decision makes no distinction
26 between the surface, commercial uses and the extraction of water
27 uses under Lease 906. Thus, under the present decision, Pima
28 could not use Booster Station No. 2 and would be unable to use
29 not only wells 6, 7, 8 and 9, which are located upon the instant
30 State land, but also could not use Booster Station No. 2 to pump
31 water from Pima's well No. 14 to Pima's mill. Therefore, Pima
32 would be limited to the maximum of 5,500 gallons per minute which

1 Booster Station No. 1 supplies (and with no reserve potential in
2 the event of breakdown).

3
4 Pima requires for its operations approximately 9,000
5 g.p.m. Thus, under the present Court's decision, Pima would lose
6 39% of its water and be forced to reduce its mining operations
7 by approximately that amount.

8
9 If, however, this Court's decision were construed upon
10 rehearing to make void only that portion of Lease 906 which relates
11 to extraction of water, then Pima's operations would be adversely
12 affected but not substantially or drastically. In other words,
13 if Pima could use its well No. 14 through the surface booster
14 station located on the instant State land per Lease 906, then Pima
15 could supply approximately 2,800 g.p.m. in addition to that supplied
16 by Booster Station No. 1.

17
18 Thus, Pima's affidavit to this Court in 1971 to the
19 effect that wells 12 and 14 simply provided back-up and better
20 spacing was quite accurate. Neither of those wells was needed to
21 provide either of Pima's Booster Stations their maximum of 5,500
22 g.p.m. nor the 9,000 g.p.m. needed for mining operations.

23
24 Also, Pima's 1974 affidavit regarding the necessity of
25 Lease 906 is quite accurate. If all uses under that lease are
26 lost, the wells servicing Booster Station No. 1 will be pumped
27 somewhat more so that they provide their maximum 5,500 g.p.m.
28 However, that will supply only 61% of Pima's water requirements.

29
30 If Pima is allowed to pump water from State land at the
31 price which will be determined upon auction, the State's Trusts
32 benefit therefrom and are fully protected from loss. If Pima's

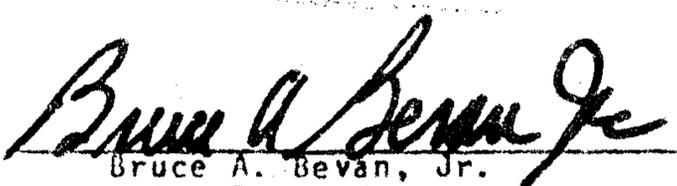
1 operations are limited, so will be the substantial mine royalty
2 to the State. Additionally, the Trusts lose the revenue from
3 pumpage per Lease 906. According to the State Land Commissioner,
4 there will be revenue produced at ten times the present rate upon
5 auction procedures being established. As stated in its Motion for
6 Rehearing, Pima is willing to pay at that tenfold rate during the
7 necessary waiting period occasioned by compliance with the pro-
8 cedures of the Enabling Act.

9
10 Petitioner's only standing to complain is its alleged
11 right to drain from lands adjacent to the State's, the water
12 presently underlying the State land. It is unseemly, somehow,
13 for Petitioner to argue that the State's Trusts should lose revenue
14 which the Enabling Act desires be secured by the State in exchange
15 for its water only so that Petitioner can obtain that water without
16 the State obtaining anything.

17
18 To conclude, the granting of Pima's motion would advance
19 the intent and purpose of the Enabling Act and the denial of
20 Pima's motion would thwart that intent and purpose.

21
22 Respectfully submitted,

23 VERITY & SMITH
24 and
25 MUSICK, PEELER & GARRETT

26
27 By: 
28 Bruce A. Bevan, Jr.
29 Attorneys for Respondent,
30 Pima Mining Company
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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

ss.

PAUL W. ALLEN, being first duly sworn, says:

He is the President of Pima Mining Company and as such is familiar with the matters set forth in the preceding Reply of that Company. The matters of fact asserted in said Reply are true and correct based upon the information and data of the Company supplied to him.

Paul W. Allen

PAUL W. ALLEN

Subscribed and sworn to before me this 15th day of July, 1974.



Grace M. Bryan

Notary Public in and for said County and State.

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

ss:

I Craig Swick 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:

Microfilm of Farmer's Investment Company v. Pima Mining Company et al, Arizona Supreme Court Case No. 11439, Reply of Pima Mining Company to Objection to Motion for Rehearing, July 15, 1974. Pages 326-331.

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

Craig B. Swick
Signature

Subscribed and sworn to before me this 12/12/2005
Date

Etta Louise Muir
Signature, Notary Public

My commission expires 04/13/2009
Date

