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Arizona State Bar I.D. No. 005188

FILED
4:25 O'Clock, *P* M

FEB 1 1989

ETHEL BOUTON, Clerk
By *[Signature]*
Deputy

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 1
)
WALES ARNOLD, et al.,) PETITION FOR AUTHORIZATION
) TO BORROW FUNDS ON BEHALF OF
Defendants.) VERDE DITCH COMPANY
) (Ex-Parte)

Commissioners, VINCE V. HIGGINBOTHAM, GLEN W. EVERETT,
HOWARD D. FERGUSON, H. DALE HARPER and JOHN REDDELL, respectfully
request that this Court and Master of the Verde Ditch authorize
the borrowing of funds in an amount of up to fifteen thousand
dollars (\$15,000.00) from a bank or other appropriate lending
institution upon such terms and repayment schedules as deemed
most appropriate by the Commissioners.

The payment of the semiannual assessments by the Verde
Ditch shareholders (in the approximate amount of \$36,000.00) sent
out in the beginning of January, 1989, have been slower than
normal and a cash flow shortage has been created.

Currently, the balance of the Verde Ditch Company's
checking account is \$9,645.00. The following amounts are

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1 outstanding: \$5,513.00 to McDonald Brothers for past construc-
2 tion, approximately \$8,500.00 as the ditch company's share of the
3 Finney Flats Pooling Agreement (due to be paid in the next fif-
4 teen to forty-five days), and \$3,100.00 for the regular loan
5 payment on the outstanding SBA loan.

6 Additionally, there are other unpaid creditors and sup-
7 pliers in a total amount in excess of \$4,000.00, and the winter
8 maintenance of the Verde Ditch is presently underway which will
9 create an additional cash flow requirement of \$2,500.00 to
10 \$4,000.00 in the next ninety days. It is imperative that the
11 winter maintenance be performed while the water is out of the
12 ditch and in as an expedient manner as possible.

13 In the past the Verde Ditch Company has borrowed funds
14 when it has suffered an unduly amount of tardy assessment pay-
15 ments. The tardiness of the assessment payments plus the
16 increased amount of the ditch's respective share of the pooling
17 agreements makes it necessary for the Verde Ditch Company to
18 borrow funds to meet its obligations.

19 WHEREFORE, the Verde Ditch Company Commissioners
20 respectfully request authorization to borrow funds from a commer-
21 cial lender upon such terms and repayment schedules as deemed
22 most appropriate by the Commissioners.

23 RESPECTFULLY SUBMITTED this 1st day of February,
24 1989.

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26 
27 L. Richard Mabery
28 101 E. Gurley St., Suite 203
Prescott, Arizona 86301
Counsel for VERDE DITCH COMPANY

2:20 FILED O'Clock, M

JAN 26 1989

By Ethel Boulton Clerk
Deputy

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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.,)	
)	No. 4772
Plaintiffs,)	
)	Division Two
vs.)	
)	RESPONSE TO MOTION TO
WALES ARNOLD, et al.,)	QUASH ORDER TO SHOW
)	CAUSE HEARING
Defendants.)	
_____		(Oral Argument Requested)

HOWARD D. FERGUSON, VINCE V. HIGGINBOTHAM, GLEN W. EVERETT, JOHN REDDELL, and DALE HARPER, present Commissioners of the VERDE DITCH COMPANY, respond to the Motion to Quash Order to Show Cause Hearing by respectfully requesting that the Court deny the motion, as more fully supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs, HOWARD D. FERGUSON, VINCE V. HIGGINBOTHAM and GLEN W. EVERETT, the then existing Commissioners of the VERDE DITCH COMPANY originally consented to vacate the Order to Show Cause hearing in this matter in June, 1988, as they understood that the matter was to be resolved. Two (2) drafts of a proposed Order have been furnished to Defendants (the latest one dated November 23, 1988) without an acceptance of the final wording.

On January 19, 1989, counsel for Plaintiffs received a

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1 check for the past due assessment, but the check was returned
2 because it was inadequate to pay the total amount of the past due
3 assessment and accrued interest as required under the existing
4 rules and regulations.

5 Defendants, **A.L. HIETT** and **HAZELDELL HIETT**, or their
6 agents or employees placed unauthorized gates and/or other
7 devices into the Verde Ditch which prohibit or restrict the flow
8 of the water to other users. While proposals have been made to
9 Defendants **HIETT** for the replacement of the inadequate and
10 unacceptable take-outs, to the best knowledge of the
11 Commissioners of the **VERDE DITCH COMPANY**, new headgates have not
12 been installed.

13 The Commissioners of the **VERDE DITCH COMPANY**, perhaps
14 above all others, would like to see this matter resolved quickly,
15 thereby promoting judicial efficiency and saving of the attendant
16 attorney's fees and costs. However, as of this date, the issues
17 involving and the actions of the Defendants **HIETT**, which led to
18 the filing of the original Order to Show Cause have not all been
19 rectified. The Commissioners of the **VERDE DITCH COMPANY** believe
20 it to be of the utmost importance to obtain an Order of the Court
21 which not only sets forth the corrections necessary for the past
22 actions of Defendants, but further provides to prevent future
23 infractions and obstructions to the flow of water in the Verde
24 Ditch.

25 **WHEREFORE**, the Commissioners of the **VERDE DITCH COMPANY**,
26 **HOWARD D. FERGUSON**, **VINCE V. HIGGINBOTHAM**, **GLEN W. EVERETT**, **JOHN**
27 **REDELL** and **DALE HARPER**, respectfully request that the Motion to
28 Quash Order to Show Cause Hearing be denied.

