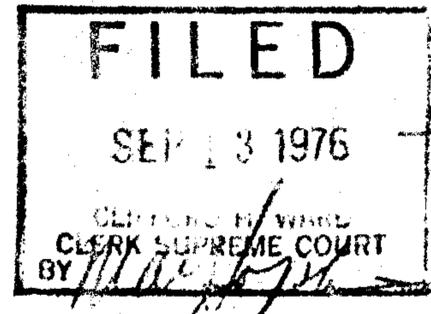


1 IN THE SUPREME COURT OF THE STATE OF ARIZONA

2 In Banc



3 FARMERS INVESTMENT COMPANY,)
4 a corporation,)

5 Appellant,)

6 v.)

7 ANDREW L. BETTWEY, as State Land)
8 Commissioner, and the STATE LAND)
9 DEPARTMENT, a Department of the)
10 State of Arizona, and PIMA MINING)
COMPANY, a corporation,)

11 Appellees.)

No. 11439-2

12 FARMERS INVESTMENT COMPANY,)
13 a corporation,)

MOTION FOR LEAVE TO
FILE BRIEF AS
AMICUS CURIAE

14 Appellant,)

15 v.)

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

19 Appellees.)

20 CITY OF TUCSON, a municipal corporation,)

21 Appellant,)

22 v.)

23 ANAMAX MINING COMPANY, and DUVAL)
24 CORPORATION and DUVAL SIERRITA)
CORPORATION,)

25 Appellees.)

26
27 Evans, Kitchel & Jenckes, P.C., respectfully move the
28 Court for an order permitting them to appear as amici curiae and
29 file a Brief in Support of the Motions for Rehearing filed by the
30 parties to this appeal.

31 Your petitioners do not represent any of the parties to
32 the several matters which were before the Court on these appeals.

EVANS, KITCHEL & JENCKES, P.C.
303 NORTH FIRST AVENUE
PHOENIX, ARIZONA 85003
(602) 254-3101

1 However, we represent various clients whose legal and economic
2 interests may be very seriously affected by the import of the
3 decision entered herein on August 26, 1976, the full legal and
4 economic consequences of which petitioners feel must not have
5 been fully contemplated by this honorable Court.

6 In brief, petitioners are concerned that:

7 1. Vital economic interests in constitutionally
8 protected property rights of enormous segments of the Arizona
9 economy may be determined and forfeited as a result of the
10 decision.

11 2. The majority opinion overrules State v. Anway,
12 87 Ariz. 206, 349 P.2d 774, and other prior holdings of the Court.

13 3. The majority opinion misconstrues earlier
14 decisions of this and other courts and ignores pronouncements
15 heretofore made by this Court, and overlooks significant portions
16 of its earlier opinions.

17 4. The majority opinion leaves unclear the
18 relative legal rights between adjacent "up gradient" and "down
19 gradient" users of ground water.

20 5. The majority opinion renders uncertain the
21 right to use ground water for nearly all ground water users in
22 every category--agricultural, industrial and municipal.

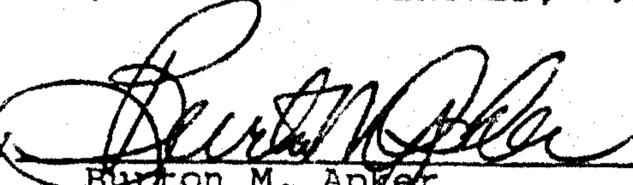
23 6. The majority opinion does not define "off the
24 land," a central issue in this case.

25 The Court has heretofore extended the time for filing
26 memoranda in support of the Motions for Rehearing up to
27 October 12, 1976.

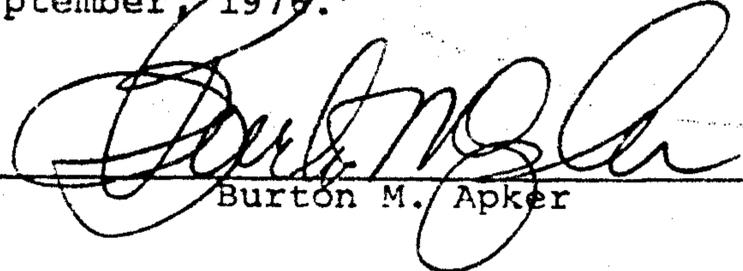
28 WHEREFORE, petitioners respectfully request that they
29 be permitted to appear and to file a Brief as Amicus Curiae in
30 Support of the Motions for Rehearing filed by the parties to the
31 appeal, as provided in the proposed form of Order which is
32 submitted herewith.

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Respectfully submitted,
EVANS, KITCHEL & JENCKES, P.C.

By 
Burton M. Apker
363 North First Avenue
Phoenix, Arizona 85003
Attorneys for Petitioners

Copy of the foregoing Motion and proposed form of Order hand delivered or mailed to all counsel of record this 13th day of September, 1976.


Burton M. Apker

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, Supreme Court
Instruments, Part One, Motion for Leave to File Brief as Amici Curiae, pages 353-355 (3 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 4/13/2009
Date

