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OCT 15 2004



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10 **SUPERIOR COURT OF ARIZONA**

11 **MARICOPA COUNTY**

12 Rob Smith and Joni Bosh, Robin Tsosie,)
13 Jerry Van Gasse, Jeff and Andrea Newman,)
14)
15 Plaintiffs,)

16 Case No.: CV 2004-020078

17 vs.)

18 **COMPLAINT**

19 Mark Winkleman, in his capacity as State)
20 Land Commissioner, the Arizona State Land)
21 Department, and the State of Arizona,)

22 Defendants.)
23)
24)
25)
26)

27 Plaintiffs, by and through their attorneys, for their Complaint against the defendants
28 hereby allege:

29 NATURE OF THE ACTION

30 1. This lawsuit is brought against the State of Arizona, the Arizona State Land
31 Department and the State Land Commissioner for breach of their fiduciary duties regarding the
32 previous issuance of easements and rights-of-way to governmental entities on state trust lands
33 without obtaining any compensation from the governmental entities.

34 JURISDICTION AND VENUE

35 2. This Court has jurisdiction pursuant to A.R.S. §12-123.

1 other than that for which the lands were granted or in any manner contrary to the provisions of
2 the Enabling Act shall be deemed a breach of trust.

3 12. Article X, §8 of the Arizona Constitution provides that every sale, lease,
4 conveyance or contract of state trust lands or their natural products not made in substantial
5 conformity with the provisions of the Enabling Act shall be null and void.

6 13. In 1915, the Arizona Legislature established the State Land Department to
7 manage, administer, lease and sell the state trust lands and created the position of State Land
8 Commissioner to oversee the SLD.

9 14. Beginning in 1929, the SLD began issuing perpetual easements on state trust
10 lands to governmental entities mostly for the purposes of road construction. The easements were
11 issued to the state highway department, cities and counties, and other entities like flood control
12 districts.

13 15. Upon information and belief, from 1929 until at least 1960, the SLD also granted
14 free gifts of sand and gravel to governmental entities for the purpose of road building.

15 16. Prior to 1967, the Arizona Supreme Court held that compensation for such
16 easements and material sites was not required because the value of trust lands was enhanced by
17 highway access thus constituting an overall benefit to the trust in negating any requirement of
18 compensation. *State v. Lassen*, 99 Ariz. 161, 166 (1965).

19 17. That position was explicitly rejected by the U.S. Supreme Court in 1967 in *Lassen*
20 *v. Arizona*, 385 U.S. 458, 470 (1967) in which the United States Supreme Court held that
21 “Arizona must actually compensate the trust in money for the full appraised value of any
22 material sites or rights-of-way which it obtains on or over trust lands.”

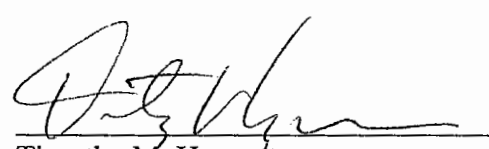
23 18. At the time the *Lassen v. Arizona* decision was issued, approximately 900
24 easements and rights-of-way had already been issued to governmental entities. They remain in
25 effect today, yet the trust has never been compensated for those rights of way or for any
26 materials taken from the material sites.

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C. Enter such other and further relief as may be necessary to implement its judgment.

DATED this 15th day of October, 2004.

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