

ORIGINAL

IN THE
SUPREME COURT
STATE OF ARIZONA

FILED
DEC 24 1974
CLERK SUPREME COURT
BY *[Signature]*

FARMERS INVESTMENT)	
COMPANY, a corporation,)	Supreme Court
)	No. 11439-2
Appellant,)	
)	
v.)	Pima County
)	No. 116542
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.)	

PETITION OF DUVAL CORPORATION AND
DUVAL SIERRITA CORPORATION FOR
LEAVE TO INTERVENE ON REASONABLE
USE ISSUES OR TO FILE BRIEF
AMICI CURIAE AND BRIEF

FENNEMORE, CRAIG, von AMMON & UDALL
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and

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and Duval Sierrita Corporation

PETITION FOR LEAVE TO INTERVENE
ON REASONABLE USE ISSUES
OR TO
FILE BRIEF AMICI CURIAE
AND
BRIEF

Petitioners Duval Corporation and Duval Sierrita Corporation ("Petitioners" or "Duval"), corporations qualified to do business in Arizona, hereby move the Court for an order permitting them to intervene in the above entitled matter and to file the appended Brief in Intervention. In the alternative, Petitioners move the Court for an order permitting them to file the appended Brief as Amici Curiae.

The vital interest of Petitioners in the appeal now before this Court arises from the same action now pending in the Pima County Superior Court from which this appeal is taken and in which Petitioners are also parties.

The central unresolved issues in the action now pending in the trial court are whether Duval and other mining companies or Farmers Investment Company ("FICO") or the City of Tucson, or any or all of them, are

pumping and using groundwater in the Santa Cruz Valley of Pima County in violation of the Arizona reasonable use doctrine.

Except that the Duval wells are located on fee lands rather than on state leased lands, Duval and Pima Mining Company ("Pima") are similarly situated.¹

Duval has never had an opportunity to present evidence on the issue of the reasonableness of its own uses or on the issues of its claim that FICO's uses are unreasonable. Duval has not even had the opportunity to brief or argue these issues in the trial court. Its request to be heard below on the reasonable use issues was denied (Record, p. 139) at the urging of FICO, which insisted that Count IV of its Amended Complaint did not reach or embrace the reasonable use issues (Record, pp. 120-121, 132-133) Therefore, if this Court rules on the issue of reasonable use, the rights of Duval to the use of groundwater may as a practical

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Some of Pima's wells are on lands owned by Pima but the wells on state leased lands are the wells here in issue.

matter be determined without any opportunity to argue the law, much less present evidence.

Duval agrees with the statement made by FICO at the outset of its Opening Brief. FICO concedes that its Motion for Summary Judgment against Pima was directed solely at the validity of State Lease 906 under the Enabling Act (FICO's A.O.B. 1-3). This was the very basis for FICO's position and the trial court's ruling that Duval could not be heard. FICO claimed that the reasonable use issues were not involved.

The three questions presented for review by FICO all purport to relate only to State Lease 906 (FICO's A.O.B. 13-14), but one need only examine pages 29 through 31 of FICO's Reply Brief to Pima's Appellee's Brief to see that FICO's appeal is not really concerned with the validity of State Lease 906 at all. FICO's appeal is in fact an effort to have this Court resolve the reasonable use issues which FICO at first disclaims.

This is apparent from FICO's first Question Presented (FICO's A.O.B., p. 13) if a few

words are stricken:

"1. Whether pumping and transportation of groundwater from ~~state trust~~ lands within a critical groundwater area ~~under-a-state-commercial-lease~~ for use outside of said critical area and away from these ~~leased~~ lands, which use is unrelated to the beneficial use and enjoyment of the land from which the water is withdrawn, thereby causing the water wells of a groundwater user in the same ~~are as said leased~~ lands and ~~withir~~ the critical area to be damaged, is unlawful or lawful?"

Petitioners have no standing as to the Enabling Act issues. Lease 906 has already been voided by this Court. But if the Court elects to rule on the reasonable use issues, Petitioners urgently request the opportunity to brief, present evidence and be heard on these most vital issues.

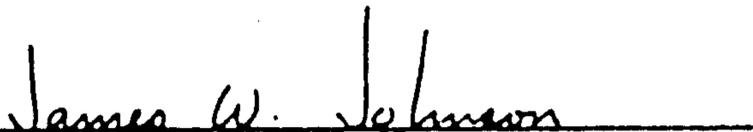
At stake are hundreds of millions of dollars of property and investments, the livelihood of several thousand citizens, a substantial segment of the economy of Pima County and the State of Arizona, and over 17 percent of the nation's production of copper, a basic metal in critically short supply.

Wherefore, Petitioners pray for an order granting leave to Intervene or alternatively to file the Brief Amici Curiae appended hereto.

Respectfully submitted this ____ day of December, 1974.

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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, Petition of Duval Corporation and Duval Sierrita Corporation for Leave to Intervene on Reasonable Use Issues or to File Brief Amici Curiae and Brief, page 727 and attachment (6 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

