

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
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BY: Heather Diaz

Verde Ditch Shareholder
1185 S. Canal Circle, Camp Verde, AZ 86322

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

GEORGE W. HANCE, et. Al.,)
)
Plaintiffs,)
)
Vs.)
)
WALES ARNOLD. Et ux., et al.,)
)
Defendants,)
UNDERSTANDING)
)
In the matter of the VERDE DITCH)
COMPANY)
)
-----)

No. P1300CV4772

Division 1

REVISED 07-17-15
FORMAL OBJECTIONS TO THE
VERDE DITCH COMPANY AND
SALT RIVER PROJECT
MEMORANDUM OF
UNDERSTANDING
OBJECTIONS NUMBER 13.

Objection 13.

I would like to file a formal objection to many sections of the "Memorandum of Understanding" as it is written. The document is written in a needlessly confusing manner and is not written for a layman or the Shareholders to understand. The Shareholders I believe are the owners of the Verde Ditch and I believe they should be able to read this document with some legal counsel, but not complete legal counsel in understanding this document and how it will affect the Shareholders of the Ditch.

- **Section 3. Term and Termination.** I would like provision 3.1 to read “This MOU may be terminated at any time by either party of the agreement. In the case of the Shareholders terminating the agreement, the Shareholders would be required to call a special vote on the termination of the MOU with a 51% vote in favor by the present or proxy Shareholders at the meeting.
- **Section 4. Definitions.** There is no definition for “Landowners” in the 4. Definitions section. This is confusing to the Verde Ditch Landowners as the definition for “Parties” include only the VDC and SRP.
- **Section 5.4.** I would like all color designations of the Lands to be made and agreed upon by the landowners before this agreement is signed by the parties. I would be time consuming to take each individual disagreement to the Hance v. Arnold court in the case of disagreements between the Parties or landowners. The individual landowner seems to be left out of this section and may not have a say in their lands color determination. This may result in an unfair determination of the landowners parcel and the parties may not give the landowner proper representation. This might also cause the landowner to seek redress from the Hance v Arnold court or the ADWR. I would like to see this section amended to require the Parties to show evidence of the color designation assigned to the property parcel to allow the landowner to agree or disagree with evidence of their own. After the evidence is reviewed by the landowner, the landowner may have a clearer picture of why his land parcel is designated with the proper color.
- **Section 5.5.** I would like to see this section changed to say “all information determining a landowners color designation of his land parcel will be available to the ~~land owner~~ landowner at no cost to the landowner”. Many of the landowners may ~~ne~~ not be able to afford an information request if the costs are prohibitive to the request. Many of the landowners are retired and on a fixed income.

- **Section 6.1.** I would like to see this section changed to say “SRP will also not contest the water rights of the Purple Lands” as it has already been established that the “Purple Lands” have HWU water rights.
- **Section 8.1.** I would like to see this section changed to say “All ~~transaction~~ transactions between the landowners for the Severances and Transfers will be voluntary”. As the wording in the MOU presently states that voluntary transactions will be encouraged is ambiguous and open ended on what will happen after the encouragement of voluntary transactions fails. We are not sure if the transactions will then become involuntary after the voluntary stage fails.
- **Section 8.3.** I would like to see this section changed to say The Hance V. Arnold court will have the final say in the Severance and Transfer requests. I see no reason for SRP to have the right to overrule the Ditch-master or the Hance Vs. Arnold Court. SRP being a Verde River water right appropriator has a conflict of interest in the Severance and Transfer process of the Hance Vs. Arnold Court. I believe this section should be eliminated.
- **Section 9.1.** I believe the wording “Historic Water Use” should be changed to “Historic Water Rights”.
- **Section 9.2.** This section seems to suggest there are Historic Water Rights available for Severance and Transfer to the Orange lands from other areas other than the Purple or Green lands. There is no evidence of Historic Water Rights available anywhere when the Purple or Green Lands are excluded. I believe this section is more evidence to mandate a feasibility study before this MOU is considered to be approved by both parties.
- **Section 9.3.** I believe this section should be eliminated as per section 8.3 describes.
- **Section 9.4.** I believe this section should also say “The landowners approval for the Severances and transfers will also be necessary to proceed”.

- **Section 11.1.** The Historic Water Use of the Purple Lands is not mentioned in this section. I believe the Wording “The Historic Water Use Rights of the Purple Lands will be maintained and not questioned by SRP or the VDC if those Purple Lands are not involved in a Severance and Transfer of Historic Water Rights”.
- **Section 12.2.** The Historic Water Use of the Purple Lands is not mentioned in this section. I believe the Wording “The Historic Water Use of the Purple Lands will be maintained and not questioned by SRP or the VDC if those Purple Lands are not involved in a Severance and Transfer of Water Rights”.
- **Section 12.3.** This section is very limiting for the VDC to question or protest SRP in any proceeding. This will limit the VDC in protecting the Shareholders and Landowner rights. I believe this section should be eliminated from the MOU
- **Section 12.4.** The wording in this section “either pursuant to the courts approval of this MOU or in a separate order” seems to suggest the VDC will be required to stop water deliveries to any Purple or Orange lands that are not deemed by the MOU as having Historic Water Use or Historic Water rights recognized by this MOU regardless of the ADWR recognizing those Historic Water Use Rights to the land parcel in question. This section would also seem to suggest the Purple and Orange landowners must obtain permission from the Hance Vs. Arnold court for Historic Water Use Rights to maintain their water delivers from the Ditch even if these Orange and Purple lands do not join this MOU agreement. I believe this section should be eliminated from the MOU.
- **Section 12.5.** This section states that after the Final Settlement Agreement has been approved by the court and executed by the parties, shall constitute a final and binding agreement is to no advantage to the VDC or the VDC Shareholders. I do not see the advantage of the VDC staying in this

agreement after the MOU ~~objections~~ **objectives** have been completed. Both parties should be happy with the Severance and Transfer agreements and there should be no reason to contest any Historic Water Use or Rights of any of the remaining Lands. I believe the last sentence of the section should be eliminated.

- **Section 12.6.** This section can be accomplished without a binding agreement by the parties.
- **Section 13. Binding Agreement.** This section is too inclusive of future changes that the VDC may wish to change in the future. The VDC may wish to change their entity status without the inclusion of this MOU agreement. This section might prevent an entity status change. I believe this section should be eliminated ~~from~~ from this MOU agreement.
- **Section 15.** This section seems to exclude the ADWR from redress in a court proceeding. I believe the wording “ADWR” should be added to the Jurisdiction and venue.
- **Section 17. Attorney Fees and Costs.** The VDC will never be able to compete with SRP in the event this agreement is litigated in a court of Law. SRP can easily bankrupt the Verde Ditch Company and the VDC Shareholders with attorney fees the Shareholders will never be able to afford. I believe this section should be worded to include “as the Hance Vs. Arnold Court determines the non-prevailing party’s ability to pay for those associated costs”.
- **Section 24.** I believe in a standard MOU agreement, when there is a misunderstanding or ambiguity involved in the interpretation of a portion of the MOU, the Author of the agreement is usually ruled against in resolving the matter as they are the author. In this MOU before us, I believe the interpretation clause is written to absolve the author from culpability of the ambiguity of the writings. I would like to see this section eliminated from this MOU.

RESPECTFULLY SUBMITTED this 17 day of July 2015.

PETER J. MOLLICK

By: _____



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Shareholder of the VERDE DITCH COMPANY

Original Hand Delivered this 17th day of July, 2015, to:

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AND COPY sent by email and U.S. mail this 17th day of July, 2015, to:

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