

**FILED**

3:30 O'Clock, P M

MAY 18 1988

ETHEL BOUTON, Clerk

By Amend Chau  
Deputy

1 L. Richard Mabery, Esquire  
2 101 E. Gurley St., Suite 203  
3 Prescott, Arizona 86301  
4 (602) 778-1116  
5 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

8 GEORGE W. HANCE, et al., )  
9 Plaintiffs, ) No. 4772  
10 vs. ) Division 1  
11 WALES ARNOLD, et al., ) MOTION FOR ISSUANCE OF  
12 Defendants. ) ORDER TO SHOW CAUSE

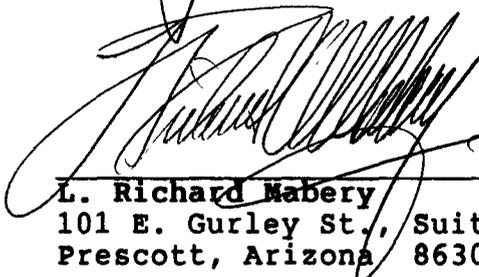
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14 HOWARD D. FERGUSON, VINCE V. HIGGINBOTHAM and GLEN W.  
15 EVERETT, Commissioners of the VERDE DITCH COMPANY, for and on  
16 behalf of the VERDE DITCH COMPANY, respectfully request the  
17 issuance of an Order to Show Cause requiring A.L. HIETT and  
18 HAZELDELL HIETT, husband and wife, to appear and show cause, if  
19 any, why they should not be found in violation of this Court's  
20 existing Orders, why they should not be ordered to refrain from  
21 interfering with the regular flow of the Verde Ditch, why they  
22 should not be ordered to remove any unathorized obstructions they  
23 have placed in the Verde Ditch and refrain from placing any fur-  
24 ther obstructions in the Verde Ditch, and why their rights in the  
25 use of the Verde Ditch should not be terminated. This motion is  
26 supported by the Memorandum of Points and Authorities and the

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1 Affidavit filed herewith, all of which are incorporated herein by  
2 reference.

3 DATED this 18th day of May, 1988.

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10 MEMORANDUM OF POINTS AND AUTHORITIES

11 On March 23, 1909, the then District Court of the Fourth  
12 Judicial District of the Territory of Arizona, predecessor to the  
13 Superior Court in and for the County of Yavapai, established Com-  
14 missioners of the Verde Ditch to be responsible to the court with  
15 duties of managing the affairs of the Verde Ditch. Said duties  
16 specifically included, but were not limited to, enforcing the  
17 provisions of a Judgment and Decree entered by Judge Richard E.  
18 Sloan. Pursuant to the terms of said Judgment and Decree, each  
19 user of the Verde Ditch must pay for the use and for the cost of  
20 repairs and maintenance of the Verde Ditch.

21 In 1963 Judge Jack L. Ogg promulgated Rules and Regula-  
22 tions for the guidance of the Verde Ditch. Included in those  
23 Rules are the following sections:

24 6. All statements submitted to Shareholders  
25 are payable not later than the 10th of the  
26 month following the month in which the state-  
27 ment is received, and will be adjudged delin-  
28 quent thereafter. Accounts that are  
delinquent as much as 30 days will bear inter-  
est at the rate of 1% per month.

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11. When, because of violations or infractions of rules by a Shareholder, and under the authority vested in them by the Court, it becomes necessary to deny a Shareholder the usage of the facilities of the Main Ditch, the Commissioners will seal off his head-gate and it shall remain sealed until the violation has been corrected and the seal removed by the Commissioners or their Agent. The Commissioners are authorized to immediately institute legal action for any violation of this rule.

. . . . .

14. All Shareholders who fail to pay their assessments within 90 days after said assessments become due and payable are subject to having their head-gate sealed off and denied the use of the ditch until all assessments together with interest accrued has been paid in full. Failure to comply with any of these rules and regulations will authorize the Commissioners to institute such court action as may be necessary under the circumstances.

A.L. HIETT and HAZELDELL HIETT, husband and wife, as users from the Verde Ditch, despite repeated requests by the VERDE DITCH COMPANY, have failed and refused to pay the assessments of the VERDE DITCH COMPANY for the use of water, and at this time their unpaid water assessments are in the principal sum of \$484.74, plus interest accrued thereon in an amount of \$93.75, for a total unpaid assessment of \$578.49.

A.L. HIETT and HAZELDELL HIETT's failure to pay assessments when due depletes and reduces the ability of the Verde Ditch Company to properly maintain and operate the ditch, all to the damage of the other users of the Verde Ditch.

A.L. HIETT and HAZELDELL HIETT, husband and wife, or their agents or employees, have placed unauthorized gates and

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1 other devices into the Verde Ditch which prohibit the flow of  
2 water to other users and, further, have diverted water from the  
3 Verde Ditch by substantially plugging the ditch and causing the  
4 water to overflow the ditch banks. Such practices are improper,  
5 a waste of water and without authorization.

6 Accordingly, the VERDE DITCH COMPANY is without adequate  
7 remedies unless the Court orders A.L. HIETT and HAZELDELL HIETT,  
8 husband and wife, to show cause why judgment should not be en-  
9 tered against them, jointly and severally, for:

10 A. The full amount of unpaid assessments and interest  
11 thereon;

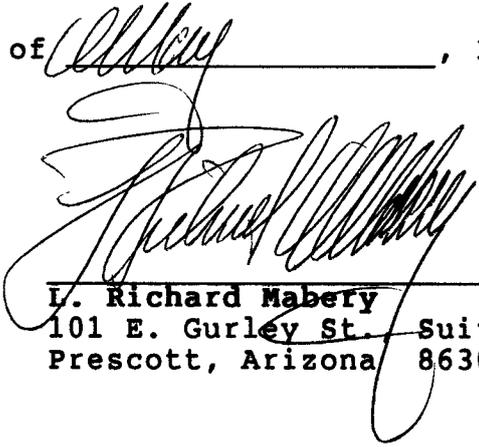
12 B. An appropriate order prohibiting A.L. HIETT and  
13 HAZELDELL HIETT, husband and wife, from improperly taking water  
14 from the Verde Ditch;

15 C. An order prohibiting A.L. HIETT and HAZELDELL  
16 HIETT, husband and wife, from using the Verde Ditch until their  
17 assessments are paid;

18 D. For the Verde Ditch's attorney's fees and costs  
19 incurred herein; and

20 E. Such other and further relief as the Court deems  
21 just and proper under the circumstances.

22 DATED this 10 day of October, 1988.

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27 101 E. Gurley St. Suite 203  
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A F F I D A V I T

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

GLEN W. EVERETT, VINCE V. HIGGINBOTHAM and HOWARD D. FERGUSON, being first duly sworn, depose and state:

1. Affiants are Commissioners of the Verde Ditch Company;

2. The Verde Ditch is over eighteen (18) miles in length and services approximately five hundred (500) water users;

3. The Verde Ditch Company has repeatedly requested that A.L. HIETT and HAZELDELL HIETT, husband and wife, pay in full their water assessments, but they have failed and refused to do so.

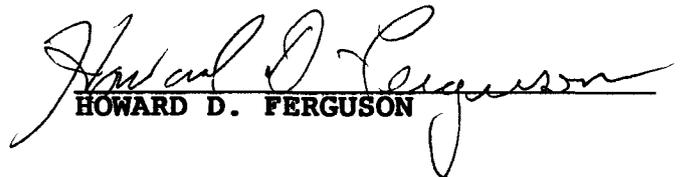
4. Unless all users of the Verde Ditch pay their water assessments, the ditch cannot be operated and maintained in a proper manner.

5. A.L. HIETT and HAZELDELL HIETT, husband and wife, or their agents or employees, have repeatedly blocked the Verde Ditch forcing the water to overflow the banks and depriving downstream users of the Verde Ditch's water.

Further Affiants sayeth not.

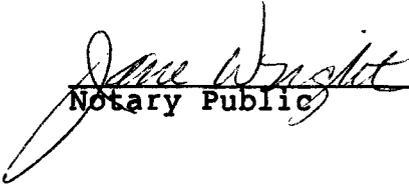
  
GLEN W. EVERETT

  
VINCE V. HIGGINBOTHAM

  
HOWARD D. FERGUSON

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SUBSCRIBED AND SWORN to before me this 16 day of  
May, 1988 by GLEN W. EVERETT, VINCE V. HIGGIN-  
BOTHAM and HOWARD D. FERGUSON.

  
Notary Public

My Commission Expires:

3-6-91

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