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ARIZONA COURT OF
APPEALS
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IN THE

Court of Appeals

The State of Arizona

DIVISION TWO

11439-2

FILED
SEP 23 1974
CLERK SUPREME COURT
BY

FARMERS INVESTMENT COMPANY, a corporation,

Appellant,

vs.

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

Appellees.

No. 2 CA-CIV 1645

Pima County
Superior Court
No. 116542

SNELL & WILMER
3100 VALLEY CENTER
PHOENIX ARIZONA 85073

APPELLANT'S REPLY BRIEF
TO BRIEF OF PIMA MINING COMPANY

(120)

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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FARMERS INVESTMENT COMPANY, a corporation, Appellant, -vs- ANDREW L. BETTNY, as State Land Commissioner and THE STATE LAND DEPARTMENT, a department of the State of Arizona, and PIMA MINING COMPANY, a corporation, Appellees.	2 CA-CIV 1645 Pima County Superior Court No. 116542

PREFATORY NOTE

The usual abbreviations as to the Abstract of Record and the Briefs of the parties will be used. Appellant FARMERS INVESTMENT COMPANY, a corporation, will be referred to herein as "FICO"; Appellee STATE LAND DEPARTMENT, a department of the State of Arizona, will be referred to herein as "STATE LAND DEPARTMENT"; and Appellee PIMA MINING COMPANY,

a corporation, will be referred to herein only as "PIMA".

All emphases, unless otherwise indicated, will have been ours.

* * *

FCTL001668

RESPONSE TO PIMA'S STATEMENT OF THE CASE

Contrary to the complicated factual assertions of Pima, the sole material question critical to a determination on this Appeal, is whether use of groundwater pumped from within a critical groundwater area and transported beyond the boundaries of the critical area for a use

(a) unrelated to any beneficial use upon the land from which it is withdrawn; and

(b) is intended as part of its use to be dumped as tailing refuse upon two sections of State School Land possessed by Pima under a 10-year "commercial lease" and which will result in turning these State Lands into tailing dumps for all time,

is a "reasonable" use.

This is <u>not</u> an Appeal from a judgment

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granting or denying FICO any relief, as Pima would apparently argue. This is an appeal from a Summary Judgment filed by Pima, seeking the judgment of the trial Court that the issues tendered by Count IV of FICO's Amended Complaint be resolved against FICO. (A.R. 66, et seq.)

> "Defendant Pima Mining Company ('Pima') moves the Court for an order granting a summary judgment in favor of Pima and against Plaintiff on Count I of plaintiff's Amended Complaint." (A.R. 66)

Count Four of the Amended Complaint (A.R. 1-7) describes the pumping and transportation of water from within the critical area to Pima's mill outside the critical area, and characterizes this activity as an illegal use of this water (A.R. 5, 4). In Paragraph VIII of Count Four, FICO alleged:

"VIII

> "The continued pumping of groundwater from the critical groundwater area and the area adjacent to the farms lands of plaintiff constitutes a trespass upon plaintiff's property

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"rights and a violation of the water law of the State of Arizona"(A.R. 5).

The prayer for relief to Count Four includes the prayer for an order directing State Land Commissioner Andrew L. Bettwy ("Bettwy") to:

> ". . .take appropriate action to prevent further breach of a trust . . .and the withdrawal of ground-water thereunder for purposes not beneficial to the use of the aforesaid land. . ." (A.R. 6, 7)

The Judgment signed by Judge Boyleston, from which this Appeal is taken, was prepared by counsel for Pima (A.R. 164). It does not limit the effect of the Judgment to an adjudication that Commercial Lease No. 905 is valid, but specifically ruled upon all issues tendered by Count Four:

> ". .IT IS HEREBY ORDERED that judgment in favor of Defendant Pima Mining Company and against the Plaintiff on Count Four be and is hereby entered." (A.R. 155)

Pima did not see fit to limit the thrust of the Judgment to the sole issue of the validity of the Commercial Lease anymore than

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it limited its Motion for Summary Judgment to that issue.

Pima intentionally thrust into the controversy over the validity of Commercial Lease No. 906, the question as to the legality and reasonableness of its use of the water pumped from the critical area. FICO's Motion for Summary Judgment before the trial Court had as its central theme the illegality of Commercial Lease No. 906.

But, this Appeal is not from the Court's ruling upon FICO's Motion, even though both Pima and Bettwy would seem to consider that FICO's Motion is also before the Court.

This Appeal is from the Judgment entered on the Motion filed by Pima and granted by the trial Court. Pima, by its affirmative action in filing the Kondine Affidavit in support of its Motion, put in issue the reasonableness of water use being made by Pima.

If Pima did not consider that the use which it was making of the groundwater with-

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drawn from the Sahuarita-Contin ntal Critical Groundwater Area was material and legally relevant to a fair resolution of its claims and those of FICO, why did it file the Komadino Affidavit?

The order of the Arizona Supreme Court accepting jurisdiction (App.Op.Br. 8) left standing the Superior Court Judgment determining the question - ether the use asserted by Pima was a reasonable use, for presumably Judge Boylston took into consideration the factual allegations made by Mr. Komadino in granting Pima Summary Judgment as to Count Four of FICO's Amended Complaint.

RESPONSE TO PIMA'S STATEMENTS AS TO "What the Issue Was" AND "How the Issue Was Decided and What the Judgment Was"

Pima, for reasons best known to it, persists in treating FICO's appeal as if FICO was appealing a judgment entered upon FICO's Motion. This appeal is not concerned with issues raised by FICO's Motion. The Judgment entered by Judge Boyle adjudicated the legal issues tendered by Count Four of FICO's Amended Complaint in favor of Pima, for it was to Count Four that Pima directed its Motion and its Affidavit supporting its Motion.

Pima asserts "Pima argued and presented evidence below solely upon the issue of whether the instant lease was valid under the Enabling Act" (Br. 2, 3).

Query (1): How does the amount of royalties and taxes paid by Pima to the State tend to validate Commercial Lease No. 9[illegible] under the Enabling Act requirements and limitations?

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Query (2): Since misuse of State School Land, Sections 9 and 10, leases 907-01 and 907-02, through the use of these two sections for tailing waste dumps (by law limited to 10-year terms) occurs as a matter of law, how can such usage demonstrate a valid purpose under the Enabling Act and justify Commercial Lease No. 9067

Query (3): How does the claim that

> "Thus the State of Arizona has leased to Pima in effect a complete system for production of water, transportation of water to the mill area where the ore from State leases is processed and for transportation of tailings away from said mill via water to tailing ponds deposit areas. Each aspect of this system is necessary for the mining and milling of ore. Each of these elements also is essential to the payment of royalties by Pima Mining Company to the State of Arizona for the ore mined and milled upon State leases." (A.R. 84)

in any fashion offer any legal justification for the execution of Commercial

FCTL001675

Lease No. 906 as meeting the mandatory requirements of the Enabling Act?

Query (4): How does the fact that tailing slurry containing almost five billion gallons of water dumped upon two sections of State School Land leased to Pima by the State Land Department under a 10-year Commercial lease as a tailing dump or pond, tend to validate the actions of the State Land Department in executing Commercial Lease No. 906?

(Note: We assume the presence of huge mounds of waste material observable to the west of the Green Valley Area off the Nogales Highway are of such public notoriety that the Court can and will judicially notice the size, magnitude and ecological effect of these tailing ponds.)

Pima further argues that the Romalino Affidavit was directed to FIGO's argument that the execution of Commercial Lease No. 906

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authorized Pima to commit waste to State School Land and that this Affidavit was designed to disprove that claim.

A reference to A.R. 50-52 discloses that FICO raised the issue of "waste" in its legal sense such as the right of a tenant at common law to "estovers" with any use which went beyond use of products of the land upon the land, as constituting "waste".

A further reference to the asserted treatment of the issue of "waste" by Pima (Br. 3, referenced to 75 - 79 A.R.) disclosed no relationship between the Kamaline Affidavit and Pima's argument. (It's chief value seems to be to permit Pima's counsel to vent their spleen by calling FICO a thief.)

While Pima argues that "FICO never brought to the attention of the lower Court its present charge that the Court had decided by its judgment an issue on which the parties had not submitted evidence or argument" (Br. 4, 5),

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Pima fails to negate the conclusion that - unless an issue is expressly withdrawn by the Court - there is a conclusive presumption that the Court in rendering judgment considered all the issues before it as presented by the record. (PICO does not recall making any such charge nor do we find it of record.) One of these issues presented by Pima was the validity of and legality of the use it made and was making of the water withdrawn by its wells within the Critical Groundwater Area. By its own Affidavit, the water was used outside of the Critical Area from which it was withdrawn for a use wholly unrelated to the beneficial use of the land from which it was withdrawn. Under Stanton v. Cheatham, 75 Ariz. 227, 255 P.2d 173 (1953); Jarvis v. State Land Department, 101 Ariz. 337, 456 P.2d 385 (1969) and Jarvis v. State Land Department, 106 Ariz. 306, 479 P.2d 150 (1970), this is not a reasonable use. Under both Jarvis cases (supra), the withdrawal of groundwater

FCTL001678

from a critical groundwater area by a user initiating a new use after the area was designated as a matter of law, established injury to existing users. As a matter of law using groundwater away from the land producing the water, if thereby an adjoining landowner's water supply was impaired, was and is unlawful. As a matter of law, damage to FICO's wells is presumed.

When the further fact is developed by Pima that its use of this water is in furtherance of an additional misuse of State School Lands (Commercial Leases 907-01 and 907-02) also plainly a breach of the trust provisions of the Enabling Act, the error on the part of the trial Court in approving the lease as in harmony with the trust provisions of the Enabling Act becomes apparent.

The Supreme Court, in accepting jurisdiction accepted only a limited jurisdiction - the validity of Commercial Lease No. 906 as according to or contravening the trust pro-

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visions of Section 28 of the Enabling Act. It let stand the remainder of the issues adjudicated by the judgment of the Pima County Superior Court. True, the Court stated in its opinion that it could not resolve the reasonable use doctrine as applied to Pima's water use "in light of Pima Mining Company's affirmative defenses".

The statement as made is made arguendo, and by way of explanation - not adjudication. It was not necessary to the Court's decision and, in view of the limitations expressed in the Order accepting jurisdiction of PICO's Special Action Petition, it was not even before the Court. If, in fact, the question of the validity of the entire Pima County Superior Court's broad judgment adjudicating the issues there litigated, or which might have been litigated, was before the Court, it should have accepted jurisdiction and reversed the judgment as to these additional issues

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over and above the legality of Commercial Lease No. 906 as contravening the Enabling Act as adjudicating issues not ripe for decision, if, in fact, the record justified this finding.

Instead, the Court allowed the judgment to stand except as to the legality of Commercial Lease No. 906 for remedy by appeal, if the parties thereby affected so elected.

FCTL001681

RESPONSE TO APPELLEE'S
"Statement of Ultimate, Material Facts"

Pima asserts that which is obviously unsupported by the record in stating that

> ". . .the parties never submitted any evidence of facts regarding that issue [reasonable use]. ." (Br. 5)

The Affidavit of Mr. Xonadino, stating how the water was used and the financial gains reaped by the State of Arizona through Pima's use of this water, plainly was filed for the purpose of stating and justifying Pima's use of this Critical Area groundwater.

To contend otherwise is simply not supportable to the mind of any reasonable person.

Pima does assert that there are two facts which "would be pertinent if this Court attempted to rule upon the issue of reasonable use". These are:

1. Pima returns more water to the State Lands than is extracted from State Lands (so Pima says).

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2. The water is used to transport tailing from its mill area for deposit in its tailing ponds on the two areas of State Trust Land leased to Pima under these two commercial leases (Br. 6).

In reply:

1. The water which Pima deposits in its tailing ponds several miles from the point of withdrawal is water polluted by milling chemicals and in the form of tailing slurry. All of the water which is reclaimable is reclaimed and re-used by Pima. The balance is polluted water locked to the tailing particles by adsorption and not available for use. It is not returned to the land from which it was withdrawn and it is dumped into a tailing pond in wholly unusable form.

2. Pima's assertion that use of Critical Groundwater Area water is to transport tailing wastes to its two commercial leases of State School Land, which it utilizes as a tailing pond,

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as a beneficial or reasonable use is unsupportable. Firstly, the water which maintains the liquidity of the tailing waste sufficiently to permit it to flow by gravity to the ponds does not amount to "transporting" the waste. The Court can also judicially notice that tailing wastes once deposited in huge quantities (as is demonstrated by the Komadino Affidavit) are ugly, dirty, dusty and substantially unmovable. The claim that Pima can, through the device of a 10-year commercial lease, thereby legally secure a storage area for its tailing waste for the forseeable future, not subject to real estate taxes and with the responsibility for the maintenance and dust control shifted to the State (as landowner) upon the expiration of the 10-year lease, illustrates the total illegality of these leases of State Trust Lands and the callous indifference to the true intent and spirit of the Enabling Act trust

FCTL001684

provisions in so utilizing these school sections.

Or, does Pima intend to pack up and cart away these millions of tons of waste when the "commercial" lease expires?

FCTL001685

RESPONSE TO PIMA'S ARGUMENT THAT "The Reasonable Use issue Was Not Involved in the Proceedings Below and Thus Is Not Before This Court"

Judge Robert Roylston did not see fit to write an opinion or otherwise explicate his views and understanding of the facts or the applicable law. His reasons for deciding the matter as he did are not a matter of record.

We must assume that Judge Roylston read Pima's Motion for Summary Judgment, which was for "summary judgment in favor of Pima and against Plaintiff on Count 1 of Plaintiff's Amended Complaint" (A.R. 66).

We must assume that Judge Roylston read the affidavit of Pima's Vice President and General Manager (Mr. Romadino), filed in support of Pima's Motion, in which Mr. Romadino set forth the uses made of the water withdrawn from the wells constructed upon the premises leased to Pima by Commercial Lease No. 906. The only affidavit actually attached to the

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Pima Motion was the Affidavit which stated, in support of the Pima Motion, just how this water was used.

That statement that the issue of reasonable use was not before the trial Court is not only not supported by the record; it is denied by the record.

Pima injected the issue of its use of the Critical Groundwater Area water into the issues before the trial Judge in the hope that it would gain an adjudication favoring the legality of these uses. There could have been no other justifiable reason for the Affidavit.

Now that the issue has backfired Pima, in the hope of more endless delay, talks of complicated issues and "judicially admits" that the issue of how Pima uses the water was not before the trial Court and further admits error if the trial Court did decide the issue.

These admissions come too late. Pima sought a decision that its use of Critical

FCTL001687

Groundwater Area water was legal and valid. It did not limit its claims and affidavits in the Court below to the issue of the validity of Lease No. 000 - it threw down the gauntlet of the purpose of its use. [illegible] is entitled to have the issue decided. There is no need for added facts in view of Pima's positive assertion of how it uses and proposes to use the water in controversy.

[illegible] again asks, "If the use which Pima makes of the groundwater pumped and transported from the Critical Area to its Gila was not in issue below, what was the purpose of the Romadino Affidavit which spelled out the details of the use?".

Pima, for its own purposes, has put on the record the fact that its use is away from the land which yields the groundwater for uses wholly unrelated to the beneficial enjoyment of the land producing the water and for the purpose of misusing another tract

FCTL001688

of School Trust Land by turning it into a waste dump.

Plainly, this is not a reasonable use.

Pima has taken the discussion by Justice Windes in Bristor v. Cheatham (infra) of what is a "reasonable use" , i.e., a "beneficial" use, upon the land producing the water, and turned it into a holding that all that Bristor held and Jarvis v. State Land Department (infra) affirmed in both cases, was that so long as the use was a "reasonable use", use away from the parcel of land producing the water was permissible. Justice Windes and the Court intended no such holding, nor does it represent a careful and knowledgeable reading of Bristor v. Cheatham (75 Ariz. 227, 255 P.2d 173 [1953]) and of Jarvis v. State Land Department (104 Ariz. 527, 456 P2d 385; Idem, 106 Ariz. 506, 479 P.2d 169 [1970]).

FCTL001689

THE APPEAL IS NOT MOOT

Pima says "This Court Cannot Grant PICO Any Relief Which It Has Not Already Won". (Br. 8)

A moment's thoughtful analysis exposes the fallacy of this assertion.

Since Pima supported its Motion with the Affidavit of its Vice President and General Manager, which in explicit terms put on record the uses to which Pima had put and intended to put the water in controversy, Judge Boylston must be considered as determining that the use so described was a reasonable and lawful use.

This is true, since otherwise he must have denied Pima's Motion.

Twist and turn as Pima has and does, there is no escape from the record. And that record is that Pima put in issue the validity of its use of the groundwater involved and now is unwilling to have an appellate tribunal

FCTL001690

review the trial Court's decision. If the facts of record were insufficient to permit Judge Roylston to adequately consider the question of the legality of Pima's water use, why did Pima put the purpose of its use of the water in issue?

The Supreme Court expressly left for resolution by the processes of appeal the validity of Pima's judgment other than the determination by the trial Judge that Commercial Lease No. 906 did not contravene Section 28 of the Enabling Act. If, as a matter of appellate review, the Supreme Court intended to review the record for the purpose of passing upon the propriety of the trial Court's adjudication of all issues raised by Count Four of FICO's Amended Complaint, why did not the Supreme Court accept jurisdiction for that purpose also and reverse the entire judgment?

In its Brief Pima says:

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"Since the entire thrust of FICO's Count IV and its motion for summary judgment thereon was directed to prevent further use of water obtained per Lease 906, and since no more water will be obtained per Lease 906, the case is simply moot." (Br. 9)

FICO suggests that the following more accurately reflects the posture of this appeal:

"Since a major thrust of Pima's Motion for Summary Judgment on Count Four of FICO's Amended Complaint was directed to an adjudication that Pima's use of the Critical Groundwater Area's water was a reasonable and lawful use, and since this issue must have been considered and adjudicated by the trial Court favorably to Pima, a major adjudicated issue remains unresolved, and the case is not moot."

This is not an appeal from the (unappealable) Order of the trial Court denying FICO's Motion; this is an appeal from the

FCTL001692

judgment entered below adjudicating the issues raised by Count Four, against FICO.

Unless and until an appellate tribunal considers and rejects each erroneous conclusion reached by the trial Court, FICO will not have obtained the relief to which it is entitled.

The Supreme Court did not decide that the legality of Fisa's use cannot be now resolved.

The Supreme Court limited its jurisdiction by its Order accepting FICO's Special Action Petition to the question of the validity of Commercial Lease No. 906 by reason of the provisions of Section 23 of the Enabling Act.

It did not accept the case for the purpose of adjudicating any other issue. FICO had no opportunity to brief or be heard upon the effect of the Romadino Affidavit as stating and fixing the issues presented by

FCTL001693

Pima's Motion for Summary Judgment.

Finally, the Supreme Court did not reverse (nor probably could it have properly reversed) the judgment below upon its merits, other than insofar as the Court accepted review in accepting limited jurisdiction of the Special Action Petition.

May we conclude this subject by observing that we have not heretofore heard it suggested that insistance upon a legal and full review of a client's rights should be classed as "quite unfriendly" (Br. 11).

FCTL001694

RESPONSE TO PIMA'S STATEMENT THAT "The Court Cannot Determine The Issue of Reasonable Use Upon The Present Record".

Perhaps Pima is more privy to Judge Roylston's thought processes than are counsel for FICO. At least we may surmise Pima has some basis for vouching for the "great surprise" Judge Roylston would experience if he learned he had, in fact, adjudicated all issues before him found within the four corners of Count Four, and supported by Pima's Affidavit supporting the Summary Judgment Motion.

We must express doubt that Judge Roylston is unaware of the rules which control judicial processes in adjudicating a summary judgment motion. We assume he considered the record adequate to justify his ruling.

Pima made its record on its Motion. It presented the facts it considered adequate for an adjudication of its claim that FICO should suffer an adverse judgment on Count

FCTL001695

Four of its Amended Complaint.

The assumption that Judge Roylston did no research, but rested solely upon arguments and citations of counsel, is unjustified. FICO refers to the pages which follow treating with reasonable use doctrine in further explanation of its position.

FCTL001696

RESPONSE TO PIMA'S STATEMENT THAT "FICO Has Not Shown a Violation of The Reasonable Use Doctrine."

There is no dispute as to the following facts:

1. Pima's wells are all within the Sahuarita-Continental Critical Groundwater Area, designated as such by the State Land Department in October, 1954.

2. All water pumped from these wells is transported several miles outside of the Critical Area and used in the milling operations of Pima, with miscellaneous related uses.

3. The tailing waste slurry is flowed by gravity to the tailing ponds of Pima, located upon two sections of State School Land held by Pima under a 10-year commercial lease from the State Land Department. The water remaining in the slurry permits it to flow to the tailing ponds.

4. The uses made by Pima of the groundwater pumped from the Critical Area are

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unrelated to any use, beneficial or otherwise, of the lands from which the water is withdrawn.

Pima says that the Court must examine the pleadings and proof before a ruling can be made upon the reasonable use issue.

This claim is untenable in a situation where, as here, as a matter of law the use made is unlawful.

The rule in Arizona is well established that

(a) Withdrawal and use of groundwater away from the land from which it is withdrawn is unlawful, if thereby the water supply of an adjoining or adjacent landowner is damaged or diminished;

(b) In a duly designated Critical Groundwater Area any withdrawals of groundwater by a new user subsequent to its designation as a Critical Area is,

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as a matter of law, damaging to existing users in the area. Bristor v. Cheatham, 75 Ariz. 227, 255 P.2d 173 (1953); Jarvis v. State Land Department, 104 Ariz. 527, 456 P.2d 385 (1969); Jarvis v. State Land Department, 106 Ariz. 506, 479 P.2d 169 (1970).

Any use of groundwater away from the land producing it is an unreasonable and unlawful use, if thereby the water supply of an adjoining landowner is diminished.

A careful reading of Bristor (supra) demonstrates that the reasonable use the Court was there considering was a use upon the land producing the water, not a use unrelated to the beneficial use and enjoyment of the land from which the water was produced.

If it is recognized that the "reasonable use" theory and doctrine enunciated by Justice Windes is limited to a determination whether the use made upon the land producing the water

FCTL001699

is reasonable and that any use away from the land producing the water is as a matter of law unreasonable if injury results to the water supply of an adjoining landowner, it follows as a matter of law that Pima's use of the water under the circumstances as disclosed by the record, is unlawful.

That is what Justice Windes plainly was saying in Bristor v. Cheatham when emphasizing the quotation from Rothrauff v. Sinking Spring Water Co., 339 Pa. 129, 14 A.2d 97, 99, stating:

> ". . . .their use must be limited to purposes incident to the beneficial enjoyment of the land from which they are obtained. . . ."

(Emphasis - Arizona Supreme Court)

FCTL001700

CONCLUSION

A careful reading and thoughtful consideration of Justice Windes' opinion in Bristor v. Cheatham (supra), and his language as adhered to in Jarvis v. State Land Department in both cited cases (supra), will convince the reader that the "reasonable use" doctrine relates to use upon the land producing the water - is the use made on that land reasonable? It has no application to use of the water used away from the land producing it, as argued by Pima, since if the use away from the land producing the water injures the water supply of an adjoining landowner, it is as a matter of law unreasonable.

A construction which would permit use of groundwater away from the land producing it, if "reasonable", would cut the reasonable use doctrine and fly in the face of the rationale supporting the doctrine.

FCTL001701

If the foregoing does not accurately analyze the rationale of Bristor v. Cheatham (supra), then there was indeed no reason for the Court's emphasis when the requirements that the water must be used for a beneficial purpose upon the land from which it was pumped, if the Court intended by its discussion of reasonable use to hold that such water might be used anywhere, if the use at the place where used was a "reasonable" (i.e., "beneficial") use, even though the place of use was miles away from the land producing the water.

Respectfully Submitted,

SNELL & WILMER

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3100 Valley Center
Phoenix, Arizona 85073
Attorneys for Appellant.

FCTL001702

STATE OF ARIZONA)
) SS.
County of Maricopa)

MARK WILMER, being first duly sworn, deposes and says:

Affiant mailed two copies of Appellant's Reply Brief to Brief of Pima Mining Company to VERITY & SMITH and to MUSICK, PEELER & GARRETT, attorneys for Appellee Pima Mining Company; and to the Attorney General of the State of Arizona, attorney for the State Land Department, properly addressed and postage prepaid, on August 9th, 1974.

Mark Wilmer, Affiant

SUBSCRIBED AND SWORN to before me this 9th day of August, 1974.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

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. 11439-2, Appellant's Reply Brief to Brief of Pima Mining Company in Farmers Investment Company v. Bettwy, filed September 23, 1974. Court of Appeals Instruments (Part Two) Page 120 with 39 Pages of the Brief following.

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 12/14/2005
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