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Attorney for Verde Ditch Company

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
2015 APR -7 PM 4:33 ✓
DONNA McQUALITY, CLERK
BY: _____ J YOUNT

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

GEORGE W. HANCE, et al.,)	No. P1300CV4772
)	
Plaintiffs,)	
)	
vs.)	
)	Division 1
WALES ARNOLD, et ex., et al.,)	
)	
Defendants.)	REPORT TO THE COURT
)	
_____)	
)	
In the matter of the VERDE DITCH)	
COMPANY)	
)	
_____)	

Subsequent to the hearing of March 5, 2015, the following participated in a conference to discuss the general issues, and all participants concurred that there should be a brief report memorializing the meeting.

Participating were Mark McGinnis, Esq., Lucas Shaw and Rebecca Davidson on behalf of the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water

Users Association (SRP); Robyn Interpreter, Esq. and Susan Montgomery, Esq. on behalf of the Yavapai-Apache Nation (Nation); Patrick Barry, Esq. and Yosef Negose, Esq. on behalf of the United States Department of Justice (United States); and Craig Cooley, John Teague and L. Richard Mabery, Esq. on behalf of the Verde Ditch Company (VDC).

ISSUES DISCUSSED

1. Continuing participation.

Both the Yavapai-Apache Nation and the U. S. Department of Justice are considering, but have not made a decision as to whether or not they want to seek inclusion or exclusion from the MOU process presently pending before the Court. The Nation requested the following addition or clarification:

It is important to the Yavapai-Apache Nation ("Nation") that any clarification or modification to the Hance v Arnold Decree originate solely with the Court's own jurisdiction and upon its own order which would set forth a process for resolving the concerns of the Ditch. Matters that arise under the jurisdiction of the Gila River Adjudication Court should be resolved through a separate process, which might be contemplated by a MOU or some other agreement among the parties which includes SRP as a downstream irrigation district. The Nation also has additional unique considerations related to their federal reserved water rights and any HWR Agreement between the Nation and SRP would likely require language to address those unique concerns.

The United States requested the following addition or clarification:

To that end, the parties anticipate the production of a modified MOU which may assist the United States and the Nation in making its decision.

2. Noticing Requirements.

There was a general discussion regarding the appropriate procedures for providing notices to all Shareholders regarding future hearings and severance and transfer applications that may be submitted to the Department of Water Resources (statutory process) or the severance and transfer applications subject to the Court's approval in the exercise of the Court's jurisdiction under *Hance v. Arnold* (judicial process).

A disclaimer was proposed to be included in future documents of potential subsequent challenges especially if any Shareholder utilized only the judicial severance and transfer process and did not undertake the ADWR statutory process. There is some concern that such Shareholders might face abandonment and forfeiture challenges in the future in the Gila River Adjudication as the law regarding this issue is not decided.

3. Sharing of Information.

Several parties have indicated a desire to examine all of the compiled records including those as to documentation involving other Shareholders. The Verde Ditch Company provides Shareholder access to the records regarding the Verde Ditch administration, billings, financial reports and court filings using the Information Request process instituted several years ago. But in regards to the compilation of records currently under way, the Verde Ditch Company has taken the position that every shareholder should receive all information pertaining to their specific parcel but not information compiled as to another shareholder's parcel until the initial report is filed with the Court.

Salt River Project has agreed to provide non-privileged information it possess regarding its Verde Ditch review process to any Verde Ditch Company Shareholder upon request. There are records of the Salt River Project and the Verde Ditch Company that have been summarized or

condensed which have been exchanged between the Verde Ditch Company and Salt River Project.

The Nation requested the following addition to this Report:

The United States and Yavapai-Apache Nation are requesting a reconnaissance level review of the records of the Verde Ditch Company. The Court's guidance on this issue is requested.

4. Scope of the Memorandum of Understanding.

There was a general discussion as to whether the MOU should be limited to historical water use of Verde River water delivered through the Verde Ditch and not include other points of diversion or uses.

There was a discussion as to whether a MOU is necessary or a simpler process might be adapted using *Hance v. Arnold* that might be more appropriate or a combination of both. There was not a consensus as how that might be structured or whether it would be advantageous or beneficial and additional further discussion is needed on this issue.

There was a discussion of the severance and transfers along the ditch and a discussion in regards to the Orders to Show Cause as filed by the Salt River Project in 2004 in the Gila River Adjudication which ended with private agreements with two shareholders and SRP that have not been presented to the Court for approval or to ADWR for severance and transfers. There was further discussion that there have been informal transfers which have not been either approved by the Court or formal severance and transfer applications filed with the Department of Water Resources. Also, there is a previous encroachment case, *Verde Ditch Company v. Jim and Colleen Davis*, which resulted in a Court judgment directing one share in the Verde Ditch be transferred to an adjoining land owner. There is no indication that either a statutory or judicial severance and transfer for that share has been completed.

5. Exploration of Other Potential Options.

There was a discussion regarding possible Department of Water Resources bulk filings or a summary procedure to streamline and expedite severance and transfer applications through DWR. If such a process could be adopted, that information would need to be provided to a Shareholder in their consideration of the alternative statutory or judicial severance and transfer processes.

The Nation requested the following addition:

It is the Nation's position that whether or not the statutory process is required for severances and transfers under the Verde Ditch remains unresolved. Any filings with ADWR for severance and transfer should be viewed as an additional process that should not be required by the Court as part of clarifying matters already under the Court's jurisdiction. This optional additional process could be part of a separate agreement with SRP.

6. Jurisdiction of the Court.

There was a general discussion as to the scope of the jurisdiction of the *Hance v. Arnold* Court and whether there was any utility to attempt to define that jurisdiction by subsequent briefing to the Master of the Verde Ditch. It was further discussed whether the determination or the scope of the jurisdiction by the *Hance v. Arnold* Court might be subject to confirmation or approval by the Adjudication court.

The Nation requested the following addition:

Additional discussion among the parties in this area is required.

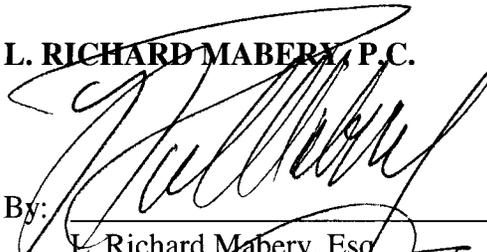
7. Change in Current Scheduling.

The parties in attendance further discussed that the current pending deadlines as established in the December 4, 2014 Order of the Court will need to be addressed by the Court at the April 8th

Status Conference. The Verde Ditch Company will be seeking direction from the Court as to how the Court desires the Verde Ditch Company to proceed with the previously announced public and Shareholder meetings and deadlines established in the December 4, 2014 Order.

RESPECTFULLY SUBMITTED this 7th day of April 2015.

L. RICHARD MABERY, P.C.

By: 

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ORIGINAL of the foregoing
filed this 7th day of April,
2015 with:

Clerk of the Court
Yavapai County Court
120 South Cortez Street
Prescott, Arizona 86303

COPY hand-delivered this
7th day of April, 2015 to:

The Honorable David L. Mackey
Judge of the Yavapai County Superior Court
Division I
120 South Cortez Street
Prescott, Arizona 86303

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