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FILED
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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. CV 4772

Plaintiff,)

Division 1

vs.)

WAKES ARNOLD, et ux., et al.,)

**VERDE DITCH COMPANY'S
RESPONSE TO MOTION FOR ORDER
TO SHOW CAUSE**

Defendants.)

GREGORY A. BLUE,)

Petitioner,)

vs.)

THE VERDE DITCH COMPANY,)

Respondent.)

John Reddell, Dugan McDonald, Albert Dupuy Jr., John Teague and Vernon Hilbers, the duly appointed Commissioners of the Verde Ditch Company and on behalf of the Verde Ditch Company (Respondent), responds to the Motion for Order to Show Cause filed October 15, 2007 by Petitioner, Gregory A. Blue.

1. The Verde Ditch is believed to have existed in its present location (applicable to the property of Gregory A. Blue and commonly referred to as Lots 15-22, Fort River Caves subdivision), since approximately 1868. The Verde Ditch is generally located along or near the south and west edge of the subdivision. The Verde Ditch is elevated approximately eight to twenty feet above the typical ground level of the Fort River Caves subdivision.

2. In 2006, the Verde Ditch started receiving inquiries from Mr. Blue as to the width of the Verde Ditch easement and restrictions regarding construction adjacent to or along the Verde Ditch. The Verde Ditch advised Mr. Blue that the Verde Ditch easement across the Fort River Caves subdivision is undefined and generally determined by the specific topography and past usage. The Verde Ditch advised Mr. Blue that any construction or improvement within fifteen to twenty feet of the waters edge of the Verde Ditch would require detailed plans or proposals for the Commissioners to consider. The Ditch further warned Mr. Blue that any improvements within or along the base of the slope of the Verde Ditch bank would, likewise, require specific consideration because of concerns to the stability, support and capacity of the Verde Ditch.

Mr. Blue was also advised that the Verde Ditch would not consider a unilateral relocation of any existing valve or head gate in the Verde Ditch or any lateral from the ditch serving shareholders in the Fort River Caves subdivision without approval and consensus of such lateral water users.

3. The original subdivision plat recorded in the Yavapai County Recorder's Office for Fort River Caves provides for an eight foot wide public utility easement across the southern eight feet of the lots owned by Mr. Blue. However, aerial photography from Yavapai County indicates that the Verde Ditch does not generally lie within the recorded eight foot wide public utility easement. The Verde Ditch in the Fort River Caves area, has historically utilized a ditch bank of

approximately six to ten feet in width at the top and a ditch bank width from the top of the edge of the ditch to the ground level of approximately fifteen to twenty-five feet.

4. Mr. Blue was repeatedly advised that the Verde Ditch would not accept or approve any construction or improvements that impeded the ability to access and maintain the Verde Ditch or that weakened, interfered with or reduced the structural integrity of the Verde Ditch.

5. Mr. Blue ultimately presented a proposal to the Verde Ditch Commissioners, which the Commissioners accepted. However, the actual construction of the improvements on Mr. Blue's property is not consistent with the information previously presented to the Commissioners as portions of the improvements are located within or along the toe or the slope or bottom of the existing ditch bank. A review of the plans presented to the Town of Camp Verde by Mr. Blue do not include a site specific grading plan or plans containing a professional engineers review or approval.

6. Witnesses have reported to the Verde Ditch that Mr. Blue, in the course of construction, removed a portion of the existing ditch bank, removed trees and other plants on the ditch bank that have historically been used to support the integrity of the bank. Subsequent to the removal of the plant growth and commencement of construction activities by Mr. Blue, Mr. Blue reported seepage and leakage to the Verde Ditch and filed complaints with the Dam Safety Division of the Arizona Department of Water Resources and to the Town of Camp Verde.

7. Upon information and belief, it appears that the Town of Camp Verde may have granted building permits for construction on Mr. Blue's property that are inconsistent with the applicable town ordinances and without regard for public health and safety. Construction by Mr. Blue of multi-family housing directly below the Verde Ditch were apparently approved by the Town

of Camp Verde without regard to the surface runoff and drainage flows emanating from the town site of Camp Verde and which have a detrimental impact on the Verde Ditch in this area.

8. The Verde Ditch has never received nor do the Town of Camp Verde files contain any detailed engineering and grading plans or specifications for construction on Mr. Blue's project.

9. The Verde Ditch undertook prompt restoration of the ditch bank and placed additional materials on the top of the ditch bank during the summer of 2007 as a result of the construction activities on the adjoining lots owned by Mr. Blue. However, the location of some of the improvements now constrict the ability of the Verde Ditch to raise the height of the crown of the ditch bank, increase the width of the top of the ditch bank or increase the width of the actual earthen ditch bank across or adjacent to Mr. Blue's property.

10. Mr. Blue ultimately proposed a major modification to the Verde Ditch adjacent to his lots only and which was not supported by any engineered or hydrological data (Blue improvements). Mr. Blue also proposed that he would pay only one-third of the projected cost. It was Mr. Blue's position that the shareholders of the Verde Ditch should be responsible for the remaining portion of the Blue improvements, even though such improvements would only provide additional protection for his property and not any other property owner in Fort River Caves located below the Verde Ditch.

11. The Verde Ditch Company concurs that it has the duty to undertake reasonable efforts to maintain the approximate eighteen miles of ditch (thirty-six miles of ditch bank) and utilize reasonable and prudent care to prevent ditch leakage, seepage or failure.

However, the Verde Ditch does not believe that it has the obligation to provide additional protection to an adjacent landowner and developer, when the developer constructed improvements inconsistent with the plans submitted to the Verde Ditch Company; constructed improvements within

the area needed are necessary to maintain the Verde Ditch and the developer failed to supply detailed grading and properly engineered plans and specifications.

12. The Verde Ditch believes it is inequitable, unfair and beyond the authority of the Verde Ditch Commissioners to undertake an expensive and costly modification to the Verde Ditch, which, at best, only partially alleviates the concerns of spillage and seepage that have been substantially created by Mr. Blue is construction of improvements which infringe and interfere with the normal and customary maintenance of the ditch and that were constructed without proper engineering and grading. Mr. Blue's proposal not only creates an undue economic burden on all of the shareholders of the Verde Ditch but fails to provide any enhanced safety or protection for any other landowner in Fort River Caves.

For the foregoing reasons, the Verde Ditch Company respectfully requests:

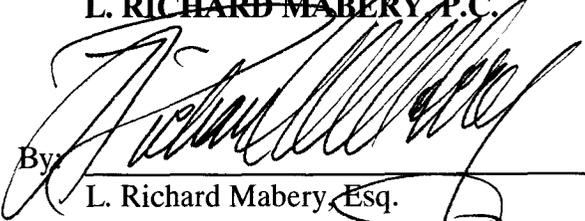
1. That the Court direct the Petitioner, Gregory A. Blue to provide appropriate grading and engineered studies that reflect the "as built" conditions created by the Petitioner.
2. That engineered studies and grading plans be required to set forth alternatives for the protection for public health and safety and an estimate of costs to accomplish each alternative.
3. That Petitioner Gregory A. Blue be assessed all additional costs for maintenance and reconstruction of the Verde Ditch created by his placement of improvements on his adjoining property.
4. That the Court direct that any further improvements to the Verde Ditch resulting from the construction by Gregory A. Blue be paid by Gregory A. Blue, including but not limited to, the actual cost of construction of any such improvements, future

maintenance and repair of such improvements; and all costs of any engineering, grading or other governmental approvals required thereby.

5. That the Court determine that any cost apportionable to the Verde Ditch be limited to only what the Verde Ditch would have been responsible for under normal and customary repairs and maintenance of the ditch and ditch bank prior to the construction by Petitioner, Gregory A. Blue.
6. Grant such and further relief as deemed appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 15th day of November, 2007.

L. RICHARD MABERY P.C.

By: 

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Attorney for Respondent

COPY of foregoing Verde Ditch Company's Response to the Motion for Order to Show Cause mailed this 15th day of November, 2007, to:

Mr. Gregory A. Blue
95 E. Cliff House Drive, #A
Camp Verde, Arizona 86322

Petitioner Pro Per

By: 

/lmh

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