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FILED  
APR - 2 1975  
CLIFFORD H. WARD  
CLERK SUPREME COURT  
BY [Signature]

6 IN THE SUPREME COURT

7 STATE OF ARIZONA

8 FARMERS INVESTMENT COMPANY, )  
9 a corporation, )  
Appellant, )

Supreme Court No. 11439-2

10 vs. )

11 ANDREW L. BETTWY, as State Land )  
12 Commissioner, and the STATE LAND )  
13 DEPARTMENT, a department of the )  
State of Arizona, and PIMA MINING )  
14 COMPANY, a corporation, )

Pima County Superior  
Court No. 116542

15 Appellees. )

PETITION OF THE CITY  
OF TUCSON FOR LEAVE  
TO FILE APPEAL  
DIRECTLY IN THIS COURT  
AND IN THIS PROCEEDING

16 CITY OF TUCSON, a municipal corporation, )

17 Appellant, )

18 vs. )

19 ANAMAX MINING COMPANY, and DUVAL )  
20 CORPORATION and DUVAL SIERRITA )  
CORPORATION, )

21 Appellees. )

22  
23 The City of Tucson appeals and moves the Court for entry of its  
24 Order permitting the filing with this Court of an appeal from a judgment  
25 against it entered in the Superior Court of Pima County on March 13, 1975,  
26 in favor of the Anamax Mining Company and Duval Corporation and Duval  
27 Sierrita Corporation. The judgment having been entered adversely to the  
28 City (a copy of which Judgment is attached hereto as Exhibit A), the City on

1 March 26, 1975, filed in the Superior Court of Pima County its Notice of  
2 Appeal in statutory form, together with a Designation of Contents of Record on  
3 Appeal. The documents remain in the Superior Court and have not yet been  
4 forwarded to the Arizona Court of Appeals. No appeal is therefore yet  
5 docketed in the Court of Appeals. The City of Tucson by this Petition seeks  
6 an Order of this Court directing the Clerk of the Superior Court of Pima  
7 County to forward all documents concerned with the City's appeal from the  
8 judgment referred to directly to this Court; for an Order that the appeal be  
9 docketed directly in this Court and treated hereafter by this Court; and that  
10 that appeal be consolidated with the appeals presently pending before this  
11 Court under the Court No. 11439-2, included in the caption of this Petition.

12 The Judgment of the trial court entered on the motions for summary  
13 judgment of Anamax and Duval determined that the City's withdrawal of water  
14 from an area of the Santa Cruz Basin and transportation of that water outside  
15 the Continental Sahuarita Subdivision of the Santa Cruz Basin to the City of  
16 Tucson for municipal purposes was a violation of law; and the Court, there-  
17 fore, in its Judgment enjoined such withdrawal and transportation out of the  
18 Groundwater Subdivision. In order that the matters determined by the Court  
19 may be clear there are attached hereto copies of the Motions for Summary  
20 Judgment filed by Anamax and Duval (without the Exhibits thereto), and the  
21 Response filed by the City of Tucson (again without the Exhibits). It is clear  
22 from a reading of these pleadings, together with the Judgment entered by the  
23 Court that the issues raised by the City's appeal are (1) fundamental to the  
24 groundwater law of Arizona, and (2) so closely related to the issues made by  
25 and presently before this Court in the appeals docketed under the above  
26 Cause Number that they should be treated on appeal within the context of these  
27 earlier appeals by the Farmers Investment Company and the mines. While  
28 the issues posed by the appeals presently pending in this Court are not

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1 identical in all particulars with those raised by the City's appeal, there is,  
2 nevertheless, such an overlapping among all of the issues and each of the  
3 parties to all of the appeals is so intimately associated with the basic litiga-  
4 tion which gave rise to all three appeals that a thorough, comprehensive and,  
5 hopefully, final disposition by this Court of the very important water law  
6 issues should not be attempted piecemeal. The fundamental issue underlying  
7 the Judgment from which the City's appeal is taken is whether a groundwater  
8 subdivision properly establishes the limit beyond which groundwater may not  
9 be taken. That issue, while simple enough to state, nevertheless, involves  
10 a real examination by the Court of all of the fundamental rules controlling the  
11 use of groundwater. Many of those issues are again either identical or  
12 closely related to those made by the presently pending appeals.

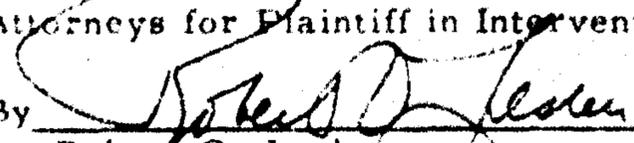
13 By this Petition, the City of Tucson does not suggest any undue  
14 delay in a disposition of the appeals presently pending here. The record on  
15 appeal from the Judgment against the City of Tucson does not involve a  
16 preparation of voluminous transcripts of record and the forwarding of that  
17 appeal to this Court by the Superior Court of Pima County should not be a  
18 time-consuming process since the issues raised are essentially legal and  
19 only in a very limited way factual. Further, an Order of the Court reducing  
20 the time periods available for the filing of briefs would be appropriate since  
21 all parties to the City's appeal have filed voluminous memoranda of law in  
22 the trial court directed to the very issues made in this Court by the appeal.

23 Respectfully submitted,

24 JAMES D. WEBB,  
City Attorney, City of Tucson,

25 -and-

26 LESHER, KIMBLE, RUCKER & LINDAMOOD, P.C.,  
Attorneys for Plaintiff in Intervention, and Appellant,

27 By   
Robert O. Leshler

28 Copies of the foregoing served by mail this 1<sup>st</sup> day of April, 1975, upon:

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1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF PIMA

3  
4 FARMERS INVESTMENT COMPANY,  
a corporation,

5  
6 Plaintiff,

7 vs.

8 THE ANACONDA COMPANY, et al.,

9 Defendants.

)  
)  
) NO. 116542  
)  
)  
)

) JUDGMENT AND DECREE OF  
) INJUNCTION  
)  
)  
)

10  
11 CITY OF TUCSON, a municipal  
corporation,

12  
13 Plaintiff in  
14 Intervention,

15 v.

16 FARMERS INVESTMENT COMPANY,  
a corporation, et al.,

17  
18 Defendants in  
19 Intervention.

20 The defendants, DUVAL CORPORATION and DUVAL SIERRITA  
21 CORPORATION, having moved the Court for partial summary judgment  
22 and decree of injunction against the intervenor, CITY OF TUCSON,  
23 upon the counterclaim of those defendants against the intervenor,  
24 the Court having considered the memoranda of law filed by the  
25 parties and having heard the oral argument of counsel on the  
26 issues and being otherwise fully advised in the premises; the  
27 Court finds and concludes:

28 1. The State Land Department by its Order No. 14 dated  
29 June 8, 1954 established the Sahuarita-Continental Subdivision  
30 of the Santa Cruz Groundwater Basin (the "Subdivision"). Such  
31 designation was pursuant to statutory duty contained in  
32 AFS 645-303. Such Subdivision constitutes an area of land

EXHIBIT A

1 overlying a distinct body of groundwater.

2 2. Duval Defendants own approximately 9,430 acres of land  
3 within the Subdivision which are used for industrial, agricul-  
4 tural and other beneficial purposes. Of such acreage approxi-  
5 mately 1,530 acres have a history of cultivation and are en-  
6 titled to the use of water for agricultural purposes from the  
7 groundwater supply of the Subdivision.

8 3. Duval Defendants pump and use within the Subdivision  
9 approximately 22,000 acre feet of groundwater per annum for use  
10 in their milling circuits and for the transportation of tailing.  
11 De minimis amounts of water are consumptively used in the milling  
12 process, the primary consumptive use of water by Duval Defendants  
13 being for the transportation of tailing.

14 4. The City of Tucson ("Tucson" or "City") lies north of  
15 the Subdivision. It owns a number of wells on small sites within  
16 the Subdivision and pumps water from such wells primarily for  
17 use and sale outside the Subdivision. Tucson owns no lands with  
18 a history of cultivation inside the Subdivision.

19 5. The City's pumping from the Subdivision commenced about  
20 20 years ago. Since the beginning of 1964 the average rate of  
21 production from the City's wells inside the Subdivision has  
22 doubled from an average daily rate of 9 million gallons to 18  
23 million gallons.

24 6. Tucson intends to continue to increase its rate of  
25 pumping and to continue to transport such water away from the  
26 Subdivision. Duval filed its answer to Tucson's Complaint in  
27 Intervention on April 12, 1972 praying for an adjudication of  
28 the relative rights of Duval Defendants and the City to the  
29 waters of the Subdivision. Duval filed its counterclaim against  
30 the City on November 7, 1973 and its Motion for Partial Summary  
31 Judgment on February 12, 1974.

32 7. For many years the water table within the Subdivision

1 has been declining and the supply diminishing.

2 8. Under the Arizona doctrine of reasonable use, ground-  
3 water may not be transported for use on lands which do not overlie  
4 the common groundwater supply and from which use the water does  
5 not return to the common supply, if others whose lands overlie  
6 the common supply are thereby injured.

7 9. The designation of the Subdivision by the State Land  
8 Department as land overlying a distinct body of groundwater  
9 constitutes a designation of the land which overlies a common  
10 supply of groundwater.

11 10. Tucson admits that it is transporting water away from  
12 the Subdivision and that none of the water transported by the  
13 City for use away from the Subdivision returns to the common  
14 supply of the Subdivision. Tucson further admits that the water  
15 supply of the Subdivision is limited, that the supply has been  
16 diminishing for many years, and that the water table of the  
17 Subdivision has been declining for many years.

18 11. All of Tucson's wells located in the Subdivision  
19 except for Tucson's wells No. SC5 and SC13, pump groundwater.  
20 As to wells SC5 and SC13, there is a material issue of fact as  
21 to whether such wells pump surface water.

22 12. Material issues of fact exist as to Tucson's  
23 affirmative defenses under which Tucson claims the right to con-  
24 tinue pumping groundwater from the Subdivision from wells  
25 installed prior to the filing of Duval's counterclaim. However,  
26 any such rights, if established, would not permit pumping of  
27 groundwater at rates in excess of those pumping rates established  
28 by April 12, 1972.

29 13. Except as noted above there are no genuine issues  
30 as to any material facts and defendants Duval Corporation and  
31 Duval Sierrita Corporation are, as a matter of law, entitled to  
32 judgment against the City of Tucson on their Motion for Partial

1 Summary Judgment dated February 12, 1974.

2 THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED

3 That the City of Tucson, its officers, agents, servants,  
4 employees, attorneys, and all persons in active concert or  
5 participation with them, be and they are hereby forever enjoined  
6 from:

7 1. Pumping and transporting groundwater for use away from  
8 the Sahurita-Continental Subdivision of the Santa Cruz Groundwater  
9 Basin, except from wells SC5 and SC13, in amounts exceeding the  
10 rates at which Tucson pumped water for transportation and use  
11 outside of the Subdivision on April 12, 1972;

12 2. Using any wells or pumps installed in the Sahurita-  
13 Continental Subdivision after April 12, 1972, for the pumping of  
14 groundwater for use outside the Subdivision.

15 It is further determined and adjudged that there is no  
16 just reason for delay in the entry of the foregoing judgment as  
17 a final judgment; and the Clerk is directed that it be forthwith  
18 entered as provided by Rule 54(b) as of the Rules of Civil  
19 Procedure.

20 Done in open Court this \_\_\_\_\_ day of \_\_\_\_\_, 1974.

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23

ROBERT O. ROYLSTON,  
Judge of the Superior Court

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32

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, Petition of the City of Tucson for Leave to File Appeal Directly in this Court and in this Proceeding, pages 169-176 (8 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

