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**FILED**  
SEP 8 1976  
CLIFFORD A. WARD  
CLERK SUPREME COURT  
BY *[Signature]*

OFFICE OF THE CITY ATTORNEY  
P. O. BOX 27210  
TUCSON, ARIZONA 85726

8 IN THE SUPREME COURT OF THE STATE OF ARIZONA

9 In Banc

11 FARMERS INVESTMENT COMPANY,  
12 a corporation,  
13  
14 Appellant,

13 vs.

14 ANDREW L. BETTWY, as State Land  
15 Commissioner, and the STATE LAND  
16 DEPARTMENT, A Department of the  
17 State of Arizona, and PIMA MINING  
18 COMPANY, a corporation,  
19 Appellees.

NO. 11439-2

MOTION FOR REHEARING

19 FARMERS INVESTMENT COMPANY,  
20 a corporation,  
21  
22 Appellant,

21 vs.

22 THE ANACONDA COMPANY, a corporation;  
23 AMAX COPPER MINES, INC., THE ANACONDA  
24 COMPANY as partners in and constituting  
25 ANAMAX MINING COMPANY, a partnership,  
26 Appellees.

26 CITY OF TUCSON, a municipal corporation,  
27  
28 Appellant,

28 vs.

29 ANAMAX MINING COMPANY, and DUVAL  
30 CORPORATION and DUVAL SIERRITA  
31 CORPORATION,  
32 Appellees.

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1 THE CITY OF TUCSON, pursuant to Rule 9(a), Rules of the  
2 Supreme Court, respectfully moves this Honorable Court for a re-  
3 hearing of the above-entitled matter. The particular grounds for  
4 said rehearing are as follows:

5 1. This Honorable Court employed in its decision alle-  
6 gations contained in the Plaintiff's complaint in the case of Bris-  
7 tor v. Cheatham as a substantial basis for its decision although  
8 that complaint was not part of the Court's published opinion in  
9 either of the decisions so titled, [73 Ariz. 228, 240 P.2d 185  
10 (1952) and 75 Ariz. 227, 255 P.2d 173 (1953)] and where in fact  
11 the opinions clearly set forth a divergent theory of the case.

12 2. This Honorable Court applied in its decision an  
13 admixture of principles derived from the doctrine of prior  
14 appropriation and the doctrine of reasonable use in such a manner  
15 as to modify to an undeterminable extent its previously announced  
16 holdings in a manner which is internally contradictory.

17 3. This Honorable Court failed to recognize established  
18 equities of the parties and the principles on which they are based  
19 and further permitted the institution of equitable remedies con-  
20 trary to law and without the necessary basis in fact.

21 4. This Honorable Court so modified and extended the  
22 reasonable use doctrine as previously enunciated by this Court as  
23 to render impossible established uses of percolating water for  
24 many municipal, industrial, domestic, and agricultural purposes,  
25 to the end that rule now established by the Court unfortunately  
26 tends to encourage the maximum exploitation of the state's ground  
27 water resource over the minimum period of time and for the least  
28 economic purposes.

29 5. This Honorable Court must now reconsider the impact  
30 of this decision, of the second decision in Bristor v. Cheatham  
31 and the cases following in light of the scarcity of the state's  
32 ground water resource, the increasing demands upon that resource

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and the changing character of the state's economic activities.

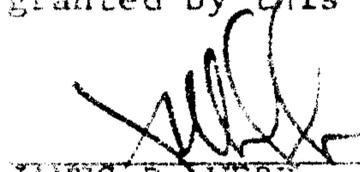
RESPECTFULLY SUBMITTED this 8 day of September, 1976.

  
\_\_\_\_\_  
JAMES D. WEBB  
City Attorney  
City of Tucson

MEMORANDUM IN SUPPORT OF MOTION FOR REHEARING

In view of the stipulation of counsel and order of Court permitting appellant to file an amendment which will be a memorandum in support of the Motion for Rehearing, appellant will 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.

  
\_\_\_\_\_  
JAMES D. WEBB  
City Attorney  
City of Tucson

Copy of the foregoing mailed  
this 8 day of September,  
1976, to:

All Counsel of Record

OFFICE OF THE CITY ATTORNEY  
P. O. BOX 27210  
TUCSON, ARIZONA 85726

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 Rehearing, pages 321-323 (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 04/13/2009.  
Date

