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SUPERIOR COURT
YAVAPAI CO[illegible] ARIZONA
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K GRESHAM

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

GEORGE W. HANCE, *et al.*, Plaintiff, vs. WALES ARNOLD, *et ux., et al.*, Defendants, In the matter of the VERDE DITCH COMPANY	No. P1300 CV4772 **SALT RIVER PROJECT'S SUBMISSION OF REVISED DRAFT OF MEMORANDUM OF UNDERSTANDING** (Assigned to the Hon. David L. Mackey)

The Salt River Project Agricultural Improvement and Power District ("District") and the Salt River Valley Water Users' Association ("Association")[1] hereby submit for the Court's review a revised version of the Memorandum of Understanding Regarding Settlement Process ("MOU") that is pending in this matter. A redline of the MOU is attached hereto as Exhibit 1. Iterative versions of revisions to the MOU have been discussed with counsel for the Verde Ditch Company ("VDC"), those parties who filed objections to the original MOU,

[1] The District and the Association are referred to herein collectively as "SRP."

and the Arizona Department of Water Resources ("ADWR") over the past several weeks. This revised MOU has not yet received final approval from VDC, SRP, or any of the objectors, but SRP submits this document for purposes of facilitating discussions between the parties and the Court at the status conference scheduled for May 15, 2015.

Pursuant to the Court's direction at the April 8, 2015 status conference, counsel for VDC, SRP, some of the objectors, and ADWR participated in a series of conference calls to discuss the concepts associated with the MOU. The revised MOU prepared by SRP is a product of those discussions. It does not include all revisions proposed by all parties, but it represents SRP's attempt to address the primary issues raised by the Court and the parties. The most significant and substantive revisions to this draft MOU from the version previously submitted to the Court include:[2]

1. Modifying certain provisions to more specifically state that the MOU is limited to waters from the Verde River delivered through the Verde Ditch. *[Recital A, Subsections 7.2, 8.6, and 9.6]*

2. Inserting a new recital to address the District's status as a VDC shareholder and landowner on the Verde Ditch, in addition to SRP's role as a signatory to the MOU. *[Recital D]*

3. Revising one prior recital to delete the reference to pending Order to Show Cause applications filed by SRP against certain VDC shareholders in the Gila River General Stream Adjudication ("Adjudication"), because SRP has withdrawn those applications in the interim. *[Recital F]*

4. Amending another recital to more specifically state that this MOU is not intended as a "guarantee" of water rights for any VDC shareholder or landowner, other than to the extent that VDC and SRP will agree not to contest certain water rights claims. *[Recital H]*

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[2] Except as otherwise noted, section and subsection references herein are to the new numbering contained in the attached revised MOU.

5. Adding a new provision to allow either party to terminate the MOU with notice in the event that the Adjudication process reaches the Verde Ditch area sooner than the parties now anticipate. *[Subsection 3.5]*

6. Clarifying the definition of the Yavapai-Apache Nation ("Nation"). *[Subsection 4.14]*

7. Adding a new provision more clearly stating that the exclusion of the Nation's lands and water uses from the calculation of "HWU Lands" also pertains to lands or water uses claimed by the United States on behalf of the Nation. *[Subsection 5.3.01]*

8. Extending the date in Subsection 5.4 to reflect the additional time associated with the process for reviewing and approving the MOU. *[Subsection 5.4]*

9. Inserting a new provision to more specifically state the willingness of VDC and SRP to provide information to any VDC shareholder or landowner. *[Subsection 5.5]*

10. Revising certain provisions to state that nothing in the MOU would preclude VDC from providing assistance to the Nation or the United States on its behalf. *[Subsections 6.2 and 12.3]*

11. Modifying the headings of the sections relating to severance and transfers ("S&Ts") to more clearly state the purpose and applicability of each of those sections and to provide that Section 8 applies to intra-ditch S&Ts and Section 9 applies to inter-ditch S&Ts. *[Sections 8 and 9]*

12. Removing the reference to A.R.S. § 45-172 in the provision relating to SRP's consent to proposed intra-ditch S&Ts, while retaining that reference in relation to inter-ditch S&Ts. *[Subsections 8.3 and 9.3]*

13. Amending certain provisions to more expressly state that any S&T approval proceedings before this Court would include notice to and an opportunity to be heard by other parties to this case. *[Subsections 8.4 and 9.4]*

14. Revising several provisions to state that any S&T application to ADWR subsequent to approval of an S&T by this Court would be at the applicants' discretion (or

governed by other applicable law) and would not be a requirement of the MOU. *[Subsections 8.5, 8.6, 9.5, 9.6, 12.1,12.2, and 12.6 and Section 10]*

15. Deleting provisions that related to an annual consolidated filing of S&T applications with ADWR. *[Prior Subsections 8.6, 8.7, and 9.6]*

16. Correcting a typographical error in one provision. *[Subsection 8.7]*

17. Revising one provision to clarify that the Court's actions contemplated in the MOU would be to enforce and interpret the 1909 judgment in this case and is not an adjudication of water rights for any particular parcel of land. *[Subsection 12.1]*

18. One other change to clarify the meaning of one provision. *[Subsection 12.4]*

Counsel for SRP expects to attend the May 15 status conference in person and will be prepared to address these revisions and any other issues of interest to the Court relating to the MOU.

DATED this 13th day of May, 2015.

SALMON, LEWIS & WELDON, P.L.C.

By Mark A. McGinnis

John B. Weldon, Jr.
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Attorneys for SRP

ORIGINAL of the foregoing sent by overnight delivery for filing this 13th day of May, 2015 to:

Clerk of the Court
Yavapai County—Division I
120 South Cortez Street
Prescott, AZ 86303

AND COPY sent by overnight delivery this 13th day of May, 2015 to:

Hon. David L. Mackey
Judge of the Superior Court
Yavapai County Courthouse
120 South Cortez Street, RM207
Prescott, AZ 86303

AND COPY sent by e-mail and U.S. mail this 13th day of May, 2015, to:

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AND COPY sent by U.S. mail
this 13th day of May, 2015 to:

Don Ferguson
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Camp Verde, AZ 86322

Francine Ford Bush

MEMORANDUM OF UNDERSTANDING
REGARDING SETTLEMENT PROCESS

[redacted]

This Memorandum of Understanding Regarding Settlement Process is entered into this _____ day of _____, 2015, by and among the Verde Ditch Company, the Salt River Project Agricultural Improvement and Power District, and the Salt River Valley Water Users' Association. Capitalized terms used herein are defined in Section 4 below.

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RECITALS

A. VDC, on behalf of the water users receiving water from the Verde Ditch, claims certain rights to divert and use the waters of the Verde River, with claimed priority dates as early as 1868. VDC has filed Statement of Claimant No. 39-50029 in the Adjudication to protect these claimed rights and other claimed rights. Individuals and other organizations have filed individual Statements of Claimant wherein they claim the right to receive water from the Verde River delivered through the Verde Ditch.

B. VDC is an unincorporated association that operates through five Commissioners appointed by and acting pursuant to the authority of the *Hance v. Arnold* Court, Yavapai County Case No. 4772. The Verde Ditch Commissioners executing this MOU on behalf of VDC do so with the express prior approval and authority of the *Hance v. Arnold* Court, which has continuing jurisdiction and remains the Master of the Verde Ditch.

C. SRP and the shareholders of the Association claim certain rights to divert and use the waters of the Verde River, with claimed priority dates as early as 1869. SRP has filed Statements of Claimant Nos. 39-50053 (as amended), 39-50054 (as amended), and 39-50055 (as amended) in the Adjudication to document and protect these claimed rights and other claimed rights.

D. In addition to SRP's interests as a holder of downstream water right claims in the Phoenix area, the District also owns approximately 114.48 acres under the Verde Ditch (Assessor's Parcel No. 403-23-017M) and is the holder of 23.57 shares in VDC.

E. In an effort to avoid the time and cost of extensive litigation regarding entitlement to Verde River water and to reduce the frustration, expense, and uncertainty for Verde Ditch shareholders and SRP, the Parties have met in an attempt to come to a comprehensive agreement on the delineation of the lands served by the Verde Ditch that have Historic Water Use.

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F. The execution and implementation of this MOU is believed to be appropriate to provide long-term certainty for landowners served by the Verde Ditch, to assist the Verde Ditch in long term planning and implementation of improvements for increased efficiency and management of water delivery and to promote and assist in continued economic stability

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as a result of such certainty for the lands that the Parties agree are legally entitled to receive water from the Verde Ditch.

G. The Parties intend for this MOU to set forth a process whereby they can work together, along with the water users on the Verde Ditch, to agree, as among the Parties, upon the existence of Historic Water Use for specific parcels served by the Verde Ditch; to attempt to resolve issues with respect to lands served by the Verde Ditch that do not have Historic Water Use or have disputes regarding the existence of Historic Water Use; and to provide a process to ensure that only lands that have Historic Water Use receive and use water from the Verde Ditch.

H. This MOU is not intended to address or resolve any attributes of any water rights other than that Historic Water Use exists for particular parcels of land. Issues such as priority date, quantity, purpose of use, and season of use are specifically left for resolution in some other forum or agreement; provided, however, that this MOU does not limit the *Hance v. Arnold* Court's authority, to the extent such authority otherwise exists, to address those issues as part of its review of a severance and transfer. Nothing in this MOU is intended to provide a guarantee to any VDC shareholder or water user that its right to use water delivered from the Verde River through the Verde Ditch may not be challenged by parties other than VDC or SRP, in the Adjudication or otherwise.

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AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises stated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of Recitals and Exhibits. The recitals set forth above and all attached exhibits are hereby expressly incorporated and included as part of this MOU.

2. Effectiveness. This MOU shall become effective upon the Execution Date.

3. Term and Termination. This MOU shall continue in force for a period of five (5) years from the Execution Date and shall thereafter be automatically renewed for additional periods of two (2) years, unless and until terminated as follows:

3.1. This MOU may be terminated at any time upon mutual written consent of the Parties.

3.2. This MOU may be terminated by any Party, upon thirty (30) days' written notice to the other Party, if any of the Completion Targets are not met, as long as such failure

to meet the Completion Targets is not the result of an intentional act by the terminating Party.

3.3. This MOU may be terminated by either Party if the other Party is in breach of a material provision of this MOU and such breach remains uncured for a period of sixty (60) days after written notice delivered by the non-breaching Party pursuant to Section 19. SRP shall be considered to be one Party for purposes of this Subsection 3.3.

3.4. For good cause shown, this MOU may be terminated by either Party by filing an appropriate pleading with the *Hance v. Arnold* Court and entry of an appropriate order reciting the good cause shown as the basis for terminating this MOU.

3.5. This MOU may be terminated upon thirty (30) days written notice by either Party if such Party has reason to believe the commencement of proceedings in the Adjudication regarding the VDC claims discussed in Recital B or the SRP claims discussed in Recital C is imminent.

4. Definitions.

4.1. "Adjudication" shall mean *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, Maricopa County Superior Court Cause Nos. W-1 through W-4 consolidated.

4.2. "ADWR" shall mean the Arizona Department of Water Resources, an agency of the State of Arizona.

4.3. "Association" shall mean the Salt River Valley Water Users' Association, an Arizona territorial corporation.

4.4. "Completion Targets" shall mean those cumulative completion goals set forth in Section 11.

4.5. "District" shall mean the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, established pursuant to Title 48, Chapter 17 of the Arizona Revised Statutes.

4.6. "Execution Date" shall mean the date upon which this MOU is fully executed by the Parties and approved by the *Hance v. Arnold* Court.

4.7. "Final Settlement Agreement" shall mean, as set forth in Section 12, that written settlement agreement regarding Historic Water Use for lands served by the Verde Ditch expected to be executed by the Parties and submitted to the *Hance v. Arnold* Court for review and approval.

4.8. "Green Lands" shall mean those lands described in Subsection 5.3.02 and depicted on Exhibit 1.

4.9. "*Hance v. Arnold*" shall mean that case in the Yavapai County Superior Court captioned as "*George W. Hance, et al. v. Wales Arnold, et al.*" (Case No. 4772).

4.10. "*Hance v. Arnold* Court" shall mean the Yavapai County Superior Court, and any appellate court or successor court (including federal courts) with continuing jurisdiction over *Hance v. Arnold.*

4.11. "Historic Water Use" or "HWU" shall mean use of the waters of the Verde River System that was (a) commenced on a particular parcel prior to June 12, 1919 or (b) commenced after June 12, 1919 pursuant to a certificate of water right issued by ADWR or other state agency of similar jurisdiction prior to January 1, 2014 or pursuant to a severance and transfer of a pre-1919 right approved by SRP.

4.12. "Historic Water Use Agreement" or "HWU Agreement" shall mean an agreement executed pursuant to Section 7.

4.13. "MOU" or "this MOU" shall mean this Memorandum of Understanding Regarding Settlement Process, including all exhibits hereto.

4.14. "Nation" shall mean the Yavapai-Apache Nation, a federally recognized Indian tribe.

4.15. "Orange Lands" shall mean those lands described in Subsection 5.3.04 and depicted on Exhibit 1.

4.16. "Party" or "Parties" shall mean SRP and VDC.

4.17. "Proceeding" shall include any judicial, administrative, or legislative proceeding.

4.18. "Purple Lands" shall mean those lands described in Subsection 5.3.03 and depicted on Exhibit 1.

4.19. "Receiving Property" shall mean the property to which a severance and transfer is made pursuant to a Severance and Transfer Agreement.

4.20. "Severance and Transfer Agreement" shall mean an agreement to sever and transfer pursuant to Section 8 or 9.

4.21. "SRP" or "Salt River Project" shall collectively mean the District and the Association.

4.22. "SRP Rights" shall mean any rights or claims to rights to use water on land included within the Salt River Reservoir District, a map of which is set forth in Exhibit 2, regardless of whether such rights are claimed or held by the District, the Association, or Association shareholders.

4.23. "Transferee" shall mean a person or entity owning the property to which a severance and transfer is made pursuant to a Severance and Transfer Agreement.

4.24. "Transferor" shall mean a person or entity owning the property from which a severance and transfer is made pursuant to a Severance and Transfer Agreement.

4.25. "Transferring Property" shall mean the property from which a severance and transfer is made pursuant to a Severance and Transfer Agreement.

4.26. "VDC" shall mean the Verde Ditch Company, an unincorporated association that operates and maintains the Verde Ditch pursuant to the March 23, 1909 order issued in *Hance v. Arnold*, as subsequently modified or amended.

4.27. "Verde Ditch" shall mean the ditch and associated water delivery system from the Verde River located near Camp Verde, Arizona, and operated and maintained by VDC pursuant to orders issued by the *Hance v. Arnold* Court.

4.28. "Verde Ditch HWU Lands" shall mean those lands that are described in Subsection 5.3.01 and depicted on Exhibit 1.

4.29. "Working Understanding" shall mean one or more of a series of preliminary and common understandings reached by the Parties with regard to the existence of Historic Water Use for particular parcels of land served by the Verde Ditch, as documented by this MOU or as may be subsequently modified as provided herein.

5. Working Understanding on Verde Ditch HWU Lands, Green Lands, Purple Lands, and Orange Lands.

5.1. As part of the negotiation of this MOU, the Parties have reviewed and shared their records regarding (a) which lands are currently receiving and using water from the Verde Ditch, (b) which lands served by the Verde Ditch have Historic Water Use, (c) which lands are owned by individuals or entities who possess shares to the Verde Ditch based upon *Hance v. Arnold*, and (d) which lands are entitled to receive water based upon the historical records of VDC and SRP.

5.2. Upon comparison of their respective records, the Parties have come to Working Understandings regarding various issues with respect to the lands served by the Verde Ditch and their respective Historic Water Use. For purposes of this MOU, those Working Understandings are preliminary and are not binding on the Parties or on any other individual or entity. The Working Understandings are compilations of multiple records and sources to further the process of ultimately ensuring that only lands that have Historic Water Use receive and use water from the Verde Ditch.

5.3. The Parties have come to a Working Understanding that:

.01. Approximately 1,067.7* acres served by the Verde Ditch have Historic Water Use. Those lands are referred to herein as Verde Ditch HWU Lands and are generally depicted on Exhibit 1. The designation of Verde Ditch HWU Lands by the Parties does not include any lands or uses claimed by the Nation (or by the United States on behalf of the Nation), and the exclusion of those lands is not intended to imply the existence of Historic Water Use or lack thereof on those lands.

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.02. Approximately 914.3* acres of Verde Ditch HWU Lands are currently receiving and using water from the Verde Ditch. Those lands are referred to herein as "Green Lands" and are shown in green on Exhibit 1.

.03. Approximately 155.7* acres of Verde Ditch HWU Lands are not currently receiving or using water from the Verde Ditch. Those lands are referred to herein as "Purple Lands" and are shown in purple on Exhibit 1.

.04. Approximately 153.8* acres are currently receiving or using water from the Verde Ditch but which appear to lack records that support Historic Water Use. Those lands are referred to herein as "Orange Lands" and are shown in orange on Exhibit 1.

5.4. The Parties recognize and acknowledge that individual water users on the Verde Ditch or others might have information that would conflict with or supplement the information upon which the Parties have utilized in the review and compilation of Verde Ditch HWU Lands, Green Lands, Purple Lands, and Orange Lands. The Parties agree to review any additional information in good faith and, upon a common determination by the Parties that one or more aspects of a Working Understanding were incorrect or incomplete, to modify this MOU to reflect a revised Working Understanding, to inform the *Hance v. Arnold* Court to that effect in writing, and to proceed accordingly as set forth in this MOU.

* The number of acres, as to any category or designation, remains preliminary and subject to further changes as additional information is obtained and reviewed

Notwithstanding any provision herein, nothing provided herein shall limit or restrict any user of water from the Verde Ditch from presenting information or supplemental alternatives or evidence to *the Hance v. Arnold* Court for consideration at an evidentiary hearing set for that purpose on or before December 31, 2016.

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5.5. In conjunction with the compilation and review of additional information in Subsection 5.4, the Parties agree to provide information obtained through the process to any VDC shareholder or landowner upon request, unless such information is exempt from disclosure by attorney-client privilege or other applicable privilege.

6. Interim Actions During Pendency of this MOU.

6.1. During the time between the Execution Date of this MOU and the date when the Final Settlement Agreement entered into pursuant to Section 12 becomes effective, SRP agrees to not contest, in any Proceeding, the existence of Historic Water Use for (a) Green Lands or (b) Orange Lands for which Severance and Transfer Agreements have been executed, approved by the Parties and the *Hance v. Arnold* Court, and recorded. SRP further agrees to not provide financial or other assistance to any other person or entity in contesting such Historic Water Use.

6.2. During the time between the Execution Date of this MOU and the date when the Final Settlement Agreement entered into pursuant to Section 12 becomes effective, VDC agrees to (a) not contest the existence of the SRP Rights in any Proceeding and (b) not provide financial or other assistance to any other person or entity in contesting such rights; provided, however, that nothing in this Agreement shall preclude VDC from providing information or other assistance to the Nation or the United States in protecting or preserving the United States' rights as a shareholder on the Verde Ditch.

6.3. Subsections 6.1 and 6.2 shall not survive the termination of this MOU pursuant to Section 3 at any time prior to the date when the Final Settlement Agreement becomes effective.

7. Agreement upon the Existence of Historic Water Use for Green Lands.

7.1. Upon and after the Execution Date, the Parties agree to work cooperatively and to meet with individual water users on the Verde Ditch who own Green Lands, in order to achieve agreement upon the existence of Historic Water Use for those Green Lands.

7.2. Upon achieving agreement with an owner of Green Lands, the Parties and the landowner will execute an HWU Agreement. In the HWU Agreement, SRP shall agree, in writing, to not contest the existence of Historic Water Use for the Green Lands at issue in that agreement in any Proceeding. Also in the HWU Agreement, the owner of the Green

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Lands shall agree, in writing, (a) to not claim Historic Water Use relating to water delivered through the Verde Ditch for any other lands on the parcel in question (as the scope of that parcel is defined in the HWU Agreement) as against SRP in any Proceeding; (b) to not sell, transfer, or otherwise convey any VDC shares to another parcel unless such conveyance is made in conjunction with a severance and transfer performed pursuant to the procedures set forth in this MOU; and (c) to not expand water use from the Verde Ditch on the parcel except in conjunction with a severance and transfer as set forth in this MOU.

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7.3. Upon execution by all necessary parties of an HWU Agreement for a particular parcel of Green Lands, the HWU Agreement shall be recorded in the real property records of the Yavapai County Recorder.

8. Facilitating Severance and Transfers from Orange Lands to Purple Lands.

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8.1. The Parties agree to work cooperatively, with each other and with other water users on the Verde Ditch, to facilitate severance and transfers so that lands receiving water from the Verde Ditch are amended appropriately and have a recognized right that is protectable under state law. The Parties will seek to encourage voluntary transactions between the owners of Purple Lands and the owners of Orange Lands to accomplish this purpose.

8.2. The Parties anticipate that, upon agreement between two willing participants regarding a severance and transfer, the participants will execute a Severance and Transfer Agreement.

8.3. Any severance and transfer pursuant to Section 9 shall be subject to the prior written consent of SRP. The request for SRP's consent will be submitted to the District Board of Directors and the Association Board of Governors concurrently with a Severance and Transfer Agreement executed by the landowners involved and any other forms required by SRP for such purposes.

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8.4. Any severance and transfer pursuant to this Section 8 shall be subject to review and approval by the *Hance v. Arnold* Court, after providing notice and an opportunity to be heard as deemed appropriate by the *Hance v. Arnold* Court for landowners on the Verde Ditch. As a matter of accommodation and convenience, on or before February 15 of each year, the Parties will coordinate the filing of a combined severance and transfer application with the *Hance v. Arnold* Court to seek approval of severance and transfers that have been agreed to between owners of the lands affected for the prior calendar year. This provision shall not preclude the Parties or individual landowners from individually filing severance and transfer applications with the *Hance v. Arnold* Court during the course of the calendar year, but the Parties will work cooperatively to submit one combined annual filing, to the extent possible, on or before February 15 of each year if severance and transfers exist

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for which applications have not otherwise been submitted to the *Hance v. Arnold* Court prior to that date.

8.5. Promptly upon execution a Severance and Transfer Agreement for a particular transfer from Purple Lands to Orange Lands, consent to such severance and transfer by SRP, and approval of the severance and transfer by the *Hance v. Arnold* Court, the records of VDC will be amended to reflect such changes and the Transferor shall cause the Severance and Transfer Agreement to be recorded in the real property records of the Yavapai County Recorder. The Transferee may proceed with any necessary filings with ADWR, but nothing in this MOU requires any filing with ADWR if it is not otherwise required under applicable law.

8.6. Upon approval by the *Hance v. Arnold* Court of any severance and transfer application pursuant to this Section 8, the Parties will work cooperatively with the Transferee to negotiate and execute a HWU Agreement for the Receiving Property, which shall be recorded with the Yavapai County Recorder's office. In the HWU Agreement, SRP shall agree, in writing, to not contest the existence of Historic Water Use for the Receiving Property in any Proceeding. Also in the HWU Agreement, the Transferee shall agree, in writing, (a) to not claim Historic Water Use relating to water delivered through the Verde Ditch for any other lands on the parcel in question (as the scope of that parcel is defined in the HWU Agreement) as against SRP in any Proceeding; (b) to not sell, transfer, or otherwise convey any VDC shares to another parcel unless such conveyance is made in conjunction with a severance and transfer performed pursuant to the procedures set forth in this MOU; and (c) to not expand water use from the Verde Ditch on the parcel except in conjunction with a severance and transfer as set forth in this MOU.

8.7. Nothing contained herein shall preclude or prohibit an individual landowner from pursuing all rights and remedies to obtain a severance and transfer independent of the process set forth herein under state law. However, neither Party is obliged to approve a severance and transfer but shall use good-faith efforts in consideration of any such transfer. In the event either Party receives an application for a severance and transfer affecting an Historic Water Use served by the Verde Ditch, the Party receiving the application will provide notice to the other.

9. Securing Additional Water Rights for Orange Lands If Purple Lands Are Not Sufficient.

9.1. The Parties acknowledge that the number of acres of Historic Water Use from the Purple Lands might or might not be sufficient to provide Historic Water Use for all acres of Orange Lands, even if all such available acres of Historic Water Use from Purple Lands are severed and transferred to Orange Lands.

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Deleted: . 8 6 On or before May 1 of each year or as soon after obtaining the approvals specified in Subsections 8 3, 8 4, and 8 5 as reasonably practicable, the Parties will coordinate the filing of a combined severance and transfer application with ADWR to seek agency approval of severance and transfers that have complied with the provisions of Subsections 8 3, 8 4, and 8 5 for the prior calendar year This provision shall not preclude the Parties or individual landowners from filing severance and transfer applications with ADWR during the course of the calendar year, but the Parties will work cooperatively to submit one combined annual filing, to the extent possible, if severance and transfers exist for which applications have not otherwise been submitted to ADWR prior that date ¶
¶
8 7 . The Parties agree to work cooperatively to assist the landowners involved in preparing and submitting the annual combined severance and transfer application to ADWR, provided, however, that nothing in this Section 8 shall require any Party to pay or contribute to the filing fees or other consideration for any severance and transfer ¶
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9.2. If the Parties determine that no additional acres of Historic Water Use are reasonably available for severance and transfer from Purple Lands to satisfy the remaining needs for such Historic Water Use on Orange Lands, the Parties agree to work cooperatively to attempt to locate additional sources of water rights, as evidenced by Historic Water Use, for the remaining Orange Lands; provided, however, that nothing in this Section 9 shall require any Party to provide financial assistance for the purchase, lease, or other acquisition of water rights.

9.3. Any severance and transfer pursuant to this Section 9 shall be subject to the consent of SRP pursuant to A.R.S. § 45-172. The request for SRP's consent will be submitted to the District Board of Directors and the Association Board of Governors concurrently with the Severance and Transfer Agreement executed by the landowners involved and any other forms required by SRP for such purposes.

9.4. Any severance and transfer pursuant to this Section 9 shall be subject to review and approval by the *Hance v. Arnold* Court, after providing notice as deemed appropriate by the *Hance v. Arnold* Court to landowners on the Verde Ditch and to any other parties the Court deems necessary. Such severance and transfers to Orange Lands may be included in the annual submittal for approval by the *Hance v. Arnold* Court pursuant to Subsection 8.4 hereof.

9.5. Promptly upon execution of a Severance and Transfer Agreement for a particular transfer from other lands to Orange Lands and consent to such severance and transfer by SRP and approval of the severance and transfer by the *Hance v. Arnold* Court, the records of VDC will be amended to reflect such changes, the Transferor shall cause the Severance and Transfer Agreement to be recorded in the real property records of the Yavapai County Recorder. The Transferee may proceed with any necessary filings with ADWR, but nothing in this MOU requires any filing with ADWR if it is not otherwise required under applicable law.

9.6. Upon approval by the *Hance v Arnold* Court of any severance and transfer application pursuant to this Section 9, the Parties will work cooperatively with the Transferee to negotiate and execute an HWU Agreement for the Receiving Property, which shall be recorded in the Yavapai County Recorder's Office. In the HWU Agreement, SRP shall agree, in writing, to not contest the existence of Historic Water Use for the Receiving Property in any Proceeding. Also in the HWU Agreement, the Transferee shall agree, in writing, (a) to not claim Historic Water Use relating to water delivered through the Verde Ditch for any other lands on the parcel in question (as the scope of that parcel is defined in the HWU Agreement) as against SRP in any Proceeding; (b) to not sell, transfer, or otherwise convey any VDC shares to another parcel unless such conveyance is made in conjunction with a severance and transfer performed pursuant to the procedures set forth in

Deleted: and in the combined severance and transfer application filed with ADWR pursuant to Subsection 8 6 hereof

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this MOU; and (c) to not expand water use from the Verde Ditch on the parcel except in conjunction with a severance and transfer as set forth in this MOU.

9.7. VDC will consider any Severance and Transfer application submitted pursuant to this Section 9, but such approval is conditioned upon the consideration of all factors and impacts to the Verde Ditch and conditional upon approval of the *Hance v. Arnold* Court.

10. Reconciliation of Verde Ditch Shares. Upon approval by the *Hance v. Arnold* Court of a severance and transfer application, VDC shall, subject to the Court's approval, reconcile the respective shares in the Verde Ditch with the associated Historic Water Use existing after approval of the severance and transfer applications. VDC shall endeavor to reconcile all VDC shares in their applicable percentages to add up to a total of 100/100 or 100%.

11. Reasonable Progress Toward Completion.

11.1. The Parties agree that, although obtaining the severance and transfer of sufficient Historic Water Use to all Orange Lands and agreement upon the existence of Historic Water Use for Green Lands could be time-consuming and difficult tasks, they will make diligent efforts toward completing these tasks in a timely manner.

11.2. The Parties have established cumulative Completion Targets for execution of Severance and Transfer Agreements for the Orange Lands and for execution of HWU Agreements for the Green Lands:

December 31, 2015	20% of all Orange Lands and 20% of all Green Lands
December 31, 2016	40% of all Orange Lands and 40% of all Green Lands
December 31, 2017	60% of all Orange Lands and 60% of all Green Lands
December 31, 2018	80% of all Orange Lands and 80% of all Green Lands
December 31, 2019	90% of all Orange Lands and 90% of all Green Lands

12. Final Settlement Agreement on Verde Ditch Historic Water Use.

12.1. Upon approval by the *Hance v. Arnold* Court of severance and transfer applications to provide Historic Water Use for eighty (80) percent of the Orange Lands and execution and recording of HWU Agreements for eighty (80) percent of the Green Lands, the Parties shall prepare and submit to the *Hance v. Arnold* Court for its approval a written Final Settlement Agreement settling all Historic Water Use for such lands among the Parties. The *Hance v. Arnold* Court's approval of the Final Settlement Agreement will conform the existing judgment in *Hance v. Arnold* pursuant to the Court's continuing jurisdiction to enforce and interpret the judgment but shall not be deemed an adjudication of the water

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10 2 Within a reasonable time after ADWR's approval of the combined severance and transfer application for each year, the Parties shall submit an application to the *Hance v Arnold* Court, in its continuing jurisdiction, to modify any applicable orders or judgments to reflect the revised allocations of ditch shares based upon the severance and transfers completed in that year ¶

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rights for any particular parcel of land that would otherwise be determined in the Adjudication.

12.2 In the Final Settlement Agreement, SRP shall agree, in writing, to not contest, in any Proceeding, the existence of Historic Water Use for (a) Green Lands for which HWU Agreements have been executed and recorded and (b) Orange Lands for which Severance and Transfer Agreements have been executed, approved by the Parties and the *Hance v. Arnold* Court, and recorded. SRP further shall agree to not provide financial or other assistance to any other person or entity in contesting such Historic Water Use.

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12.3. In the Final Settlement Agreement, VDC shall agree, in writing, to (a) not contest the existence of the SRP Rights in any Proceeding and (b) not provide financial or other assistance to any other person or entity in contesting such rights; provided, however, that nothing in this Agreement shall preclude VDC from providing information or other assistance to the Nation or the United States in protecting or preserving the United States' rights as a shareholder on the Verde Ditch.

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12.4. The Final Settlement Agreement shall provide that VDC will not undertake any actions to permit or allow water from the Verde Ditch to serve any lands that do not have Historic Water Use as approved by the *Hance v. Arnold* Court, either pursuant to the Court's approval of this MOU or in a separate order. The lack of an HWU Agreement for any particular parcel of land shall not preclude VDC from serving such parcel, so long as the parcel is designated as having Historic Water Use by the *Hance v. Arnold* Court.

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Deleted: entered pursuant to this MOU

12.5. Upon approval by the *Hance v. Arnold* Court of the Final Settlement Agreement, the Parties shall execute such agreement. The Final Settlement Agreement, when approved by the *Hance v. Arnold* Court and executed by the Parties, shall constitute a final and binding agreement among the Parties.

12.6. After execution of the Final Settlement Agreement and until the termination of this MOU, the Parties will continue to cooperate in good faith, with each other and with water users on the Verde Ditch, to (a) negotiate and execute HWU Agreements for any remaining Green Lands; (b) resolve any issues relating to any remaining Orange Lands; and (c) to reconcile any remaining discrepancies regarding Verde Ditch shares for those lands under *Hance v. Arnold.*

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13. Binding Agreement. This MOU is binding upon and inures to the benefit of the Parties, their heirs, executors, successors, and assigns.

14. Waiver. The failure of any Party to insist on any one or more instances upon strict performance of any of the obligations of any other Party pursuant to this MOU or to take advantage of any of its rights hereunder shall not be construed as a waiver of the

performance of any such obligation or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

15. Controlling Law, Jurisdiction, and Venue. This MOU shall be interpreted and construed according to Arizona law. The Parties agree that jurisdiction and venue in any action to enforce the provisions of this MOU shall be proper in the *Hance v. Arnold* Court, or, if the *Hance v. Arnold* Court is not in existence at such time, in the Superior Court in and for Yavapai County, Arizona.

16. Transactions Costs. Each Party agrees to bear its own attorneys' fees, consultants' fees, and other costs associated with negotiating, drafting, and executing this MOU.

17. Attorneys' Fees and Costs. In any future dispute or action arising under this MOU, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred therein, including expert witness fees as may be awarded by the Court.

18. Entire Agreement. This MOU and the exhibits attached and incorporated herein constitute the entire understanding of the Parties and supersede any previous agreement or understandings on the subjects discussed herein.

19. Notice; Change of Name or Address.

19.1. All notices, requests, demands, and other communications under this MOU shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following mailing, by registered or certified mail, postage prepaid, return receipt requested, whichever is earlier, addressed as set forth below:

(a) If to SRP:

Bruce Hallin, Director
Water Rights and Contracts
Salt River Project, MS PAB 110
1521 Project Drive
Tempe, AZ 85281-1298

With copies to:

Frederic L. Beeson, Senior Director
Law Services—Litigation
Salt River Project, MS PAB 341
1521 Project Drive
Tempe, AZ 85281-1298

Corporate Secretary's Office
Salt River Project
1521 Project Drive, MS PAB 215
Tempe, AZ 85281-1298

(b) If to VDC:

Verde Ditch Company
P.O. Box 2345
Camp Verde, AZ 86322

L. Richard Mabery, Esq.
Law Offices of L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, AZ 86301-3008

19.2. Any Party may change the addressee or address to which communications or copies are to be sent by giving notice of such change of addressee or address in conformity with the provisions of this Section 19 for giving notice.

20. **Amendments.** Any amendment, modification, or termination of this MOU shall be effected only by an instrument executed and acknowledged by each of the Parties or their successors in interest.

21. **Time of Essence.** Time is of the essence under this MOU. Any extension of time for performance under this MOU by any Party must be in writing.

22. **Severability.** If any provision or any portion of a provision of this MOU is deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining portion of that provision or of any other provision of this MOU, unless the invalid, illegal, or unenforceable provision defeats the primary and essential purposes of the Parties as expressed herein.

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23. **Not Partners.** Neither this MOU, nor any activity of the Parties in connection herewith, shall constitute the Parties as partners or any other entity or association for any purposes whatsoever.

24. **Interpretation.** The Parties acknowledge and agree that each has been given the opportunity to independently review this MOU with legal counsel, and that this MOU is the result of negotiations among the Parties. In the event of any ambiguity in or dispute regarding the interpretation of this MOU, the interpretation shall not be resolved by any rule

of interpretation providing for the interpretation against the Party who caused the uncertainty to exist or against the draftsman.

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25. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be deemed an original, with the same force and effect as if all signatures were appended to one instrument.

26. Not Precedent. The Parties have negotiated this MOU to resolve specific issues relating to the lands served by the Verde Ditch. The terms and conditions of this MOU are not intended to have any value as precedent with respect to other ditch companies in the area or other situations.

27. Individual Rights. Notwithstanding any provision herein, an individual landowner receiving water from the Verde Ditch is the owner of any water right appurtenant to the land. The owner of the land is solely responsible for the use, misuse, and compliance with state law in regards to any water right or authorized uses.

28. No Third-Party Beneficiaries. Notwithstanding any provision or section of this MOU, the terms and provisions contained herein do not constitute or create a third-party beneficiary entitled to enforce or demand that any party perform or undertake any act or filing by the Commissioners of VDC or the Officers/Directors of SRP.

IN WITNESS HEREOF, this MOU is executed by the Parties and made effective on the Execution Date.

VERDE DITCH COMPANY

By _____
Commissioner

Date: _____, 2015 Deleted: 4

By _____
Commissioner

Date: _____, 2015 Deleted: 4

By _____
Commissioner

Date: _____, 2015 Deleted: 4

By _____
Commissioner

Date: _____, 2015 Deleted: 4

By _____
Commissioner

Date: _____, 2015 Deleted: 4

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By _____

Its _____

Date: _____, 2015 Deleted: 4

Attest: _____
Secretary

Date: _____, 2015 Deleted: 4

Approved as to form:

_____

Date: _____, 2015 Deleted: 4

SALT RIVER VALLEY WATER USERS'
ASSOCIATION

By _____

Its _____

Date: _____, 2015 Deleted: 4

Attest: _____
Secretary

Date: _____, 2015 Deleted: 4

Approved as to form:

_____

Date: _____, 2015 Deleted: 4