

FILED

2:30 O'Clock, P M

AUG 22 1991

NORBERT G. WEDEPOHL, Clerk  
By *[Signature]*  
Deputy

1 L. Richard Mabery, Esq.  
2 L. RICHARD MABERY, P.C.  
3 101 E. Gurley St., Ste. 203  
4 Prescott, Arizona 86301  
5 (602) 778-1116  
6 Arizona State Bar I.D. No. 005188

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
7 IN AND FOR THE COUNTY OF YAVAPAI

9 GEORGE W. HANCE, et al., )  
10 Plaintiffs, ) No. 4772  
11 vs. ) Division 2  
12 WALES ARNOLD, et al., ) MOTION FOR ORDER TO SHOW  
13 Defendants. ) CAUSE IN RE: CONTEMPT  
14 \_\_\_\_\_ )

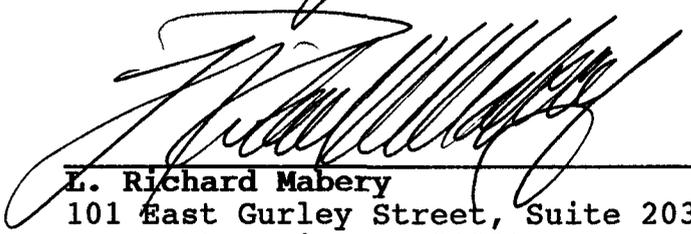
15 The VERDE DITCH COMPANY, by its authorized Commissioners,  
16 GLEN W. EVERETT, HOWARD D. FERGUSON and JOHN REDDELL, respectfully  
17 moves the Court for an Order to Show Cause why Defendants, A. L.  
18 HIETT and HAZELDELL HIETT, husband and wife, should not be held in  
19 contempt of court for their failure to comply with the Court's  
20 Orders of February 6, 1988 and July 30, 1990, on the grounds set  
21 forth in and supported by the Affidavit attached hereto.

22 The VERDE DITCH COMPANY further requests that A. L. HIETT  
23 and HAZELDELL HIETT, husband and wife, be ordered to pay its  
24 attorney's fees and costs incurred by reason of having to bring  
25 this Motion and that the Court grant such and further relief as the  
26 Court may deem just and proper under the circumstances.

27 \* \* \* \* \*

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1 DATED this 2nd day of August, 1991.

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5 L. Richard Mabery  
6 101 East Gurley Street, Suite 203  
7 Prescott, Arizona 86301  
8 Counsel for VERDE DITCH COMPANY

9 COPY of the foregoing MOTION FOR  
10 ORDER TO SHOW CAUSE IN RE: CONTEMPT  
11 mailed this 22nd day of August,  
12 1991, to:

13 Richard Walraven, Esquire  
14 WALRAVEN & ROBERTS  
15 239 South Cortez Street  
16 Prescott, Arizona 86303  
17 Counsel for Defendants HIETT

18 

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

GEORGE W. HANCE, et al., )  
 )  
Plaintiffs, ) No. 4772  
 )  
vs. ) Division 2  
 )  
WALES ARNOLD, et al., ) AFFIDAVIT IN SUPPORT OF  
 ) MOTION FOR ORDER TO SHOW  
Defendants. ) CAUSE IN RE: CONTEMPT  
 )

STATE OF ARIZONA, )  
 ) ss:  
County of Yavapai. )

GLEN W. EVERETT, HOWARD D. FERGUSON and JOHN REDDELL,  
being first duly sworn, upon their oath, depose and state:

1. We are the Commissioners of the VERDE DITCH COMPANY;  
we are familiar with the facts involved in this matter and make  
this Affidavit in order to seek enforcement of the Court's Orders  
dated February 6, 1988 and July 30, 1990.

2. On February 6, 1988, the above-entitled Court signed  
an Order stating in pertinent part:

2. A. L. HIETT and HAZELDELL HIETT, husband and  
wife, shall not, and are hereby prohibited from:

A. Restricting, retarding or interfering with  
the flow of the Verde Ditch;

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B. Diverting water from the Verde Ditch except on the dates and times regularly scheduled and approved by the Verde Ditch Commissioners;

\* \* \* \*

C. Placing, building or constructing any crossings, bridges or other structures over or across the Verde Ditch;

D. Adding, constructing or placing any further irrigation headgates into the Verde Ditch, except as provided in Paragraph 3(B);

E. Modifying or changing the Verde Ditch banks;

F. Allowing water to be diverted so that it flows over the top of the Verde Ditch banks; and

G. Wasting water from the Verde Ditch.

3. A. L. HIETT and HAZELDELL HIETT, husband and wife, shall within thirty (30) days from the date hereon:

\* \* \* \*

B. Install non-leaking headgates (as approved by the Verde Ditch Commissioners) to divert water from the Verde Ditch in such locations as designated by the Soil Conservation Service;  
\* \* \* .

3. Defendants HIETT thereafter failed and refused to comply with the provisions of the Court's Order of February 6, 1989. On April 18, 1990, the VERDE DITCH COMPANY filed a Motion for Order to Show Cause in re: Contempt, on which the Court issued an Order dated July 30, 1990. Said Order reads in pertinent part:

2. That Respondents, A. L. HIETT and HAZELDELL HIETT, husband and wife, shall, within ten (10) days from June 18, 1990, deliver to the Petitioners the Soil Conservation plans and proposals for installing leak-proof headgates on the Verde Ditch to their property along with the other documentation and procedures previously ordered.

\* \* \* \* \*

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3. That Respondents, A. L. HIETT and HAZELDELL HIETT, husband and wife, shall install the leak-proof headgates as approved by the Verde Ditch Commissioners within ten (10) days of June 18, 1990.

\* \* \* \*

5. It is further ordered that in the event Respondents, A. L. HIETT and HAZELDELL HIETT, husband and wife, fail to comply with the February 6, 1989 order of the court or the orders of the court as set forth herein, the court shall impose a further sanction and penalty in the amount of \$100.00 per day for each and every day that the Respondents, A. L. HIETT and HAZELDELL HIETT, husband and wife, are in violation of the court's orders.

4. As of the date of this Affidavit, Defendants HIETT have on at least five occasions during the past three months restricted and interfered with the flow of water in the Verde Ditch, diverted water from the Verde Ditch, and placed obstructions in the Verde Ditch causing water to be diverted and overflow onto their property, thereby prohibiting other users of the Verde Ditch of the right to obtain water.

5. As of the date of this Affidavit, Defendants HIETT have further failed to implement the Soil Conservation plans and proposals for installing leak-proof headgates in the Verde Ditch, and have not installed such leak-proof headgates.

6. As a result of Defendants HIETT's failure to comply with the Court's Orders of February 6, 1989 and July 30, 1990, the VERDE DITCH COMPANY has been required to incur costs for labor and heavy equipment to repair the damages caused to the ditch by Defendants HIETT's actions, and further has been required to incur attorney's fees and costs coincident to this action.

\* \* \* \* \*

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7. The VERDE DITCH COMPANY has repeatedly attempted to resolve the outstanding issues with Defendants HIETT without success. The VERDE DITCH COMPANY seeks compliance by Defendants HIETT with the Court's Orders of February 6, 1989 and July 30, 1990, the reimbursement of the costs of repair to the ditch, attorney's fees and costs incurred, and the sanction and penalty against Defendants HIETT of \$100.00 per day for each day Defendants HIETT are in violation of this Court's Orders.

8. Further Affiants sayeth naught.

*Glen W. Everett*  
GLEN W. EVERETT

*Howard D. Ferguson*  
HOWARD D. FERGUSON

*John Reddell*  
JOHN REDDELL

SUBSCRIBED AND SWORN to before me this 13 day of August, 1991, by GLEN W. EVERETT, HOWARD D. FERGUSON and JOHN REDDELL.

*Jane Wright*  
Notary Public

My Commission Expires:  
1-28-95

