

ORIGINAL

IN THE SUPREME COURT

STATE OF ARIZONA

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H. WARD
CLERK SUPREME COURT
BY *[Signature]*

FARMERS INVESTMENT CO.,)
Appellant,)

-vs-

ANDREW L. BETTWY, etc.,)
et al,)
Appellees.)

Supreme Court

NO. 11439-2

FARMERS INVESTMENT CO.,)
Appellant,)

-vs-

THE ANACONDA COMPANY,)
et al,)
Appellees.)

Pima County
Superior Court
NO. 116542

BRIEF OF
APPELLEES DUVAL
CORPORATION AND
DUVAL SIERRITA
CORPORATION

CITY OF TUCSON,)
Appellant,)

-vs-

ANAMAX MINING COMPANY,)
et al,)
Appellees.)

FENNEMORE, CRAIG, von AMMON & UDALL
100 West Washington, Suite 1700
Phoenix, Arizona 85003

and

ELMER C. COKER
132 South Central, Suite J
Phoenix, Arizona 85003
Attorneys for Duval Corporation
and Duval Sierrita Corporation

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INTRODUCTORY NOTE - DUVAL'S AMICI BRIEF

Duval Corporation and Duval Sierrita Corporation ("Duval") have already briefed the principal issues involved in this appeal in their Brief Amici Curiae filed in FICO's appeal against Pima Mining Company (Supreme Court No. 11439-2, "FICO's Appeal"). This appeal is being heard with FICO's appeal. Therefore, arguments presented in that brief will not be repeated here. The Court is respectfully referred to the Amici Brief, and appropriate reference will be made to it as "Duval's Amici Brief."

In this brief, "(AR)" refers to the Abstract of Record on Appeal, and "(AR Supp.)" refers to the Supplemental Abstract of Record on Appeal. The City of Tucson is sometimes referred to as "the City".

STATEMENT OF FACTS

As shown on the map on page 4 of the Supplemental Abstract of Record, the Sahuarita-Continental Critical Groundwater Area, south of Tucson (the "Critical Area"), was so designated by the State Land Department on October 14, 1954. It lies entirely within the larger Sahuarita-Continental Subdivision of the Santa Cruz Groundwater Basin (the "Subdivision"), designated by the State Land Department by Order No. 14 on June 8, 1954.

A copy of Order No. 14 and the official map of the Sahuarita-Continental Subdivision, certified by Louis C. Duncan, Deputy Land Commissioner, are on file with the Arizona Supreme Court in Cause No. 10486. Copies of those documents and of their certification by Clifford H. Ward, Clerk of the Arizona

Supreme Court, appear in the Supplemental Abstract of Record (pp. 5, 6-8).

By statute, "'Groundwater Sub-division' means an area of land overlying as nearly as may be determined by known facts, a distinct body of groundwater. It may consist of any determinable part of a groundwater basin." A.R.S. § 45-301-6.

The City of Tucson lies north of the Subdivision and the Critical Area. The north boundary of both the Subdivision and the Critical Area is a common one. No part of the corporate limits of the City of Tucson extends south of this boundary line. Tucson takes water from small parcels within the Subdivision and Critical Area, and exports this water for sale. The "consumptive" and "beneficial" uses of this water by any definition are outside the Subdivision and Critical Area, and it is a hydrological

impossibility under existing facts for any of such water to be returned to the common basin supply of the Subdivision. Tucson freely admits that none of the water pumped by it returns to the Subdivision. (AR, p. 48, para. IV)

Tucson's land holdings in the Subdivision consist of less than two sections of desert land and twenty-seven well sites within the Critical Area, each approximately 330 x 330 feet. Tucson owns no lands with a history of cultivation inside the Critical Area or Subdivision, and has no plans to buy or retire any. (Deposition of Frank Brooks, Assistant City Manager, p. 35)

Pumping by the City from the Subdivision may have commenced about 20 years ago. (Brooks' Dep., p. 52) By 1964, production from the City's wells inside the Critical Area and Subdivision had reached an average daily rate of 9

million gallons and had doubled within 10 years to 18 million gallons. (Brooks' Dep., pp. 52-54) Tucson admits that it intends to increase these rates greatly and to continue to transport such water away from the Subdivision to which the water cannot return. (Appellant's Opening Brief ("AOB"), pp. 4-5; AR, p. 48, para. IV) Within fifty years Tucson expects to be pumping nearly all of its projected water requirement of 233,000 acre feet per year from its "principal wells . . . located in the so-called South Side Field, south of the airport. . . ." in the Sahuarita-Continental Subdivision. (AOB, pp. 4-5)

Duval owns approximately 9,430 acres of land within the Subdivision, 7,430 acres of which are within the Critical Area. This land is used for industrial, agricultural, grazing and domestic purposes. Of such acreage, approximately

1,530 acres, located inside the Critical Area on the Canoa Ranch and the Esperanza Ranch, have a history of cultivation and are entitled to the use of water from the groundwater supply of the Subdivision. To help reduce the basin overdraft, all of Duval's agricultural land has been temporarily retired from cultivation since 1970.

Duval is also engaged in mining an ore body lying mostly within and partially to the west of the Subdivision. The ore is hauled by trucks to mills located within the Subdivision. Industrial process water is pumped by Duval from wells located within the Subdivision and also within the Critical Area. The primary use of industrial water is to conduct material through the mills and to tailing ponds by closed pipelines. The tailing ponds are located within the Critical Area.

While water is "used", in the broad, literal sense of the word, outside the Critical Area for the transportation of slurry within the mills, no water is legally or consumptively used outside the Subdivision or even outside the smaller Critical Area. The points of consumptive use are the tailing ponds located within the Critical Area. Of course, water is continuously reclaimed from the tailing ponds and recycled into the mill circuits, but recycling does not change the point of consumptive use.

A secondary and much smaller use consists of leaching water through stockpiled, low grade ore. The solution is recovered, the copper is extracted, and the water is recirculated. De minimis amounts of water are used in the mine and absorbed by the copper concentrates shipped from the mills. For example, in 1973, concentrates consumed a

total of only 37 acre feet of water. To compensate, water is produced by dewatering the pits. For example, the Sierrita pit produced over 480 acre feet of groundwater in 1973, which was pumped into the Duval mill circuit. Overall makeup requirements for industrial process water are about 23,000 acre feet per year.

In contrast to Tucson's 330 foot square well sites, Duval's Esperanza well field is located on a tract of fee land comprising approximately 562 acres, while the Sierrita well field is located on a fee parcel comprising approximately 5,950 acres.

As Tucson admits, the water table within the Subdivision has been declining for many years and the groundwater supply has been diminishing. (AR, p. 48, para. IV)

Duval filed its Answer to Tucson's

Complaint in Intervention on April 12,
1972, praying for an adjudication of the
relative rights of Duval and the City to
the waters of the Subdivision. Duval
filed its Counterclaim against the City
on November 7, 1973.

OBJECTIONS TO TUCSON'S STATEMENT
OF THE CASE

To place this appeal in proper perspective, certain corrections of Tucson's Statement of the Case must be made at the outset.

1. The judgment from which appeal is taken. The judgment entered in this action is that which appears on page 154 of the Abstract of Record. Tucson has printed an additional "judgment". (AR, p. 163) This was a proposed form of judgment prepared by counsel for the City of Tucson which broadly overstated the relief sought by Duval in its Motion for Partial Summary Judgment. This proposed form of judgment was not signed or entered by the trial court.

2. Tucson's appropriative rights are not in issue. Tucson discusses its claimed appropriative rights to the Santa Cruz River. (AOB, pp. 2-3) If Tucson has

any appropriative rights they are not in issue but have been expressly reserved for trial.

Tucson's own evidence conclusively established that only two of the twenty-seven wells owned by Tucson in the Sahuarita-Continental Subdivision might be pumping water from the subterranean channel of the Santa Cruz River as defined by Tucson's own evidence and experts. (See Exhibits 1 and 8 to Response of City of Tucson to Motions for Summary Judgment of Anamax and Duval, and discussion thereof at AR, pp. 141-43, 151-52) These two wells, SC 5 and SC 13, are expressly exempted from the operation of the judgment. Whether these wells are pumping groundwater or draw from the subterranean channel of the Santa Cruz River pursuant to an appropriative right remains for trial.

3. Pumping by Tucson has not been held unlawful. The court below did not find pumping from Tucson's remaining twenty-five wells "unlawful" but held only that Tucson could not increase pumping from those wells or from the Sahuarita-Continental Subdivision above its April 12, 1972 pumping rates. However, even that prohibition has been stayed pending this appeal. (AR, p. 155)

As to pumping at pre-April 12, 1972 rates, Tucson has alleged affirmative defenses. These defenses were not decided by the trial court. The judgment signed and entered in this action expressly states that "Material issues of fact exist as to Tucson's affirmative defenses" as to pre-April 12, 1972 levels. (AR, p. 160) The judgment on appeal is limited to pumping levels in excess of the April 12, 1972 rates. (AR, p. 161-62)

4. None of Tucson's wells were drilled prior to 1954. Although Tucson asserts in its brief that the construction of its wells within the critical area "occurred in many cases in 1954 prior to the designation of the area either as a subdivision (sic) of the Santa Cruz Basin or as critical" (AOB, p. 5), there is nothing in the record to support this statement. To the contrary, Tucson's own evidence in the proceedings below shows that all but six of its wells were drilled after 1954. The other six were drilled in 1954, but there is no indication whether they were drilled before, after, or concurrently with the designation of the Subdivision or whether they were drilled with knowledge of the proposed boundaries of the Subdivision. Tucson's tabulations of well production show no pumping prior to 1956. (See Exhibits 1 and 6 to Tucson's

Response to Motions for Summary Judgment
of Anamax and Duval)

5. Unsupported Factual Statements.

Tucson makes certain assertions of fact, such as those relating to its drilling program near the mine properties and to the soundness of the northern boundary of the Sahuarita-Continental Subdivision. These assertions are unsupported by the record and have never been proven in this action by affidavit or otherwise. However, as will appear below, such factual statements are irrelevant in the context of the issues raised in this appeal.

ARGUMENT

Introduction

Duval moved for partial summary judgment against the City on two grounds: (1) If FICO's theory is valid--that transportation of groundwater outside a critical area is unlawful per se--then Duval is automatically entitled to judgment against Tucson for the very same reason. (2) Duval argues that FICO's theory is incorrect and the proper ground for sustaining the partial judgment against Tucson is that transportation of groundwater away from the base of the common supply violates the reasonable use doctrine and should be enjoined, if others, whose lands overlie the common supply, are damaged.

I

IF FICO'S THEORY IS CORRECT--THAT
TRANSPORTATION OF GROUNDWATER OUTSIDE A
CRITICAL AREA IS UNLAWFUL PER SE--THEN
DUVAL IS AUTOMATICALLY ENTITLED TO
JUDGMENT AGAINST TUCSON FOR THE SAME
REASON.

For the reasons stated in Duval's
Amici Brief in FICO's appeal, Duval
insists that FICO's theory is incorrect.
The partial judgment in favor of Duval
against Tucson should not be sustained on
these grounds. However, if this Court
accepts FICO's theory, the judgment
against Tucson must be affirmed.

Tucson asserts that if FICO's theory
is valid, Duval is not entitled to
judgment against the City because Duval
is itself transporting water outside the
Critical Area. Tucson's factual premise
is incorrect because the court below

correctly found the point of consumptive use to be controlling. The trial court also found with de minimis exceptions, such as water contained in finished concentrates, that the water is consumed by Duval only in the transportation of tailing. This consumption takes place entirely within the Critical Area.^{1/}

(AR, p. 157)

1/

Thus, whether Tucson's "drilling program" finds return to the common supply or not is irrelevant. All of the water pumped by Duval is returned to the Critical Area. Therefore, only one of two things can happen: (1) the water is consumptively used within the Critical Area, which does not violate the reasonable use doctrine; or (2) the water returns to the common supply. However, whatever Tucson's unsupported statements may be in this regard, the undisputed evidence in collateral proceedings below is that 77% of the water pumped by Duval returns to the ground within the Critical Area. (Duval's Amici Brief, p. 40)

Even if Tucson were correct in its statement, Duval would nevertheless be entitled to judgment against the City for the protection of the beneficial uses for its land holdings which lie entirely within the Critical Area. Duval owns over 1,530 acres of land inside the Critical Area entitled to the use of water for irrigation, and over 6,000 additional acres. Duval has constitutionally protected property rights to the preservation of the common groundwater supply subjacent to these lands under the principles announced in Jarvis v. State Land Department ("Jarvis I"), 104 Ariz. 527, 456 P.2d 385 (1969), and Jarvis v. State Land Department ("Jarvis II"), 106 Ariz. 506, 479 P.2d 169 (1970).

Admittedly, Duval has temporarily discontinued virtually all agricultural uses of water on all 7,430 acres. But

these uses have been discontinued solely to husband the common supply of the Basin and to help assure the availability of water for the mine processes. If FICO's theory were taken as correct, the agricultural lands would be immediately put back into production, and the remaining 6,000 acres would be developed for domestic, municipal, and, of course, industrial purposes.

By asserting that Duval's land located entirely within the Critical Area is entitled to no protection against Tucson's unlawful withdrawals, Tucson brushes over the fact that while Duval has contributed substantially to the preservation of the common supply by the retirement of water uses on over 7,430 acres of land, Tucson has done nothing.

Aside from its two desert sections, Tucson's land holdings in the Basin consist of 27 well sites, each

approximately 330 x 330 feet, strategically placed to drain surrounding land. Tucson, unlike the private litigants in this case, has the power of eminent domain, but it owns no agricultural lands in the Basin and has no plans to acquire any.

In the proceedings below, Tucson argued that only municipalities are allowed to retire agricultural land and transport water historically used elsewhere. As pointed out in Duval's Amici Brief (pp. 32-36), the rule which this Court formulated in Jarvis II stands on one of the soundest principles of the doctrine of reasonable use, one which is not specially applicable to municipalities. The rationale is not founded on the peculiar needs of cities, although that was certainly a factor in the Jarvis decision, but rather on the fact that remaining users are not hurt by the

retirement of one use and the substitution of another. In any event, discussion of this aspect of Jarvis might be relevant if the City had itself retired lands within the Subdivision from cultivation, but it has not. Regardless of the law which might arguably apply in another context, it nevertheless remains that Duval has directly contributed a substantial water resource to the common supply of the Subdivision by the temporary retirement of agricultural and other lands. The City has done nothing whatever toward conserving the common supply. Thus, on an equitable basis, Duval is all the more entitled to partial judgment against the City.

II

BY TRANSPORTING GROUNDWATER AWAY FROM THE COMMON SUPPLY, AS DELIMITED BY THE BASIN SUBDIVISION, TO POINTS FROM WHICH IT CANNOT RETURN TO THE COMMON SUPPLY, THEREBY CONTRIBUTING TO AN OVERDRAFT ON THE SUPPLY, TUCSON IS DEPLETING THE COMMON SUPPLY IN VIOLATION OF THE REASONABLE USE DOCTRINE.

The partial judgment against Tucson should not be sustained on the ground that the City it is transporting water out of the Critical Area. Rather, the judgment should be sustained because Tucson is violating the reasonable use doctrine: the City concentrates groundwater on minute well sites and transports it to lands which do not overlie the source basin and from which the return of water not consumptively used to the common supply is not

possible.

Water may be used off the land from which it is taken only when the rights of others are not injured. This Court said in Jarvis II:

Percolating waters may not be used off the lands from which they are pumped if thereby others whose lands overlie the common supply are injured. [Emphasis added] 479 P.2d at 171.

And:

Such waters can only be used in connection with the land from which they are taken. [Emphasis added] 479 P.2d at 172.

Under the doctrine of reasonable use, the land from which the water is taken is the land which overlies the common basin supply. In this case, the land overlying the common supply has been legally and statutorily determined by the State Land Department as the Sahuarita-Continental Subdivision of the Santa Cruz Groundwater Basin. It did so by Order No. 14 entered June 8, 1954 pursuant to A.R.S. § 45-303.

Both of these points have been carefully briefed in Duval's Amici Brief in FICO's appeal and will not be needlessly repeated. See Duval's Amici Brief, pp. 1-26. As discussed therein and in this Court's decisions in Anway, Bristor, Jarvis, and the cases cited in Jarvis, the fundamental principle of the doctrine of reasonable use is that water shall not be moved to a point from which the water not consumptively used cannot return to the common supply. Bristor v. Cheatham, 75 Ariz. 227, 255 P.2d 173 (1953) ("Bristor II"); State v. Anway, 87 Ariz. 206, 349 P.2d 774 (1960). A shorthand way of saying the same thing is that groundwater shall not be used "off the land" to which it is subjacent.

Without duplicating the argument set forth in Duval's Amici Brief, it can be pointed out that Tucson's pumping in the Sahuarita-Continental Subdivision

presents the classic situation which gave rise to the doctrine of reasonable use in the first place. Municipalities were installing wells on small parcels and transporting the groundwater pumped therefrom away from the base of the common supply for sale to customers and for use at points where it would never return to the common basin. As was said in Canada v. City of Shawnee, 64 P.2d 694, 697 (Okla. 1936), "practically all of the cases in which this rule of . . . reasonable use has been applied were cases in which percolating water was being extracted from land for the purpose of sale at a distance, for use in supplying water to cities and towns. . . ."

In Katz v. Walkinshaw, 70 P. 663 (Cal. 1902), on rehearing, 74 P. 766 (Cal. 1903), the court defined the land from which the water is taken as the

"water-bearing land" (p. 771) and the
"land overlying the water-bearing strata"
(p. 772). It held the defendant could
not divert "water for sale, to be used on
the lands of others distant from the
saturated belt from which the artesian
water is derived." [Emphasis added] (70
P. at 664). Likewise, in Burr v. Maclay
Rancho Water Co., 98 P. 260, 264 (Cal.
1908), the court held that:

. . . one cannot, to the injury of
the other, take such waters from the
strata and conduct the same to
distant lands not situated over the
same water-bearing strata. [Emphasis
added]

Further,

The reasonable rule here would be to
hold that defendants' appropriation
for distant lands is subject to the
reasonable use of the water on lands
overlying the supply. . . . [Emphasis
added]

And in the following cases cities
were enjoined from concentrating water on
small well sites and transporting it away
from the boundaries of the common supply:

Schenk v. City of Ann Arbor, 163 N.W. 109, 111 (Mich. 1917) (held unlawful ". . . to pipe the water away from the land, to sell some of it, to use some of it for municipal purposes, [and] not to return any of it to the land."); Volkman v. City of Crosby, 120 N.W.2d 18, 22-23 (N.D. 1963) (water was ". . . piped to the city which is not located above the source of supply where it is used for municipal purposes and for sale to individuals. . . ." [emphasis added]); Forbell v. City of New York, 58 N.E. 644, 645-46 (N.Y. App. 1900) (city could not take water beyond the boundaries of the common supply ". . . and by merchandising it prevent its return. . . ."); Evans v. City of Seattle, 47 P.2d 984 (Wash. 1935) (the rule applies ". . . to the subject of water from a saturated stratum extending under the property of several owners."); City of San Bernardino v. City

of Riverside, 198 P. 784 (Cal. 1921).

All of the above cases were cited by this court in Jarvis II. They all support the holdings in Jarvis that a city has no better right than a private individual to transport water away from the base of the common supply and prevent its return.

In this case, the City not only admits that none of the water pumped by it from the Subdivision will return to the Subdivision (AR, p. 48), but it is a hydrological impossibility for a single drop of the water pumped and transported away from the Subdivision by Tucson to return to the aquifer at any place within the Subdivision.

Further, as has been carefully shown in Duval's Amici Brief (pp. 19-26), the boundaries of the common supply in this case have been designated by the State Land Department pursuant to a mandatory

duty imposed by statute. By its Order No. 14, the State Land Department on June 8, 1954, designated and established a groundwater subdivision called the "Sahuarita-Continental Subdivision of the Santa Cruz Basin". A "Groundwater Subdivision" is defined by statute as "an area of land overlying, as nearly as may be determined by known facts, a distinct body of groundwater."

Thus, a distinct body of groundwater is found to exist by the Land Department on the basis of known hydrological facts. The determination of the Commissioner is a quasi-judicial proceeding and is subject to appeal under A.R.S. § 45-321. It is not now subject to collateral attack. Parker v. McIntyre, 47 Ariz. 484, 493, 56 P.2d 1337, 1341 (1936). Once the land overlying "a distinct body of groundwater" is defined, the common law and constitutional principles of

reasonable use applicable to land
overlying the common supply obtain.

The City urges that the boundaries of
the common supply are defined not by the
designation of the Sahuarita-Continental
Subdivision but by the Santa Cruz Basin.

A.R.S. § 45-301-5 defines

"groundwater basin" as follows:

"Groundwater basin" means land
overlying, as nearly as may be
determined by known facts, a distinct
body of ground water. . . .

Subsection 6 of A.R.S. § 45-301

defines "groundwater subdivision" as
follows:

"Groundwater subdivision" means an
area of land overlying, as nearly as
may be determined by known facts, a
distinct body of groundwater. It may
consist of any determinable part of a
groundwater basin. [Emphasis added]

Thus the City argues erroneously, if
the groundwater subdivision defines the
boundaries of the common supply, so too
does the groundwater basin.

The critical language, of course, is

that a groundwater subdivision "may consist of any determinable part of a groundwater basin."

The subdivision defines the smallest body which is definable as a distinct body of groundwater. It is the smallest unit of common supply identifiable as such. However several distinctly identifiable basins may be interconnected to form a larger basin. Such basin is defined by the statutes as the "groundwater basin". This is illustrated by the present case where water returning to the Sahuarita-Continental Subdivision might eventually arrive in the Tucson Subdivision, but water returned to the Tucson Subdivision would never return to the Sahuarita-Continental Subdivision.^{2/}

2/

Tucson also argues, with no support from the record, that if the groundwater Subdivision were drawn in accordance with

In reliance upon the Land Department's statutory finding and establishment of the Sahuarita-Continental Groundwater Subdivision, Duval spent over \$225,000,000 in the development of its mines, mills, and related facilities. The specific statutory scheme for the establishment

hydrological realities, the northern boundary would not be a straight east-west line. Although the determination by the Land Department is not now subject to collateral attack, this Court may take notice of groundwater contour maps drawn by the University of Arizona and the United States Geological Survey which show that there is in fact a zone of low permeability approximately 1/2 mile wide running from east to west slightly to the north of the established boundary. This zone forms a natural hydrologic barrier preventing free flow of water from the Sahuarita-Continental Subdivision into the Tucson Subdivision, as evidenced by the fact that water levels on the north or Tucson side of the barrier are 100 or more feet below the levels immediately to the south of the barrier.

and declaration of groundwater subdivisions can only have been intended to induce such reliance. The law provides a procedure to establish and define the extent of the groundwater supply. Persons are thereby allowed and encouraged in industrial enterprises and are able to assess the extent of the available water supply and the probable demands on it. Without such a statutory procedure for the conclusive determination and establishment of the lands overlying the common supply which are accordingly entitled to the beneficial and reasonable use of water from the basin without intervening demands for the benefit of distant lands, investments dependent on groundwater supplies could be made only at great peril. That is precisely the case here. Within fifty years, Tucson intends to look to the subdivision as the principal supply to

meet its projected water demand of
233,000 acre feet per year. (AOB, pp.
4-5) Such pumping duty would wipe out
every user in the Subdivision.

CONCLUSION

As stated in Bristor v. Cheatham, (Bristor II), 75 Ariz. 227, 237-38, 255 P.2d 173, 180 (1953), two elements must be shown in order to make out a violation of the reasonable use doctrine: (1) that groundwater is not diverted for the "reasonable use of the land from which it is taken", and (2) resulting injury.

As to the first element, Tucson has admitted that it is transporting water away from the Subdivision for use at points where it does not return to the Subdivision. (AR, p. 48, para. IV)

As to the second element, resulting injury, Tucson has admitted that the water supply of the Subdivision is limited, that it has been diminishing for many years, and that the water table of the Subdivision has also been declining for many years. Ibid.

Tucson's continued pumping from the Subdivision and transportation of such water to points where it cannot return to the Subdivision supply can only aggravate this overdraft situation and contribute to the damage of Duval and all other lawful users within the Subdivision.

Therefore, as was said in the Jarvis cases, further withdrawals from the common supply can only impair the rights and deplete the supply of existing users. In Jarvis, the second element--resulting injury--was presumed solely from the fact of the existence of a designated critical area and concomitant finding that there was insufficient water available to sustain agriculture at existing rates of withdrawal.

Thus the elements necessary to show a violation of Duval's property rights under the reasonable use doctrine have been admitted by Tucson: (1) Tucson is

transporting water out of the Subdivision which defines the "distinct body of groundwater" forming the common groundwater supply for Duval and others; the water does not return but is forever lost to the Subdivision; and (2) the common basin supply of the Subdivision has been being depleted since at least 1954, and pumping by the City is contributing to that overdraft.

The Judgment should be affirmed.

Respectfully submitted,

FENNEMORE, CRAIG, von AMMON
& UDALL

By Calvin H. Udall - JWJ
Calvin H. Udall

By James W. Johnson
James W. Johnson

ELMER C. COKER

Elmer C. Coker - JWJ

Attorneys for Duval Corpora-
tion and Duval Sierrita
Corporation

STATE OF ARIZONA)
) ss.
County of Maricopa)

JAMES W. JOHNSON, being first duly sworn, says:

Affiant mailed two copies of Brief of Appellees Duval Corporation and Duval Sierrita Corporation to Robert O. Leshner, attorney for Appellant, the City of Tucson, properly addressed and postage prepaid, on August 18, 1975.

James W. Johnson
JAMES W. JOHNSON

SUBSCRIBED and sworn to before me this 18th day of August, 1975.

Francis A. Perkins
Notary Public

My Commission Expires:

My Commission expires Sept. 2, 1977

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

SS:

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, Brief of Appellees
Duval Corporation and Duval Sierrita Corporation, page 733 and attachment (42 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 12/15/05
Date

Etta Louise Muir
Signature, Notary Public

My commission expires 04/13/2009
Date

