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# MEMORANDUM

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Date: February 21, 2008

To: The Honorable Chairman and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator 

Re: **State Land Mineral Lease Litigation in the Davidson Canyon Area**

The Board, after discussing the status of this litigation in Executive Session on Tuesday, February 12, 2008, directed that the County receive an expert opinion on this litigation and possible confirmation.

Attached please find a letter from a mineral litigation expert. He has commented on and made recommendations regarding this litigation. His February 15, 2008 letter is attached. His recommendation is to seek settlement of the case through dismissal.

The analysis does indicate that our litigation to date has resulted in significant progress regarding the County's ability to participate in and prevail in the application of stringent operational and reclamation standards, as well as the Court recognizing the County has standing to participate in these proceedings. Continued participation in this case could result in our losing gains made by the County in these processes to date, both from a legal perspective, as well as administrative recognition of County recommended mitigation, operational and reclamation requirements imposed on State mineral lessees.

CHH/jj

Attachment

c: Christopher Straub, Chief Civil Deputy County Attorney

**W. Scott Donaldson**  
**Attorney-at-Law**



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15 February 2008

German Yusufov  
Deputy County Attorney  
Pima County Attorney's Office  
32 North Stone Avenue, Suite 1400  
Tucson, Arizona 85701-1403

**Re: Pima County v. ASLD, et al. – CV 2007-009686**

German:

You asked me to comment on and make recommendations regarding Pima County v. ASLD, et al., CV 2007-009686, currently proceeding in Maricopa County Superior Court. The case is set for summary judgment hearing on 17 March 2008.

I urge you to immediately seek settlement of this case, hopefully through dismissal with each side bearing its own costs. The pertinent Arizona statutes focus on revenue production for the Trust beneficiaries and the mineral leases are the only income-producing alternative on the table.

We are also not able to diminish the projected mineral production revenues by showing harm to the Trust lands or beneficiaries. Our real estate appraiser's preliminary oral report indicates the mineral revenues will outweigh any diminution in value of the Trust lands, whether or not reclamation is accomplished. Our biologist does not expect to find any federally listed species on the property or the surrounding area, a belief consistent with prior nearby studies. Pima County Regional Flood Control staff has concluded it is unlikely mining activities will impact Cienega Creek.

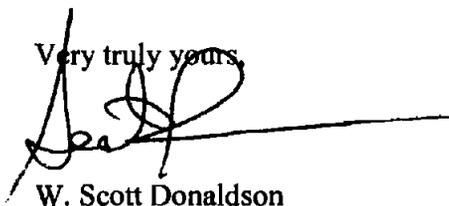
Further pursuit of this case will likely result in a ruling against Pima County, an award of fees and costs, and destruction of the gains made to this point. The litigation, and the County's earlier participation, has resulted in mineral leases with stringent operational and reclamation standards and the Court's recognizing that Pima County has standing to participate in mineral lease proceedings through Title 37, A.R.S. Both the operational constraints and Judge Rayes' Title 37 statements are important victories to which California Portland has apparently conceded.

In contrast, note the status of a companion case involving the State Land Department (SLD); namely, Charles P. Seel v Arizona Land Department and Mark Winkleman, LC2007-000440, Maricopa County Superior Court. On 18 December 2007 The Honorable Michael D. Jones ordered the State Land Commissioner (SLC) to make a decision. The Judge also ruled the SLC's discretion to deny the mineral leases' applications was limited to one of the five specific reasons listed in A.R.S. § 27-251(B). SLD had argued that the SLC could deny a renewal for any reason SLD finds is in the best interest of the Trust.

We do not have grounds to expect victory at summary judgment or later proceedings in the litigation. Indeed, further pursuit of the case will endanger important gains made to date. I advise withdrawal from the current litigation until such time as the County can propose alternative income flows or diminish the mineral revenues through damages.

Dismissal should be arranged as soon as practicable. The expert opinions mentioned above may be subject to rules of disclosure. Their publication will certainly not help Pima County in this litigation or future Trust lands disputes. Continuation of the litigation will force the County's attorneys to evaluate their disclosure obligations.

Very truly yours,

A handwritten signature in black ink, appearing to read 'W. Scott Donaldson', is written over a horizontal line. The signature is stylized and cursive.

W. Scott Donaldson