

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-009686

08/06/2007

JUDGE DOUGLAS L. RAYES

CLERK OF THE COURT
S. Yoder
Deputy

PIMA COUNTY

GERMAN YUSUFOV

v.

ARIZONA STATE LAND DEPARTMENT, et al. THERESA M CRAIG

GARY F URMAN

RULING

This matter was taken under advisement after oral argument held on August 3, 2007 concerning the State's Motion to Dismiss, joined by California Portland Cement Co. The Court has considered the State's Motion to Dismiss, California Portland Cement Co.'s Joinder, Pima County's Response, the State's Reply and the arguments of counsel.

The State brought its Motion to Dismiss pursuant to Rule 12(b)(6), seeking to have Plaintiff's complaint dismissed for lack of subject matter jurisdiction and lack of standing. Because the Court finds that Plaintiff does have standing and the Court does have jurisdiction, the Motion to Dismiss is denied.

A.R.S. § 41-1092.03(B) provides in relevant part, "a notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed...."

Whether Plaintiff will be adversely affected by the agency's action is a question of fact. The motion to dismiss turns on the question of whether the Plaintiff had a right provided by law

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to comment on the action, i.e. the granting of the mineral lease. Because A.R.S. § 37-132 requires the State Land Commissioner (and therefore the Department) to “make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions,” the Plaintiff was entitled to submit comments to the Department. Mineral leases are typically 10 or 20 year leases, involving substantial areas of land and impacting large areas of the surrounding environment. When the Department issues a mineral lease, it is making a long-range plan for future use of state lands. Therefore, the Plaintiff’s comments addressing both immediate and long-term impact of the proposed mining lease were made as a right provided by law. Because the Plaintiff’s comments were made in the exercise of its rights pursuant to specific statutory authority, the Plaintiff was entitled to request an administrative review of the Department’s decision pursuant to A.R.S. § 41-1092.03(B). Because the Plaintiff was authorized to file an administrative appeal, it has standing and the Court has jurisdiction to hear its appeal pursuant to A.R.S. § 41-1092.08(H).

IT IS ORDERED denying the State’s and California Portland Cement’s Motions to Dismiss.