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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2006-000178-001 DT

10/17/2006

JUDGE DOUGLAS L. RAYES

CLERK OF THE COURT
S. Yoder
Deputy

CALIFORNIA PORTLAND CEMENT
COMPANY

MICHAEL R URMAN

v.

ARIZONA STATE LAND DEPARTMENT (001) THERESA M CRAIG
MARK WINKLEMAN (001)

MINUTE ENTRY

This matter was taken under advisement after the oral argument held on Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment. The Court has considered the Plaintiff's Motion for Summary Judgment, Defendant's Response to Motion for Summary Judgment and Cross-Motion, Plaintiff's Reply and Response to the Cross-Motion, and Defendant's Reply. The Court has also considered the arguments of counsel.

Plaintiff's Complaint is a four-count special action seeking mandamus and declaratory relief. Plaintiff filed its Motion for Summary Judgment on Counts I through III. Defendant brought a Cross-Motion for Summary Judgment on Counts II and III.

The facts are undisputed. Plaintiff is the lessee in four mineral leases for State land Southeast of Tucson. Two leases were executed in January 1976 and two in July 1980. Each lease was for a term of 20 years. Prior to the expiration of the leases, plaintiff filed timely applications with the Defendant, Arizona State Land Department ("ASLD") to renew the leases in December 1995 and June 2000. The mineral section of the ASLD evaluated the renewal applications and comments and prepared a report. The report, dated July 12, 2005, contained an analysis of the application and comments. The mineral section recommended renewal of the

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leases and submitted its report to the commissioner of the ASLD. The commissioner has not ruled on the applications for renewal of the four leases.

Special Action at Jurisdiction

The decision to accept or reject special action jurisdiction is highly discretionary. *See State ex rel. McDougall v. Superior Court*, 172 Ariz. 153, 835 P.2d 485 (App. 1992); *Arizona Legislative Council v. Howe*, 192 Ariz. 378, 965 P.2d 770 (1998). The Plaintiff has no adequate remedy by appeal. For this reason the Court will accept special action jurisdiction as to Count I.

Mandamus

Mandamus is an action authorized pursuant to statute, A.R.S. § 12-2021, to compel performance of an act which the law specifically imposes as a duty resulting from an office. The purpose of a mandamus action is not to create duties, but require performance of duties, already existing. *State ex rel. Williams v. Superior Court In and For the County of Pima*, 18 Ariz. App. 92, 500 P.2d 352 (1972). Mandamus lies only to compel an officer to perform a duty concerning which he has no discretion, and which he has refused to perform. *Board of Regents of University and State Colleges v. Frohmiller*, 69 Ariz. 50, 208 P.2d 833 (1949). A Writ of Mandamus to a public officer cannot be used to compel the performance of discretionary acts. *Peterson v. Rodgers*, 51 Ariz. 502, 78 P.2d 480 (1938).

Ruling

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The commissioner is required by A.R.S. § 27-251(B) to reissue the land leases to the plaintiffs if the commissioner finds that issuing the permit is in the best interest of the trust. The lease renewal applications were submitted in 1995 and 2000. The evaluation of the application and report prepared by the mineral section was submitted to the commissioner in July 2005.

Defendant explains this lengthy delay in the commissioner's ruling in their Response that the commissioner is deliberating on issues that are complicated. There has been no suggestion, however, by the Defendants that additional information is being sought or is necessary for the commissioner to determine if the leases are in the best interests of the trust. Inherent in the duty of the commissioner to decide whether to reissue leases is the duty to make timely decisions. Two of the Plaintiff's applications have been pending for over 11 years, and two have been pending for over six years. The mineral section's report was prepared and submitted to the commissioner 15 months ago. The commissioner has not complied with his duty to timely decide Plaintiff's application for lease renewals.

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IT IS, THEREFORE, ORDERED that the commissioner decide whether to renew the Plaintiff's four leases by **no later than November 20, 2006**.

As to Counts II and III of Plaintiff's Complaint, the Court declines to accept special action jurisdiction.

IT IS ORDERED granting Defendant's Motion for Summary Judgment regarding Counts II and III.

IT IS ORDERED dismissing Counts II and III of Plaintiff's Complaint.

/s/ Douglas L. Rayes

10/18/2006

Douglas L. Rayes
Judge of the Superior Court