

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. BETTWY, as State Land)
8 Commissioner, and the STATE)
9 LAND DEPARTMENT, a Department)
of the State of Arizona, and)
PIMA MINING COMPANY, a)
corporation,)

10 Appellees.)

11 FARMERS INVESTMENT COMPANY, a)
12 corporation,)

13 Appellant,)

14 v.)

15 THE ANACONDA COMPANY, a corpora-)
16 tion; AMAX COPPER MINES, INC.,)
17 THE ANACONDA COMPANY as partners)
in and constituting ANAMAX)
MINING COMPANY, a partnership,)

18 Appellees.)

19 CITY OF TUCSON, a municipal)
20 corporation,)

21 Appellant,)

22 v.)

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

25 Appellees.)
26

27 COME NOW the City of Prescott, a municipal corporation
28 of the State of Arizona, Petitioner in Cause No. 11439-2 before
29 this Honorable Court, by and through their undersigned attorney,
30 and respectfully request permission of this Court to file as
31 amici curiae a brief in the above-entitled cause within thirty
32 (30) days after the filing of this Petition, or at such other
32-A time as the Court may order.

FILED

D H WARD
SUPREME COURT

Anna L. Debra

OCT 1 1973

NO. 11439-2

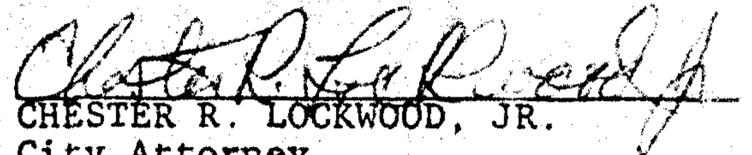
PETITION FOR LEAVE TO
FILE BRIEF AS AMICI
CURIAE AND MEMORANDUM
IN SUPPORT THEREOF

THE CITY OF PRESCOTT,
A MUNICIPAL CORPORATION
OF THE STATE OF ARIZONA,
PETITIONER

OFFICE OF THE
PRESCOTT CITY ATTORNEY
125 E. GURLEY STREET
PRESCOTT, ARIZONA 86301
(802) 445-3500, EXT. 74

1 A memorandum is filed herewith in support of this
2 Petition.

3 DATED this 30th day of September, 1976.

4
5 

6 CHESTER R. LOCKWOOD, JR.
7 City Attorney
8 125 East Gurley Street
9 Prescott, Arizona 86301

10 MEMORANDUM IN SUPPORT OF PETITION FOR LEAVE TO FILE
11 BRIEF AS AMICI CURIAE

12 Petitioner, CITY OF PRESCOTT, a municipal corporation
13 of the State of Arizona, like many other cities and towns in the
14 State of Arizona, provide water for the needs of its citizens
15 and many other residents in the areas surrounding Prescott. The
16 City of Prescott's current water sources have been established
17 for many years.

18 The City of Prescott is faced with the following
19 dilemma:

20 1. The City of Prescott is currently involved as
21 Defendant in litigation challenging the City's rights to secure
22 water for its citizens from its established sources. At the
23 same time, the City of Prescott is obligated under Judgment and
24 Decree in Superior Court, Yavapai County, Arizona, in the matter
25 of GEORGE SELSUN v. CITY OF PRESCOTT, et al., No. 301109 (July 18,
26 1974) to, "promptly take all necessary and appropriate steps to
27 undertake complete and make public a definite and comprehensive
28 water study for the City of Prescott: a study and forecast of
29 water resources available to the City taking into consideration
30 conflicting uses of these water resources and conflicting legal
31 and other claims of interest made by others to these water
32 resources."

Since it is imperative that the City of Prescott
provide an adequate source of water to its citizens and it is

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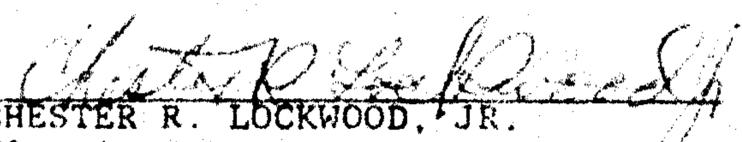
1 further imperative that during any pending water litigation that
2 the City must fulfill its obligation under a prior Court decree
3 to plan for the City's water resources based on all legal claims
4 and the applicable law, it is necessary that the City of Prescott
5 respectfully urge this Court to review, modify and clarify its
6 decision in order to set forth guidelines by which trial courts
7 could adjudicate both legal and equitable rights between parties
8 and by which municipalities could plan for future water resources.

9 The Petitioners specifically request the Court to
10 define the term "on the land" and "off the land" use in light of
11 earlier decisions of this Court. Further, Petitioner urges the
12 adoption of a definition of "land from which the water was taken"
13 that would be in line with the opinion expressed by Justice
14 Cameron in his previous dissent in this matter, as the view
15 which represents the previous law in the State of Arizona and
16 the most equitable solution to transportation of groundwater.

17 Petitioners further would request this Court to
18 indicate what effect the decision in this case has on its
19 decision in the Jarvis cases.

20 Since there are many situations in which many
21 equitable factors should be considered in deciding relative
22 water rights, the Petitioner feels that this Court decision
23 should state clearly the fact that there are equitable con-
24 siderations which may affect the application of the rules of
25 law as laid down in this case in any specific circumstance.

26 Respectfully submitted this 3rd day of September, 1976.

27
28 
29 CHESTER R. LOCKWOOD, JR.
30 City Attorney
31 125 East Gurley Street
32 Prescott, Arizona 86301

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1 COPIES of the foregoing Petition and
2 Memorandum in Support mailed this
3 30th day of September, 1976, to:

4 Honorable Bruce E. Babbitt
5 The Attorney General for the State of Arizona
6 200 State Capitol
7 Phoenix, Arizona 85007

8 Mark Wilmer, Esquire
9 Snell & Wilmer
10 3100 Valley Center
11 Phoenix, Arizona 85073
12 (Attorneys for FICO)

13 James Webb, Esquire
14 City Attorney
15 City of Tucson
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Phoenix, Arizona 85004
(Attorney for W. W. Jarvis, et al.)

Diene Jamison

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 for Leave to File Brief as Amici Curiae and Memorandum in Support Thereof, pages 430-433 (4 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

Notary Public State of Arizona
Etta Louise Muir
Commission Expires
04/13/2009