

1 ROBERT S. LYNCH, Attorney at Law  
2 2001 N. 3rd Street, Suite 204  
3 Phoenix, Arizona 85004-1472  
4 (602) 254-5908  
5 State Bar No. 001638

**FILED**  
12:20 O'Clock, P M

JUL 17 1989

By Ethel Bouton Clerk  
Deputy

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

7 GEORGE W. HANCE, et al. )

8 Plaintiff, )

9 vs. )

10 WALES ARNOLD, et ux., et al. )

11 Defendant. )  
12

No. 4772

Division 1

RESPONSE TO ORDER TO  
SHOW CAUSE

13 The Estate of Virginia F. Webb, deceased, by its  
14 undersigned counsel, herewith submits its objections, suggestions  
15 and comments concerning the proposed new Rules and Regulations  
16 for the operation of the Verde Ditch pursuant to Order to Show  
17 Cause dated June 28, 1989.

18 The following comments will be made by numbered  
19 paragraph for ease of reference:

20 1. We respectfully suggest that this proposed Rule  
21 provide specific terms for the Commissioners. One or more terms  
22 of Commissioners should expire each year, thus providing a  
23 regular annual assessment and discussion of the conduct of  
24 Commissioners at the annual meeting of shareholders provided in  
25 proposed Rule 11, which comments would in turn give this Court a  
26 consistent annual review of the management program exercised by  
27 the Commissioners.

28 2. In the prior rules, the Verde Ditch Company was

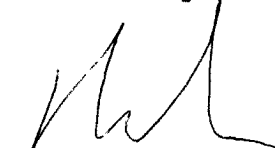
1 liable for any damage caused to private property and accepted the  
2 responsibility to repair damage when done because of necessary  
3 maintenance and repair activities along the ditch. Since this  
4 proposed rule expands the prior provision to allow the  
5 Commissioners to cross any private property to gain access to the  
6 ditch and not just that of shareholders, it would seem that any  
7 such blanket easement should be accompanied by the commensurate  
8 responsibility to repair damage. We suggest the insertion of a  
9 sentence at the end of paragraph 2 as follows: "Except as  
10 provided in Rule 3, the Verde Ditch Company shall, at its option,  
11 either compensate for or repair any damage caused by crossing  
12 private property to gain access to the Verde Ditch."

13 3. The prior provision refers to the 1909 judgment and  
14 the requirement to maintain water in the ditch at all times for  
15 cattle watering purposes. It would appear that the intent of  
16 this provision is to expand the requirement of water availability  
17 to uses beyond cattle watering. If that is truly the intent of  
18 this new language, some additional expression of intent is  
19 warranted. One such change that might be helpful is to insert at  
20 the end of the first line of proposed Rule 4 the clause  
21 "including stock water as required under the terms of the 1909  
22 judgment." The provision would then clearly express the  
23 continuing intent to maintain the obligations of the 1909  
24 judgment while expanding the provision.

25 In the above provision or otherwise generally in the  
26 proposed Rules, if there is a stated intent to materially vary  
27 from past practices in ways that the language of the Rules might  
28 not make totally clear, we would suggest that the order of the

1 Court implementing the Rules in final form include a narrative  
2 describing the intent of such changes and how they are intended  
3 to be administered so as to protect the water rights and property  
4 rights of shareholders and others along the ditch and the Verde  
5 River.

6 RESPECTFULLY SUBMITTED this 13th day of July, 1989.

7  
8  
9 By   
10 Robert S. Lynch  
11 Attorney for the Estate of  
12 Virginia F. Webb  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28