IN THE SUPREME COURT OF THE STATE OF ARIZONA

In Banc

FARMERS INVESTMENT COMPANY, a corporation,

Appellant,

v.

ANDREW L. BETTWY, as State Land Commissioner, and the STATE LAND DEPARTMENT, a Department of the State of Arizona, and PIMA MINING COMPANY, a corporation,

Appellees.

FILED
SEP 8 1976
CLIFFORD H. WARD
CLERK SUPREME COURT
BY

No. 11439-2

FARMERS INVESTMENT COMPANY, a corporation,

Appellant,

v.

THE ANACONDA COMPANY, a corporation; AMAX COPPER MINES, INC., THE ANACONDA COMPANY as partners in and constituting ANAMAX MINING COMPANY, a partnership,

Appellees.

MOTION FOR REHEARING

CITY OF TUCSON, a municipal corporation,

Appellant,

v.

ANAMAX MINING COMPANY, and DUVAL CORPORATION and DUVAL SIERRITA CORPORATION,

Appellees.

THE ANACONDA COMPANY, AMAX COPPER MINES, INC., and ANAMAX MINING COMPANY, pursuant to Rule 9(a), Rules of the Supreme Court, respectfully move this Honorable Court for a rehearing of the above-entitled matter. The particular grounds for said rehearing are as follows:

1. This Honorable Court did not follow and apply the reasonable use doctrine as enunciated by this Court in its previous opinions.

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2. This Honorable Court used allegations contained in the plaintiff's complaint in the case of Bristor v. Cheatham as a contributing reason for its decision when such complaint was not a part of the Court's published opinion in either the first Bristor v. Cheatham, 73 Ariz. 228, 240 P.2d 185 (1952) or the second Bristor v. Cheatham, 75 Ariz. 227, 255 P.2d 173 (1953) and when the opinions indicated the complaint alleged a different theory.

3. This Honorable Court so restrictively defined the term "off the land" as to make it impossible for many users of percolating water to continue such use either for industrial, domestic, or agricultural purposes, or municipal use.

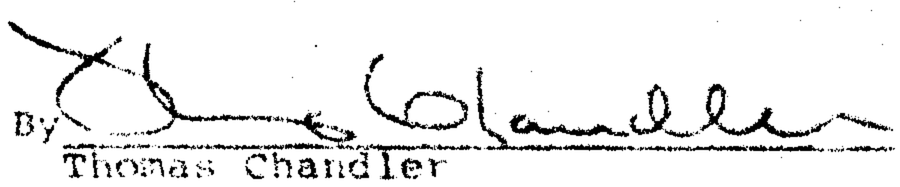
4. This Honorable Court applied principles from the doctrine of prior appropriation of water to percolating water, which is contrary to the announced common law of the state and tends to make it difficult for attorneys to advise clients on matters connected with the use of percolating water.

5. This Honorable Court failed to apply long-standing principles of equity to the facts of this case, but instead applied equitable principles that should not be applied to the case at bar.

WHEREFORE, these appellees respectfully request that this Honorable Court grant a rehearing, set this matter for further oral argument, and, following such oral argument, modify its opinion in accordance with the reasons and arguments set forth in the memorandum in support of this motion, and for such other order as is appropriate in the premises.

Respectfully submitted,

CHANDLER, TULLAR, UDALL & RICHMOND

By 

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MEMORANDUM IN SUPPORT OF MOTION FOR REHEARING

In view of the stipulation of counsel and order of Court permitting appellees to file an amendment which will be a memorandum in support of the Motion for Rehearing, appellees will simply state that the legal memorandum in support of its Motion for Rehearing will support the particular grounds stated in the Motion for Rehearing.

It would serve no useful purpose to outline the legal memorandum at this point, and the complete legal memorandum will be filed within the time period granted by this Honorable Court.

Respectfully submitted,

CHANDLER, TULLAR, UDALL & RICHMOND

By _____
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STATE OF ARIZONA)
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COUNTY OF MARICOPA)

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, pages 317-320 (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

Notary Public State of Arizona
Maricopa County
Etta Louise Muir
My Commission Expires
04/13/2009