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BY: K. ALEXANDER

1 John B. Weldon, Jr., 003701
2 Mark A. McGinnis, 013958
3 **SALMON, LEWIS & WELDON, P.L.C.**
4 2850 East Camelback Road, Suite 200
5 Phoenix, Arizona 85016
6 (602) 801-9060
7 jbw@slwplc.com
8 mam@slwplc.com

9 *Attorneys for Salt River Project Agricultural*
10 *Improvement and Power District and Salt River*
11 *Valley Water Users' Association*

12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF YAVAPAI**

14 GEORGE W. HANCE, *et al.*,

15 Plaintiff,

16 vs.

17 WALES ARNOLD, *et ux., et al.*,

18 Defendants,

19 In the matter of the VERDE DITCH
20 COMPANY

No. P1300 CV4772

**SALT RIVER PROJECT'S REPLY
TO OBJECTIONS TO REVISED
PROPOSED MEMORANDUM OF
UNDERSTANDING**

(Assigned to the Hon. David L.
Mackey)

(Hearing Scheduled for August 21,
2015, at 10:00 a.m.)

21 Pursuant to the Court's order dated May 15, 2015, the Salt River Project Agricultural
22 Improvement and Power District ("District") and the Salt River Valley Water Users'
23 Association ("Association")¹ hereby submit their reply to various objections to the most
24 recent revised draft of the proposed Memorandum of Understanding ("MOU") filed on June
25 15, 2015. The June 15 draft of the MOU was the latest in a series of drafts that the Verde
26 Ditch Company ("VDC") and SRP have submitted for review by the Court and the parties
27 over the last several months.

¹ The District and the Association are referred to herein collectively as "SRP."

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1 **I. INTRODUCTION**

2 SRP has received six sets of objections/comments to the June 15 draft of the MOU.

3 Those include:

4 1. Two identical objections filed by shareholders Karen Phillips and Leroy Miller.
5 *See* Formal Objections to the Verde Ditch Company and Salt River Project Memorandum of
6 Understanding, filed by Karen Phillips (July 16, 2015); Formal Objections to the Verde Ditch
7 Company and Salt River Project Memorandum of Understanding, filed by Leroy Miller (July
8 17, 2015). Those two documents are referred to herein as the “Phillips/Miller Objections.”

9 *See* Section II, *infra*.

10 2. Various objections, motions, and other documents filed, revised, and refiled on
11 several different dates by shareholder Peter Mollick. Those documents, which are more
12 specifically listed and described in Section III below, are referred to herein collectively as the
13 “Mollick Filings.” *See* Section III, *infra*. Certain of these documents were addressed and
14 disposed of by the Court in its July 24, 2015 Ruling. *See id*.

15 3. Handwritten objections filed by Bradford C. Gordon on June 25, 2015, along
16 with an attached marked-up version of the MOU (“Gordon Objections”). *See* Section IV,
17 *infra*.

18 4. Arizona Department of Water Resources’ Comments to Revised Memorandum
19 of Understanding, filed on or about July 15, 2015 (“ADWR Comments”). *See* Section V,
20 *infra*.

21 5. Yavapai-Apache Nation’s Objections and Comments to Revised Memorandum
22 of Understanding (MOU) and Proposed Order, filed on or about July 17, 2015 (“YAN
23 Objections”). *See* Section VI, *infra*.

24 6. United States’ Objections to the MOU Submitted by the Verde Ditch
25 Commissioners for Approval, filed on July 16 or 17, 2015 (“U.S. Objections”). *See* Section
26 VII, *infra*.

27

1 In Sections II through VII below, SRP addresses each of those six sets of filings in
2 turn. Several of the issues raised by the various parties overlap with one another. In order to
3 avoid repetition, SRP's replies to certain objections incorporate by reference prior discussions
4 herein of the same issues.

5 SRP finds merit in some of the comments/suggestions raised by certain parties.
6 Exhibit 1 attached hereto consists of a table setting forth each of those suggestions with which
7 SRP generally agrees. This table is provided in lieu of another redline of the MOU, in order
8 to avoid confusion with the prior MOU redlines that previously have been submitted for the
9 Court's review.

10 **II. PHILLIPS/MILLER OBJECTIONS**

11 The Phillips and Miller objections are identical to one another and appear to have been
12 generated using a form or template. Those objections raise five primary issues. First, these
13 two shareholders request that review and approval of the MOU be suspended so that the
14 "Verde Ditch Shareholders can perform its due diligence." *See* Phillips/Miller Objections, at
15 1. Although SRP agrees that the Court should allow parties to the *Hance v. Arnold* case
16 sufficient time to review and comment on the MOU, SRP contends that the Court already has
17 allowed ample time for that purpose. Approval of the MOU has been pending before the
18 Court for many months. The Court has held various hearings and conferences on the subject,
19 and the Verde Ditch Commissioners have held two lengthy information sessions discussing
20 the MOU in significant detail. At the Commissioners' request, staff and counsel for SRP
21 have participated in those information sessions.

22 Second, these two shareholders contend that "the MOU does not provide sufficient
23 time for the Verde Ditch Shareholders to collect, analyze, and disseminate historical facts and
24 other pertinent information." *Id.* at 1. The MOU is, by its very nature, a process document.
25 Although it is important that the shareholders understand the process set forth in the MOU,
26 the substantive matters do not arise until the next step, when the process is implemented by
27 the Court. The time for "collect[ing], analyz[ing], and disseminat[ing] historical facts and

1 other pertinent information” commences once the MOU is approved and the process is
2 underway. That process cannot even begin in earnest until the Court resolves the various
3 objections and approves the MOU.

4 Third, these two shareholders state that “[t]he MOU does not clearly or accurately
5 identify property zones (green, purple, orange) or openly inform the Verde Ditch
6 Shareholders of any entitlements or regulations based on property zones.” *Id.* at 1-2. The
7 actions associated with a shareholder’s property being Green, Purple, or Orange are laid out in
8 the MOU. *See* MOU §§ 5-9. That is one of the purposes of that document. SRP agrees that
9 the large-scale maps distributed to date make it difficult to identify Green, Purple, and Orange
10 designations, especially for smaller parcels. The purpose of the MOU is not to make a final
11 determination of the “color” of anyone’s property, however. The purpose is to set forth a
12 process whereby that determination ultimately will be made by stipulation among the
13 Commissioners, SRP, and the landowner or by a ruling of the Court. Once the MOU is
14 approved and one-on-one meetings with shareholders can begin, smaller-scale maps will be
15 available for review with individual landowners.

16 Fourth, the Phillips/Miller Objections assert that “[t]he MOU does not offer the Verde
17 Ditch Shareholders significant insight into the purpose, justification, and benefits of the
18 agreement. *See* Phillips/Miller Objections, at 2. Those topics are discussed in some detail in
19 the “Recitals” portion of the MOU. They also were addressed in greater depth at the two
20 information sessions held by the Verde Ditch Commissioners. SRP agrees that “transparent
21 communication” promotes the development of mutually beneficial relationships. *Id.* SRP’s
22 view is that such communication already has been occurring among the shareholders, the
23 Commissioners, and SRP. Further such communication will occur as implementation of the
24 MOU proceeds.

25 Thus, although SRP appreciates the input from these two shareholders and is in general
26 agreement with several of the sentiments expressed in their objections, SRP asserts that
27 nothing in the Phillips/Miller Objections requires or merits any additional revisions to the

1 MOU proposed by the Parties² on June 15, 2015. All of the issues they raise already are
2 outlined in the MOU and will be addressed through the implementation process, once the
3 MOU is approved and executed.

4 **III. MOLLICK FILINGS**

5 SRP has received at least six different filings from Mr. Mollick, several of which have
6 been revised, updated, and refiled on one or more occasions:

7 1. Motion for a Postponement of the Memorandum of Understandings [sic] Legal
8 Proceedings Between Verde Ditch Company and Salt River Project (June 23, 2015) (“Motion
9 for Postponement”);

10 2. Motion to Schedule an Emergency Shareholders Meeting Similar to the SRP
11 Informational Meeting on July 9th 2015 Sponsored by the Verde Ditch Company (July 13,
12 2015) (“Motion for Emergency Meeting”);

13 3. Motion to Proceed with a Feasibility [sic] Study of the Availability of Historic
14 Water Use Rights for Severance and Transfer (July 13, 2015) (“Motion for Feasibility
15 Study”);

16 4. Formal Objections to the Verde Ditch Company and Salt River Project
17 Memorandum of Understanding, numbered 1 through 13 and filed on various dates
18 (collectively, “Mollick Objections”);

19 5. Information Related to the Preceeding [sic] Objections to the Verde Ditch
20 Company and Salt River Project Memorandum of Understanding (July 6, 2015) (“Mollick
21 Information”); and
22
23
24
25
26

27 ² For ease of reference, the capitalized term “Parties” is used herein as defined in the MOU to include VDC and SRP only. Other references to lower-case “parties” are intended to be more general.

1 6. Discussion of Events During the Proceedings of the Memorandum of
2 Understanding between Salt River Project and the Verde Ditch Company (July 13, 2015)
3 (“Mollick Discussion”).³

4 In its July 24, 2015 Ruling, the Court denied Mr. Mollick’s Motion for Postponement,
5 his Motion for Emergency Meeting, and his Motion for Feasibility Study. *See* Ruling, at 2-3.
6 The Court also denied Mr. Mollick’s “Motion for a Shareholders Vote on the Memorandum
7 of Understanding between the Verde Ditch Company and Salt River Project” and an
8 amendment to that motion, neither of which SRP has received. *Id.* at 2.

9 With respect to the Mollick’s Objections, the Mollick Information, and the Mollick
10 Discussion, the Court indicated that those documents would be considered at the August 21,
11 2015 hearing, along with any replies. *See* Ruling, at 2-4. Therefore, SRP herein replies to
12 those three sets of documents filed by Mr. Mollick.

13 **A. Mollick Objections**

14 Peter Mollick is an electrical contractor who resides in Phoenix and owns a little more
15 than an acre of land on the Verde Ditch and a few shares in VDC. *See* Mollick Discussion, at
16 1-2. Between June 19 and July 17, Mr. Mollick filed a series of “Formal Objections” to the
17 MOU. Those objections, which are spread over various filings, have been designated as
18 Objections 1 through 13. Each of those objections is addressed below. SRP appreciates the
19 significant effort expended by Mr. Mollick in attempting to understand the MOU and make
20 suggestions that might improve it. Although the sheer number and repetition of his filings has
21 been burdensome and difficult to follow and SRP does not agree with many of his comments,
22 certain of his observations have merit and deserve consideration for possible inclusion in the
23 MOU. *See* Exhibit 1 attached hereto.

24
25
26 ³ SRP also received a copy of a July 13, 2015 filing from Mr. Mollick, entitled “Complete Copies of
27 All of the Enclosed First Page Documents Were Sent to All Interested Parties.” Because that
document appears to be a notice of service of documents that were otherwise filed, no separate
response to that document is required.

1 **I. Mollick Objection 1:** Mr. Mollick’s Objection 1 relates to Subsections
2 8.3 and 9.3 of the MOU. Those provisions state that any severance and transfers (“S&Ts”)
3 “shall be subject to the prior written consent of SRP and the *Hance v. Arnold* Court.” See
4 MOU §§ 8.3, 9.3. Mr. Mollick does not appear to object to the requirement that S&Ts be
5 approved by this Court. Rather, his objection is focused on the requirement that S&Ts be
6 approved by SRP. Three fundamental flaws exist in Mr. Mollick’s analysis.

7 First, he assumes that the Verde Ditch is an “irrigation district” for purposes of A.R.S.
8 § 45-172(A)(6). That statute provides that S&Ts within irrigation districts can be
9 accomplished by excluding the transferring lands from the irrigation district and including the
10 receiving lands, with no state agency or other approval required. The problem with Mr.
11 Mollick’s analysis is that the **Verde Ditch is not an “irrigation district.”** Although
12 “irrigation district” is not specifically defined in the Arizona Surface Water Code, there is an
13 entire chapter in the Arizona Revised Statutes governing “irrigation districts.” See A.R.S.
14 Title 48, Chapter 19, §§ 48-2901 to -3256. An “irrigation district” is formed pursuant to a
15 petition filed with the County Board of Supervisors, and the statutes contain detailed and
16 specific requirements of the steps necessary for forming such districts. See, e.g., *id.* §§ 48-
17 2903 to -2923.⁴ The Verde Ditch has never undertaken those necessary statutory steps and is
18 not an “irrigation district.” Therefore, A.R.S. § 45-172(A)(6) simply does not apply.

19 Second, Mr. Mollick appears to argue that the only way an S&T can be accomplished
20 is through the Arizona Department of Water Resources (“ADWR”). This Court already has
21 indicated that it has jurisdiction to approve S&Ts under the 1909 judgment in this case. See
22 April 8, 2015 Minute Entry, at 2. ADWR has taken the position that, if the Court is asserting
23 jurisdiction over S&Ts, ADWR will refrain from doing so. See generally ADWR Comments,
24 at 2. Thus, the issue Mr. Mollick raises already has been considered and addressed by the
25 Court and ADWR.

26
27 ⁴ See also generally A.R.S. § 45-401(20) (defining “irrigation district” for purposes of the
Groundwater Code).

1 Third, Mr. Mollick contends that “Salt River Project has no right to prevent any
2 irrigation water rights severance and transfer within the boundaries or outside the boundaries
3 of an irrigation district.” See Mollick Objection 1, at 2. That assertion is incorrect as a matter
4 of law and ignores A.R.S. § 45-172(A)(5), which provides, in pertinent part:

5 No right to the use of water on or from any watershed or drainage area which
6 supplies or contributes water for the irrigation of lands within an irrigation
7 district, agricultural improvement district or water users’ association shall be
8 severed or transferred without the consent of the governing body of such
9 irrigation district, agricultural improvement district or water users’ association.
10 . . .

11 The Association is a water users’ association formed as an Arizona territorial
12 corporation.⁵ The District is an agricultural improvement district formed pursuant to Title 48,
13 Chapter 17 of the Arizona Revised Statutes. *Id.* It is beyond reasonable dispute that the
14 Verde Ditch is located in a “watershed or drainage area which supplies or contributes water
15 for the irrigation of lands within” the Association and the District. See A.R.S. § 45-
16 172(A)(5). Thus, **with or without the MOU**, no S&T can occur within the Verde Ditch area
17 without first obtaining the consent of the governing bodies of the Association and the District.
18 *Id.*

19 Mr. Mollick characterizes Subsections 8.3 and 9.3 as giving SRP some right that it
20 would not otherwise have without the MOU. To the contrary, that S&T consent right already
21 exists, for the Association, for the District, and for other irrigation districts, agricultural
22 improvement districts, and water users’ associations (if any) downstream in the watershed.
23 Rather than the MOU giving SRP something that it does not already have, Mr. Mollick’s
24 request that the SRP consent requirement be deleted from Subsections 8.3 and 9.3 of the

25 ⁵ See *Uhlmann v. Wren*, 97 Ariz. 366, 373, 401 P.2d 113, 117 (1965); *City of Mesa v. Salt River*
26 *Project Agric. Imp. & Power Dist.*, 92 Ariz. 91, 95, 373 P.2d 722, 725 (1962), *reh’g denied* (Sept. 18,
27 1962), *appeal dismissed*, 372 U.S. 704 (1963); *Bethune v. Salt River Valley Water Users’ Ass’n*, 26
Ariz. 525, 528, 227 P. 989, 990 (1924); *Orme v. Salt River Valley Water Users’ Ass’n*, 25 Ariz. 324,
327, 217 P. 935, 936 (1923).

1 MOU constitutes an attempt to require SRP **give up** a right it has by statute. Despite its desire
2 to achieve settlement with VDC and its landowners and avoid future litigation in the Gila
3 River General Stream Adjudication (“Adjudication”), SRP is not willing to relinquish its
4 statutory S&T consent right as part of the MOU.⁶

5 In the MOU, the HWU Agreements, and the Final Settlement Agreement, SRP will be
6 agreeing not to contest that Historic Water Uses exist for the Green and Purple Lands. *See*
7 *also* revisions in Exhibit 1. As defined in the MOU, “Historic Water Use” relates to the
8 appurtenancy/place of use attribute of a water right. *See* MOU § 4.11 & Recital H. To the
9 extent that a particular S&T involves only the transfer of an HWU from one Verde Ditch
10 parcel to another, there is no reason to expect that SRP would withhold its statutory consent.⁷
11 Because it is uncertain at this point, however, whether individual S&Ts presented to the Court
12 for review and approval also might attempt to address other attributes of a water right (such as
13 priority date, quantity, purpose of use, point of diversion, or season of use), SRP needs to
14 retain its statutory consent right under A.R.S. § 45-172(A)(5). The MOU does not resolve,
15 and was never intended to resolve, issues associated with the priority date, quantity, purpose
16 of use, point of diversion, or season of use of any water right. Subsections 8.3 and 9.3 need to
17 stay in the final MOU.

18 Furthermore, the S&Ts contemplated in Section 9 of the MOU likely will occur from
19 lands located outside the VDC area. *See* MOU § 9.2. For those S&Ts coming from other
20 than VDC Green or Purple Lands, SRP will not have agreed that an HWU exists for the
21

22 ⁶ The SRP governing boards have approved the version of the MOU that was presented to the Court
23 and includes the SRP S&T consent provisions. Although the decision of whether to authorize SRP to
24 enter into the MOU is ultimately one for those governing boards, if a revised version of the MOU that
25 lacked those provisions was presented again to the boards for approval, neither the SRP management
26 nor its counsel would recommend approval in that form. It is unlikely that the boards would approve
27 such revised MOU over the recommendations of management and counsel. *See also* discussion in
Section VI(A), *infra*.

⁷ Furthermore, SRP already has agreed in Subsection 8.7 of the MOU to limit its statutory consent
right to some extent for certain S&Ts by agreeing to use “good-faith efforts in consideration of” any
S&Ts from Green or Purple Lands to Orange Lands. *See* MOU § 8.7; *see also* Section VI(A), *infra*.

1 source property. SRP will not agree to waive its statutory consent right for S&Ts from such
2 lands. *See* Note 6, *supra*.

3 2. **Mollick Objection 2:** In his Objection 2, Mr. Mollick raises concerns
4 about abandonment and forfeiture of water rights. In his June 23 version of that objection,
5 Mr. Mollick based his argument upon A.R.S. § 45-188(C), which he alleges insulated water
6 rights located within the boundaries of an “irrigation district” from abandonment or forfeiture
7 under certain circumstances. In addition to the Verde Ditch not being an “irrigation district,”
8 *see* Section III(A)(1), *supra*, Mr. Mollick’s reliance upon that statute was misplaced because
9 the Arizona Supreme Court has found that provision unconstitutional and invalid. *See San*
10 *Carlos Apache Tribe v. Superior Court*, 193 Ariz. 195, 207, 218, 972 P.2d 179, 191, 202
11 (1999).⁸ Mr. Mollick apparently has realized the error in his analysis, because the July 6
12 version of his Objection 2 deletes the references to A.R.S. § 45-188(C).

13 With respect to broader concerns about abandonment or forfeiture based upon the
14 designation of a particular parcel as Purple, SRP submits that it did not anticipate and did not
15 intend for such concerns to exist. The classification of particular parcels as Purple and “not
16 currently receiving or using water from the Verde Ditch” was merely intended to designate
17 those landowners that were most likely to be receptive to a voluntary S&T of their HWUs to
18 Orange Lands because they did not appear to be presently using water on their land. *See*
19 MOU § 5.3.03.

20 Most or all of the water rights on the Verde Ditch were acquired prior to enactment of
21 the 1919 Water Code, and SRP has consistently taken the position that pre-1919 rights are not
22 subject to forfeiture under the Arizona statutes. Since the concerns relating to abandonment
23 and forfeiture were raised recently by shareholders, SRP has considered additional language
24 that might be inserted into the MOU to address those unanticipated concerns. SRP proposes
25 that the following language be added to Section 5 of the MOU: “The preliminary designation

26 _____
27 ⁸ Unfortunately, although the *San Carlos* decision struck down several provisions of Title 45, those provisions remain in the published versions of A.R.S. because Title 45 has not been recodified in the interim.

1 of certain lands as Purple and not currently receiving or using water from the Verde Ditch was
2 based upon limited information available to the Parties. Such designation is not intended to
3 form the basis for any assertion that any water rights for the parcel have been forfeited or
4 abandoned pursuant to applicable law.” SRP submits that such language would best be
5 included as a new Subsection 5.5, thus making the existing Subsection 5.5 into Subsection
6 5.6. *See* Exhibit 1. SRP would not oppose the insertion of that or similar language anywhere
7 in the MOU where the Court and VDC deem it appropriate.

8 3. **Mollick Objection 3:** Mr. Mollick’s Objection 3 addresses the
9 preliminary designation of lands as Green, Purple, or Orange. His primary focus in this
10 objection is on the potential ramifications of initially classifying lands as Purple instead of
11 Green. *See* Mollick Objection 3, at 3-5. To the extent this portion of his objection stems
12 from his general concerns about abandonment or forfeiture, SRP understands those concerns
13 and has proposed additional language (new Subsection 5.5) to address them. *See* Section
14 III(A)(2), *supra*; *see also* Exhibit 1.

15 With respect to whether specific parcels are currently classified as Green, Purple, or
16 Orange, Mr. Mollick ignores the plain language of the MOU that the “Working
17 Understandings” are “preliminary” and “not binding on the Parties or on any other individual
18 or entity.” *See* MOU § 5.2. Mr. Mollick complains that VDC and SRP “are not performing
19 due diligence in classifying lands as Purple lands,” but the MOU itself recognizes that
20 “individual water users on the Verde Ditch or others might have information that would
21 conflict with or supplement the information” that VDC and SRP have utilized to date. *See*
22 *id.* § 5.4. That is part of the point of the MOU—i.e., to set up a process to work with
23 individual landowners and exchange information. **The MOU is the beginning of that**
24 **process, not the end.** That Mr. Mollick might have information about recent water use on his
25 parcel that has not previously been made available to VDC or SRP should not be surprising.

26 Also in his Objection 3, Mr. Mollick unveils his conspiracy theory that VDC and SRP
27 are attempting to take the water rights from the Purple Lands without the landowners’

1 consent. *See* Mollick Objection 3, at 5. SRP has no such intent, and SRP has seen no
2 indication that VDC has such intent. Any S&T from the Green or Purple Lands to Orange
3 Lands will be entirely voluntary and not the result of any coercion or other tactics.
4 Subsections 8.1 and 9.2 of the MOU refer specifically to “voluntary transactions.” Although
5 Mr. Mollick proposes no specific language in his Objection 3, he does so with respect to
6 Subsection 8.1 in his Objection 13. In Objection 13, Mr. Mollick suggests that the following
7 language be included in Subsection 8.1 of the MOU: “All transactions between the
8 landowners for the severance and transfers will be voluntary.” *See* Mollick Objection 13.
9 SRP does not oppose the insertion of that language, as shown on Exhibit 1 attached hereto.
10 SRP submits that such language might also be included in the parallel provision of Section 9.2
11 of the MOU. *See* Exhibit 1.

12 **4. Mollick Objection 4:** In his Objection 4, Mr. Mollick raises issues about
13 notice to Verde Ditch shareholders. SRP takes no position with respect to what type of notice
14 should be required in these proceedings. Those are issues for the Court and VDC. SRP notes
15 that language regarding notice already has been added to the MOU in Subsections 8.4 and 9.4,
16 based upon prior objections and at the Court’s direction.

17 Near the end of his Objection 4, Mr. Mollick asserts that “[t]he shareholders classified
18 in the [G]reen and Purple areas also need to be made aware that their irrigation water rights
19 severance and transfer rights will be superceded [sic] by Salt River Project.” *See* Mollick
20 Objection 4, at 6. To the extent that he is referring to SRP’s statutory consent right under
21 A.R.S. § 45-172(A)(5), that issue has been fully addressed in Section III(A)(1), *supra*. With
22 respect to S&Ts, the MOU would give SRP nothing it does not already have.

23 **5. Mollick Objection 5:** Objection 5 is merely a restatement of Mr.
24 Mollick’s Objection 1. For SRP’s reply to that objection, *see* Section III(A)(1), *supra*.

25 **6. Mollick Objection 6:** Mr. Mollick’s Objection 6 states that SRP is not
26 subject to regulation by the Arizona Corporation Commission (“ACC”), which is generally
27 correct for purposes of the MOU. He contends that the VDC shareholders have no ability to

1 complain to the ACC about the MOU, which is also correct. The proper forum for raising
2 concerns about the MOU, either with regard to its initial approval or its implementation once
3 approved, is this Court. *See, e.g.*, MOU § 15. This Court has shown a large capacity for
4 entertaining and carefully considering complaints about the MOU to date, and there is no
5 reason to expect it will not continue to do so.

6 7. **Mollick Objection 7:** Objection 7 is largely a restatement of the latter
7 portion of Objection 3. *See* Section III(A)(3), *supra*, for SRP’s reply. Furthermore, as
8 discussed above, A.R.S. § 45-188(D)(3) has been found unconstitutional and struck down by
9 the Arizona Supreme Court. It is of no force or effect. *See* Section III(A)(2), *supra*.

10 8. **Mollick Objection 8:** Objection 8 is simply a different spin on the latter
11 portion of Objection 3. *See* Section III(A)(3), *supra*, for SRP’s reply.

12 9. **Mollick Objection 9:** Objection 9 is yet another restatement of the latter
13 portion of Objection 3. *See* Section III(A)(3), *supra*, for SRP’s reply.

14 10. **Mollick Objection 10:** Mr. Mollick’s Objection 10 begins with a
15 discussion of the “severability” language in Section 22 of the MOU. Somehow, in a form
16 provision of the agreement, Mr. Mollick has found fuel for his conspiracy theory that SRP is
17 trying to force involuntary S&Ts from Green or Purple Lands to Orange Lands. That is not
18 the case. *See* Section III(A)(3), *supra*; *see also* Section III(A)(2), *supra*, with respect to
19 SRP’s position on abandonment and forfeiture issues. Objection 10 also reiterates Mr.
20 Mollick’s complaints, previously stated in Objection 3, about perceived errors in the initial
21 classification of Green, Purple, and Orange Lands. *See* Section III(A)(3), *supra*, for SRP’s
22 reply on those issues.

23 Mr. Mollick also repeats his flawed statement that forced S&Ts are the “only logical
24 place to look for” additional water rights if voluntary S&Ts from Green or Purple Lands are
25 not sufficient. *See* Mollick Objection 10, at 4. This contention is without coherent support,
26 for at least two reasons. First, SRP has repeatedly stated that it has no interest in involuntary
27 S&Ts, and the only S&Ts contemplated by the MOU will be voluntary. *See* Section

1 III(A)(3), *supra*. Furthermore, Mr. Mollick ignores the fact that the “additional sources of
2 water rights” referred to in Subsection 9.2 of the MOU might come from lands outside the
3 Verde Ditch. *See* Section III(A)(1), *supra*.

4 In his final paragraph of Objection 10, Mr. Mollick expresses concern that SRP’s
5 agreement not to contest HWUs in Subsections 6.1 and 12.2 refers to Green Lands and to
6 Orange Lands for which S&Ts have been approved and recorded but does not specifically
7 include Purple Lands. SRP sees merit in Mr. Mollick’s statement on this issue. It has never
8 been SRP’s intent to challenge the existence of HWUs for Purple Lands. Purple Lands, by
9 their designation, are “Verde Ditch HWU Lands” and, therefore, SRP will have agreed that
10 they have Historic Water Use. *See* MOU §§ 4.27, 5.3.03. Exhibit 1 includes simple language
11 insertions in Subsections 6.1 and 12.2 that SRP suggests in order to address this issue, adding
12 the words “or Purple” in both of those subsections.

13 **11. Mollick Objection 11:** Mr. Mollick’s Objection 11 relates to his request
14 to delay consideration of the MOU while a “feasibility study” is conducted. That objection
15 repeats the arguments presented in his motion on that same subject. The Court denied that
16 request in its July 24, 2015 Ruling. For several reasons, SRP agrees with the Court that
17 conducting a “feasibility study” is neither necessary nor prudent. Objection 11 is now moot
18 based upon the Court’s Ruling.

19 **12. Mollick Objection 12:** Objection 12 asks that consideration of the MOU
20 be delayed while VDC complies with an information request presented by Mr. Mollick. In its
21 July 24, 2015 Ruling, the Court denied Mr. Mollick’s request for information relating to
22 parcels other than his own. Objection 12 is therefore also now moot.

23 **13. Mollick Objection 13:** SRP received various versions of Mr. Mollick’s
24 Objection 13 that all bear the filing date of July 17, 2015 but appear to have different content.
25 Each of these objections, however, is a “catch-all” category in which Mr. Mollick sets forth
26 his legal opinions about various provisions of the MOU. Mr. Mollick asserts that the MOU
27 “is written in a needlessly confusing manner.” Although SRP and the Commissioners

1 undertook diligent efforts to make the MOU as clear and user-friendly as possible, the nature
2 of the document itself does make it somewhat dense and technical. The MOU is not a piece
3 of literature, it is a commercial agreement negotiated at arm's-length by two entities
4 represented by counsel. Therefore, the final version was necessarily a product of give-and-
5 take, and many sections reflect a compromise in language from each party's position. In
6 addition, the current version that Mr. Mollick has reviewed has been subject to additional
7 negotiation and revision based upon comments by counsel for parties who participated during
8 the prior round of objections before Mr. Mollick became involved. It is ironic that Mr.
9 Mollick complains about the "confusing" nature of this end-product while simultaneously
10 implying that the document is drafted one-sided in favor of SRP and was simply rubber-
11 stamped by VDC and its counsel.

12 The technical nature of the MOU and the process that went into drafting it are among
13 the reasons that the Commissioners have held two shareholder information sessions regarding
14 its terms and why SRP has participated in those sessions at the Commissioners' request. At
15 the most recent July 9 information session, each provision of the MOU was projected onto a
16 large screen and discussed in significant detail. Mr. Mollick attended that session and
17 repeatedly asked the Commissioners for an opportunity to state his opinions. When given that
18 opportunity to present his views to a room full of shareholders, Commissioners, and SRP
19 representatives, Mr. Mollick stood and talked for approximately one minute, said essentially
20 nothing of substance, and sat down.

21 Mr. Mollick's comments in his Objection 13 relating to specific provisions of the
22 MOU are addressed below.

23 a. **Section 3:** Section 3 of the MOU deals with the agreement's term
24 and how it may be terminated. Mr. Mollick suggests that the VDC "shareholders" should
25 have the right to terminate the agreement, but such a right of termination would be
26 inappropriate because the **individual shareholders are not parties to the MOU**. The only
27 parties to the MOU are SRP and VDC. No individual shareholder is expected to agree to or

1 execute the MOU. To the extent that what Mr. Mollick is trying to say in his objection to
2 Subsection 3.1 is that a vote of the VDC shareholders should be required if VDC is going to
3 terminate the MOU, SRP takes no position as to whether such a vote should be required. SRP
4 does oppose, however, insertion of any provision that would give **either Party** a unilateral,
5 unfettered right to terminate the MOU. Implementing the MOU process will require
6 substantial time and effort by both Parties (and the Court), and it would be unfair for either
7 Party to be able to simply take its ball and go home any time it desired. Subsections 3.1
8 through 3.4 have been carefully negotiated and drafted to specify the circumstances under
9 which the MOU can be terminated. Unilateral termination by one Party can occur only if (1)
10 the Completion Targets in Section 11 are not met, for a reason other than an intentional act by
11 the terminating Party; (2) the other Party has breached the agreement by not performing its
12 obligations; or (3) this Court finds good cause for such termination. *See* MOU §§ 3.2-3.4.
13 Those negotiated conditions require no additional revision.

14 **b. Section 4:** Section 4 of the MOU sets forth definitions of certain
15 terms used therein. Mr. Mollick suggests that “Landowners” should be defined. In the MOU,
16 “landowners” is used a few times in the common general meaning of the term, with no
17 specific technical definition. The reasons for not defining “Landowners” are that (1) such
18 definition is not necessary because the term is recognizable in context when it is used and (2)
19 more precisely defining the term would involve addressing various legal interests that a
20 person can hold in land, distinctions among which are not necessary for purposes of this
21 process-related document. Although SRP would be willing to consider a proposed definition
22 of “Landowners” if the Court desires to include one, SRP believes that no such definition is
23 necessary.

24 **c. Subsection 5.4:** Mr. Mollick proposes that the “color”
25 designation for each parcel be agreed by the landowner before the MOU is executed. That
26 suggestion puts the cart clearly before the horse. The MOU is intended to establish a process
27 to address the “color” designations and other related issues. To require those designations to

1 be finally made and agreed to before the MOU is executed stands the process on its head. In
2 addition, it is unclear whether legal authority exists for VDC or the Commissioners to even
3 enter into final agreements about “colors” for various lands without the Court’s approval of
4 the MOU or a similar document.

5 **d. Subsection 5.5:** Subsection 5.5 of the MOU sets forth the Parties’
6 agreement to provide information generated through the MOU process to any VDC
7 shareholder. Mr. Mollick’s comment deals with the cost of obtaining information. The cost
8 issue relates primarily to VDC and not SRP. SRP has received requests for information from
9 various VDC shareholders and has, to date, provided all of that information free of charge.
10 SRP intends to continue that practice, unless future information requests are unduly
11 burdensome in terms of the amount or type of documents requested.

12 **e. Subsection 6.1:** SRP generally agrees with Mr. Mollick’s
13 comment on this subsection regarding Purple Lands and has suggested language in Exhibit 1
14 to address that concern. *See also* Section III(A)(10), *supra*.

15 **f. Subsection 8.1:** SRP always has taken the position that all S&Ts
16 should be voluntary. *See* Section III(A)(3), *supra*. SRP does not oppose the language
17 suggested by Mr. Mollick for this provision and believes that it might also be appropriate to
18 include in Subsection 9.2. *See id.*; *see also* Exhibit 1.

19 **g. Subsection 8.3:** Mr. Mollick reiterates his unsupported legal
20 opinions about SRP’s statutory consent right for S&Ts under A.R.S. § 45-172(A)(5). SRP’s
21 position on this issue is set forth in Section III(A)(1), *supra*.

22 **h. Subsection 9.1:** Mr. Mollick suggests that “Historic Water Use”
23 be changed to “Historic Water Rights.” The term “Historic Water Use” was used through the
24 MOU, because it is only intended to deal with appurtenancy/place of use issues and not the
25 other attributes of water rights. *See* Section III(A)(1), *supra*; *see also* MOU Recital H.
26
27

1 **i. Subsection 9.2:** Mr. Mollick’s statements continue to ignore the
2 fact that the “additional sources of water rights” referred to in this subsection could come
3 from outside the Verde Ditch. *See* Section III(A)(1), *supra*.

4 **j. Subsection 9.3:** Mr. Mollick reiterates his unsupported legal
5 opinions about SRP’s statutory consent right for S&Ts under A.R.S. § 45-172(A)(5). SRP’s
6 position on this issue is set forth in Section III(A)(1), *supra*.

7 **k. Subsection 9.4:** Mr. Mollick suggests additional language that
8 appears to be intended to ensure that all S&Ts are voluntary. The insertions that Mr. Mollick
9 has suggested, and which SRP does not oppose, to Subsections 8.1 and 9.2 should be
10 sufficient to address those concerns. *See* Section III(A)(3), *supra*; *see also* Exhibit 1. Adding
11 even more language in Subsection 9.4 is not necessary.

12 **l. Subsection 11.1:** Similar to Subsections 6.1 and 12.2, SRP does
13 not oppose the insertion the words “and Purple” between “Green” and “Lands” in the second
14 line of Subsection 11.1. *See* Exhibit 1. SRP opposes Mr. Mollick’s suggestion that the
15 language in that subsection be revised from “Historic Water Use” to “Historic Water Rights”
16 for the same reasons set forth in reply to his comments about Subsection 9.1. *See* Section
17 III(A)(13)(h), *supra*. The MOU does not deal with “Water Rights.”

18 **m. Subsection 12.2:** Mr. Mollick’s comments here parallel those
19 with regard to Subsection 11.1. *See* SRP’s reply to those comments in Section III(A)(13)(l),
20 *supra*.

21 **n. Subsection 12.4:** Mr. Mollick’s interpretation of this subsection
22 is generally correct. The Final Settlement Agreement would require VDC to stop delivering
23 water to any lands that do not have an HWU based upon (1) an agreement among VDC, SRP,
24 and the landowner or (2) a ruling by this Court. No reason exists to revise the clear language
25 of Subsection 12.4.

26 **o. Subsection 12.5:** Mr. Mollick questions the need for the last
27 sentence of this subsection. He states that he does “not see the advantage of the VDC staying

1 in this agreement after the MOU objectives have been completed.” The primary advantage of
2 the MOU staying in place after execution of the Final Settlement Agreement is that the Final
3 Settlement Agreement will be approved and executed before all of the lands have been
4 addressed (the trigger for the Final Settlement Agreement is eighty percent). *See* MOU §
5 12.1. Section 12.6 of the MOU contains ongoing promises between the Parties that continue
6 after the Final Settlement Agreement is executed. At some point after that, when most or all
7 of the remaining twenty percent of the S&Ts and HWU Agreements are completed, the MOU
8 might become of little use. At that time, it can be terminated by mutual written consent or
9 unilaterally with a finding of good cause by the Court pursuant to Section 3.

10 **p. Subsection 12.6:** As discussed above, this subsection provides a
11 continuing obligation by the Parties to continue to work together to finish things up. *See*
12 Section III(A)(13)(o), *supra*. That goal perhaps could be accomplished without a binding
13 agreement between the Parties, but this subsection clearly sets forth the Parties’ intent in
14 wrapping up the project. No reason exists to delete it.

15 **q. Section 13:** Section 13 of the MOU simply states that the MOU
16 constitutes a binding agreement on the Parties. Mr. Mollick wants this provision eliminated.
17 It is standard language included in virtually all commercial contracts. It **does** prevent either
18 Party from exiting the agreement merely by changing its status, and that is the purpose of the
19 provision. It would not prevent an “entity status change,” but rather would ensure that the
20 MOU remained in effect if any Party changed its organizational status.

21 **r. Section 15:** Section 15 of the MOU is standard contract provision
22 regarding controlling law, jurisdiction, and venue. Mr. Mollick wants this provision to be
23 expanded to include ADWR. The language of this provision refers only to enforcement of the
24 provisions of the MOU. ADWR is not a court of law and has no statutory or other authority
25 or jurisdiction to enforce provisions of contracts between parties. *See generally* A.R.S. Title
26 45. To add ADWR to Section 15 would be incorrect as a matter of Arizona law. Although
27 ADWR has statutory regulatory authority to review and approve S&Ts, it has no jurisdiction

1 to enforce contracts. That is a job for the courts. Section 15 of the MOU selects this Court as
2 the forum to resolve any conflicts relating to interpretation or enforcement of the MOU. This
3 Court is the appropriate forum for those matters.

4 **s. Section 17:** This is also a standard contract provision regarding
5 attorneys' fees and costs with which Mr. Mollick is apparently unfamiliar. Inserting the
6 language Mr. Mollick suggests would be unprecedented and inappropriate. To the extent the
7 Court or VDC desires to delete this provision entirely and rely instead on the general
8 language of A.R.S. § 12-341.01, SRP would not oppose that deletion. SRP's preference,
9 however, is that Section 17 remain in the MOU.

10 **t. Section 24:** Mr. Mollick's understanding of draftsman's clauses
11 is incorrect. As a general matter, commercial contracts that are negotiated at arm's length
12 between parties represented by counsel usually contain provisions similar to Section 24. Mr.
13 Mollick's version of a draftsman's clause appears more frequently in consumer contracts and
14 other instances in which one party is relatively unsophisticated and not represented by
15 counsel. This MOU was negotiated over several years between parties who each were
16 represented by competent and experienced counsel. *See* discussion, *supra*. Although SRP
17 prepared the initial draft, so many different drafts and so many revisions were made that the
18 final product bears little resemblance to that initial draft. Thus, it would be difficult to
19 determine which party was the "draftsman" of the final product, even if a presumption against
20 the draftsman did apply. In addition to VDC being represented by competent counsel, this
21 MOU has been subject to thorough review by this Court and objections by various other
22 parties, many of whom also were represented by separate counsel. There is perhaps no
23 greater example than this MOU of a situation in which a presumption against the "draftsman"
24 **should not** apply.

25 ...

26 ...

27 ...

1 **B. Mollick Information**

2 On or about July 6, 2015, Mr. Mollick filed his “Information” pleading relating to the
3 MOU.⁹ That filing contained one sentence of text, plus an attached copy of the “Arizona
4 Stream Adjudication Bulletin” from January 1999. Although it is difficult to discern from
5 Mr. Mollick’s brief submittal, this filing apparently was intended to show that the Arizona
6 Supreme Court did not really mean what it said when it struck down A.R.S. § 45-188(C) in
7 *San Carlos Apache Tribe v. Superior Court*, 193 Ariz. at 195, 972 P.2d at 179. See Section
8 III(A)(2), *supra*.

9 If and to the extent Mr. Mollick intended this document to show that A.R.S. § 45-
10 188(C) is still good law, his reliance is misplaced. The Court clearly struck down that statute,
11 as discussed above. In addition, Mr. Mollick apparently misreads the table set forth in his
12 attachment. With regard to A.R.S. § 45-188(C), the far-right column on page 4 of that
13 attachment states: “Upheld prospectively.” That column, however, refers to the ruling by
14 Judge Bolton, the trial judge. The introductory phrase at the top of each page shows the
15 Supreme Court’s decision on each of the listed statutes: “The Arizona Supreme Court
16 determined the following sections to be **invalid**.” See Mr. Mollick’s attachment, at 4
17 (emphasis in original). Furthermore, even a cursory reading of page 1 of the attachment
18 shows that the Supreme Court differed with Judge Bolton “in whether some of these
19 provisions, while not given retroactive effect, still could be applied prospectively or to clarify
20 ambiguities in prior law.” *Id.* at 2. It is beyond reasonable dispute that A.R.S. § 45-188(C) is
21 no longer of any force or effect. It cannot form the basis for a proper objection to the MOU.

22 ...

23 ...

24
25 ⁹ In its July 24, 2015 Ruling, the Court indicated that the Mollick Information would be deemed a
26 supplement to his objections. Because the only substance in the Mollick Information is the
27 attachment of the *Arizona Stream Adjudication Bulletin* and because the contents of that *Bulletin* do
not support an objection to the MOU, the Mollick Information does not provide basis for his
objections on any grounds.

1 **C. Mollick Discussion**

2 Mr. Mollick’s July 13, 2015 “Discussion of Events” filing reiterates many of the same
3 arguments set forth in his other filings and describes his recent personal medical history.¹⁰ In
4 large part, SRP relies upon its replies with respect to Mr. Mollick’s other filings on these
5 same issues. Mr. Mollick spends much of this document personally disparaging Rick Mabery
6 and the Verde Ditch Commissioners. SRP repeats its prior assertions that the lengthy
7 negotiations of the MOU, while professional, were contested. For Mr. Mollick to assert that
8 the MOU “was written favorably to SRP and not so favorable to the Verde Ditch
9 Shareholders” is unfounded and untrue.

10 Mr. Mollick states that Mr. Mabery’s opinions at the June 23, 2015 VDC shareholder
11 meeting were generally in favor of the MOU. *See* Mollick Discussion, at 3. That is not
12 surprising when one considers that Mr. Mabery, as counsel for VDC, had negotiated the terms
13 of the MOU with SRP over the course of several years and obtained significant concessions
14 that were favorable to VDC in the terms of the final version of the MOU submitted to the
15 Court for review.

16 Many of Mr. Mollick’s statements about the various meetings and other events that
17 have occurred relating to the MOU are incorrect or slanted. In several instances, he vaguely
18 refers to opinions held by “many shareholders.” *See, e.g.*, Mollick Discussion, at 5. He
19 provides no information regarding the identity of these “many shareholders,” and the fact that
20 he is one of only four individual shareholders who filed objections to the MOU belies the
21 accuracy of his broad and general characterizations. Mr. Mollick attempts to give the
22 impression that he is speaking on behalf of a large group of VDC shareholders and expressing
23 their common concerns about the MOU. Nothing in the record indicates that this implication
24 is correct.

25
26
27 ¹⁰ As with the Mollick Information, the Court in its July 24, 2015 Ruling found that the Mollick Discussion would be deemed a supplement to his objections.

1 In addition, Mr. Mollick’s statements regarding the County Recorder and ADWR also
2 are largely inaccurate. *See* Mollick Discussion, at 4. Although he is correct that the County
3 Recorder typically does not check the legality of documents that get recorded, appropriable
4 water rights in Arizona are inherently appurtenant (tied to) a particular parcel of land. ADWR
5 has a clear statutory role in the registration of water rights under, among other things, the
6 Water Rights Registration Act (A.R.S. §§ 45-181 to -190), but the operative document that
7 conveys an appropriate water right is the same as what conveys a parcel of land—i.e., a deed
8 or other similar document that is recorded in the chain of title with the County Recorder.¹¹
9 Mr. Mollick’s musings about the County Recorder demonstrate an inherent misunderstanding
10 of the nature of Arizona prior appropriation and real property law.

11 Despite his protestations that the VDC shareholders have been “left out of the entire
12 process,” *see* Mollick Discussion, at 2, Mr. Mollick’s own filing refers to the last two VDC
13 meetings held to provide information to shareholders about the MOU (June 23 and July 9).
14 Several prior meetings with the VDC shareholders also occurred before Mr. Mollick decided
15 to get involved in the process. Mr. Mollick own filing also shows that SRP invited Mr.
16 Mollick to his own private meeting to discuss the MOU terms, which meeting occurred in
17 Tempe on June 25. *Id.* at 5. Even though the SRP staff took the time to spend two hours
18 meeting with one individual VDC shareholder (Mr. Mollick) to discuss his concerns, that still
19 was not enough for him.

20 Mr. Mollick also complains about the July 9, 2015 information session conducted by
21 the Commissioners. His primary criticism appears to be his “frustration” that the session was
22 conducted as an information session for the shareholders and not as a “debate” among the
23 Commissioners, SRP, and Mr. Mollick regarding the advisability of the MOU. *See* Mollick
24 Discussion, at 7. SRP staff and counsel traveled to Camp Verde on the evening of July 9 and
25

26 ¹¹ For example, the MOU contemplates that S&T Agreements will be recorded with the Yavapai
27 County Recorder. Absent such recording, significant uncertainty exists as to whether appropriative
rights have been legally conveyed, even if the transferring parties complete an S&T approval process
through ADWR or a court. *See, e.g.*, MOU § 8.5.

1 participated in that meeting at the Commissioners' request. Based upon its presence at the
2 meeting, SRP can avow that the panel participants spent approximately an hour answering
3 written questions submitted by shareholders, many of which were detailed and insightful.
4 Also during that session, individual shareholders were given an opportunity to make oral
5 statements regarding the MOU. When given that opportunity to present his views to a room
6 full of shareholders, Commissioners, and SRP representatives, Mr. Mollick stood and talked
7 for approximately one minute, said essentially nothing of substance, and sat down. Having
8 not fully availed himself of the opportunity that was provided to him (and the other
9 shareholders) to present his views at that July 9 session, Mr. Mollick should not be heard to
10 complain that such session was "unfair to the Shareholders."¹²

11 SRP agrees with a few of Mr. Mollick's concerns and has proposed language revisions
12 to address them, as shown in Exhibit 1. On the whole, however, Mr. Mollick's filings consist
13 of inaccurate statements of Arizona water law, poorly conceived notions about how to solve
14 rather complicated problems, and personal attacks on the Commissioners and VDC's
15 attorney. Other than the items specifically listed on Exhibit 1, nothing in Mr. Mollick's
16 filings supports rejection of or further revision to the MOU as presented to the Court on June
17 15.

18 **IV. GORDON OBJECTIONS**

19 On or about June 25, 2015, Thomas Gordon filed a short set of handwritten comments,
20 along with a marked-up version of the MOU. *See* Gordon Objections. Mr. Gordon opens his
21 comments with the statement that the MOU "will be a great benefit to the shareholders of the
22 Verde Ditch," a statement with which SRP agrees. Mr. Gordon also states, however, that
23 VDC's counsel "has not raised any objections to SRP's version of the MOU and does not
24 seem to be representing the interests of the Verde Ditch shareholders." *Id.* Based upon its
25

26 ¹² Mr. Mollick alleges that SRP "did not accept" the printed handouts he prepared and distributed at
27 the July 9 information session. That allegation is untrue. SRP "accepted" copies of "Pete Mollick's
opinions on this MOU" and has reviewed that document. It consists of the same largely unsupported
and legally incorrect assertions that he has included in his objections.

1 involvement in years of negotiation with Mr. Mabery and the Commissioners over the terms
2 of the MOU, SRP disagrees with that statement entirely. *See generally* Section III(A)(13),
3 *supra*.

4 Mr. Gordon's handwritten comments on the copy of the MOU attached to his
5 objections are addressed below.

6 **A. Deletion of "Purple" Designation**

7 Mr. Gordon desires to entirely eliminate the designation of Purple Lands. *See* Mr.
8 Gordon's handwritten mark-up of MOU §§ 4.17, 5, 5.3.03, 5.4, 8.1, 8.5, 9, 9.1, 9.2, and 12.6.
9 Mr. Gordon states no basis for his suggestion for the elimination of the Purple designation. To
10 the extent that his concerns are the same as Mr. Mollick's with respect to abandonment and
11 forfeiture, the language changes proposed by Mr. Mollick and accepted by SRP in
12 Subsections 5.5 (new), 6.1, 11.1, and 12.2 should adequately address those concerns. *See*
13 Exhibit 1. If his proposal is related to a concern that SRP and VDC will attempt to make the
14 owners of Purple Lands involuntarily S&T their HWUs to Orange Lands, the proposed
15 revisions to Subsections 8.1 and 9.2 address those issues. *See* Exhibit 1. SRP sees no other
16 reason why a VDC shareholder would be in favor of eliminating the Purple designation.

17 **B. Deletion of SRP S&T Consent**

18 Mr. Gordon also raises some of the same issues as Mr. Mollick with respect to SRP's
19 statutory consent to S&Ts contained in A.R.S. § 45-172(A)(5). *See* Mr. Gordon's
20 handwritten mark-up of MOU §§ 8.3, 8.5, 9.3, and 9.5. SRP's position with respect to those
21 provisions is addressed at length in reply to Mr. Mollick's parallel objections above. *See*
22 Section III(A)(1), *supra*.

23 **C. Subsection 8.7**

24 Mr. Gordon's mark-up also deletes the second sentence of Subsection 8.7, which
25 states: "However, neither Party is obliged to approve a severance and transfer but shall use
26 good faith efforts in consideration of any such transfer." It appears that Mr. Gordon struck
27 that provision as part of his general attempt to remove any consent required by SRP.

1 Standing by itself (and assuming the other related provisions remain), the language in
2 Subsection 8.7 actually constitutes a benefit for the VDC shareholders because it provides a
3 standard that SRP and VDC must use in considering S&Ts. SRP sees no benefit to the VDC
4 shareholders in removing that language.

5 **V. ADWR COMMENTS**

6 ADWR has been involved in the process of reviewing the MOU with the Court for
7 several months. The agency previously submitted written and oral comments, which the
8 Court considered and some of which were incorporated into prior drafts of the MOU. *See*
9 ADWR Comments, at 2. ADWR submitted additional comments on July 15, which are
10 addressed in this section.

11 **A. Scope of the Revised MOU (recitals and definitions)**

12 The first substantive section of ADWR's filing relates to what process the Court will
13 undertake in reviewing future S&Ts. *See* ADWR Comments, at 3-6. ADWR states that the
14 MOU does not indicate "whether the Court will be determining the attributes of any water
15 rights held by VDC shareholders as part of" the S&T review process. *Id.* at 5. That statement
16 is correct. In drafting the MOU, the Parties intentionally refrained from specifying the details
17 of the Court's review of future S&Ts. In response to prior comments by other parties, the
18 current version of the MOU provides in Subsections 8.4 and 9.4 that the S&T approval
19 process will include notice and an opportunity to be heard as deemed appropriate by the
20 *Hance v. Arnold* Court. *See* MOU §§ 8.4 and 9.4. Other than that statement regarding notice
21 and other provisions that relate to the Parties' agreement to attempt to coordinate periodic
22 combined filings of S&T applications with the Court as an accommodation to individual VDC
23 shareholders, the MOU is relatively silent about the details of the Court's process for
24 reviewing future S&Ts.

25 ADWR suggests that the scope of the Court's review of S&Ts be stated "in the
26 appropriate sections of the Revised MOU to avoid uncertainty about the Court's process and
27 its relationship to ADWR's statutory process." ADWR Comments, at 6. SRP agrees with

1 that suggestion, in part. Although SRP agrees that it would be helpful to VDC, SRP, and the
2 other parties to this case to have the Court specify what steps it intends to undertake in
3 reviewing future S&Ts, SRP disagrees with ADWR's position that the MOU is the proper
4 vehicle for such specification. The MOU is a contract between SRP and VDC. It binds no
5 individual or entity other than those two Parties. Information and details about the Court's
6 procedures are more properly stated in a procedural order adopted by the Court. Thus,
7 although SRP agrees with ADWR that more detailed information would be helpful, SRP does
8 not believe that such information should be included in the MOU.

9 **B. HWU Lands (MOU § 5)**

10 With respect to Section 5 of the MOU, ADWR contends that the term "currently
11 receiving or using water" in Subsections 5.3.02, 5.3.03, and 5.3.04 be more precisely defined.
12 *See* ADWR Comments, at 6. As discussed above with respect to Mr. Mollick's comments
13 regarding Section 5, the initial determination of what VDC lands were "currently receiving or
14 using water" (and, therefore, what lands were Green, Purple, or Orange) was necessarily
15 based upon the limited information available to the Parties. Those designations are expressly
16 "preliminary and subject to change," *see* MOU § 5.3 (footnote), and SRP expects that at least
17 some of those designations will change as the MOU is implemented.

18 To the extent that ADWR's concerns about the definition of this term are based upon
19 concerns about forfeiture and abandonment, SRP has addressed those concerns in response to
20 Mr. Mollick's objections and has proposed clarifying language in new Subsection 5.5. *See*
21 Exhibit 1. The intent of that new language is to address the uncertainty ADWR notes with
22 regard to "whether the lack of current use has any legal effect on the validity of the water
23 rights." ADWR Comments, at 6. Under the language contained in Exhibit 1, the Purple
24 designation will have no effect on the security of water rights as they relate to challenges by
25 SRP and VDC, because SRP will agree not to contest the rights for the Purple Lands. *See*
26 Exhibit 1 (revisions to MOU §§ 6.1, 11.1, and 12.2). With respect to parties other than SRP
27 and VDC, the additional language in new Subsection 5.5 will clarify that the "color"

1 designation based upon limited information is not intended to be used as a basis for an
2 assertion of forfeiture or abandonment. *See id.* (new Subsection 5.5). Although other parties
3 still will be able to argue that actual proof of nonuse (as opposed to the Purple designation
4 itself) might be evidence that a right has been forfeited or abandoned, the mere designation of
5 a parcel as a particular “color” should have no legal effect.

6 **C. Interim Agreement (MOU § 6)**

7 With regard to Section 6 of the MOU, ADWR suggests that SRP’s agreement in
8 Subsection 6.1 not to contest that HWUs exist for particular parcels extend to Purple Lands as
9 well as Green Lands and Orange Lands for which an S&T has been executed, approved, and
10 recorded. *See* ADWR Comments, at 7. As discussed in reference to Mr. Mollick’s similar
11 point, SRP agrees with this suggestion. *See* Section II(A)(10), *supra*. Exhibit 1 includes a
12 revision to Subsection 6.1 that addresses this issue.

13 **D. HWU for Green Lands (MOU § 7)**

14 Section 7 of the MOU deals with HWU Agreements for Green Lands. ADWR
15 contends that Subsection 7.2 “underscores the importance of describing in the MOU the
16 issues that will be addressed by this Court in the severance and transfer process.” ADWR
17 Comments, at 8. Although SRP agrees that specifying the scope of the Court’s review of
18 future S&Ts would be helpful, SRP submits that the MOU between VDC and SRP is not the
19 proper place to do that. *See* Section V(A), *supra*. That specification should be done in a
20 procedural order issued by the Court, which is binding on all parties to this case and not just
21 VDC and SRP.

22 ADWR correctly notes that SRP’s agreement in the first sentence of Subsection 7.2 is
23 limited to “the existence of Historic Water Use for the Green Lands at issue in that [HWU]
24 agreement in any proceeding.” *See* ADWR Comments, at 8. SRP is agreeing not to contest
25 appurtenancy/place of use, the only attribute of any “water right” that is addressed in the
26 MOU. *See* Section III(A)(1), *supra*. To the extent that the Court in a procedural order
27 associated with approval of this MOU (or some future procedural order issued while the

1 MOU is in effect) elects to address other attributes of a water right (such as priority date,
2 quantity, purpose of use, point of diversion, or season of use) as part of an S&T, SRP's
3 agreement in Subsection 7.2 will not apply to any disputes about those other attributes. As
4 clearly stated in Recital H of the MOU, "[i]ssues such as priority date, quantity, purpose of
5 use, and season of use are specifically left for resolution in some other forum or agreement."

6 ADWR also "suggests that the form of the HWU Agreement be approved by the Court,
7 perhaps as an exhibit to the MOU, to assure consistency with the MOU." *See* ADWR
8 Comments, at 8. At a relatively early stage of the MOU negotiations, SRP drafted a proposed
9 form of HWU Agreement and submitted it to VDC counsel for review as a possible exhibit to
10 the MOU. VDC counsel responded that not having a single form of agreement would allow
11 the individual VDC shareholders flexibility to negotiate with SRP on other specific provisions
12 that they might like to include in the agreement. Seeing the merit of that position, SRP agreed
13 not include a form HWU Agreement. SRP continues to agree with VDC's stated position on
14 that issue.¹³

15 **E. Severances and Transfers (MOU § 8)**

16 Section 8 of the MOU addresses S&Ts from Green or Purple Lands to Orange Lands.
17 ADWR correctly notes that Section 8 does not specifically indicate what is being severed and
18 transferred. *See* ADWR Comments, at 8. That language is intentionally vague and is
19 intended to provide flexibility to the VDC shareholders proposing the S&T and to the Court
20 about which water right attributes will be addressed in the Court's S&T approval process.
21 The intent of the MOU is that S&Ts will focus exclusively on the appurtenancy/place of use
22 attribute of a water right, *see* MOU Recital H, but the exact scope of that process is for the
23
24

25 ¹³ If the Court concludes that a form HWU Agreement should be included as an MOU exhibit, SRP
26 would not oppose that inclusion, to the extent that it would not require another round of objections
27 and further extended negotiations with objectors and unreasonably delay the MOU approval process.
The form of HWU Agreement that SRP previously drafted was based upon a prior version the MOU
and likely would need to be updated to conform to the current version of the MOU.

1 Court to determine in its procedural orders. SRP's reply to ADWR's comments on these
2 issues is set forth in Section V(A), *supra*.

3 **F. Additional Water Rights for Orange Lands (MOU § 9)**

4 Section 9 of the MOU deals with S&Ts to Orange Lands if sufficient HWUs from
5 Green and Purple Lands are not available for voluntary transfer. ADWR proposes that the
6 language in Subsections 9.1 and 9.2 be revised to refer to "water rights" instead of HWUs.
7 *See* ADWR Comments, at 9-10.

8 SRP agrees that determining the appropriate language for Subsections 9.1 and 9.2 is a
9 difficult issue. With respect to S&Ts from Green or Purple Lands to Orange Lands in Section
10 8, limiting the Court's S&T approval process to the appurtenancy/place of use attribute is
11 more likely because those S&Ts will be from VDC lands to other VDC lands. That is why
12 Section 8 refers to HWUs and not "water rights," in order to provide flexibility for the Court's
13 approval of those S&Ts to be limited to just the appurtenancy/place of use attribute of the
14 water right. *See* Section V(A), *supra*.

15 The S&Ts contemplated in Section 9, however, are by definition **not** from Green or
16 Purple Lands. Therefore, those S&Ts are most likely to come from non-VDC lands. Whether
17 the Court can or should limit its review of those S&Ts from non-VDC lands to just one
18 attribute of the water rights is a less clear question. Although SRP has not included ADWR's
19 proposed revisions to Subsections 9.1 and 9.2 in its set of revisions included in the table
20 attached hereto as Exhibit 1, SRP is willing to discuss this issue further with the Court at the
21 August 21 hearing and to consider incorporating those revisions if the Court desires to do so.
22 Alternatively, the scope of the Court's review of non-VDC S&Ts (from other lands to VDC
23 lands) could be addressed in a separate procedural order to be adopted by the Court.

24 **G. ADWR's Role (MOU §§ 8.5, 8.7, and 9.5)**

25 ADWR continues to be concerned about its role with respect to approving S&Ts.
26 ADWR correctly points out the "vague" language in Subsections 8.5, 8.7, and 9.5 regarding
27

1 the ability of a VDC shareholder to undertake the ADWR S&T approval process under A.R.S.
2 § 45-172 after obtaining this Court’s approval. *See* ADWR Comments, at 10-11.

3 The initial version of the MOU submitted for the Court’s review contemplated that
4 every S&T would be subject to the ADWR Section 45-172 approval process after obtaining
5 this Court’s approval. Because ADWR took the position that it would defer to the Court’s
6 concurrent jurisdiction in reviewing S&Ts and would refrain from exercising its authority
7 under A.R.S. § 45-172, that language was substantially revised in subsequent drafts of the
8 MOU, including the most recent draft submitted by the Parties on June 15. The intent of
9 those revisions was to provide flexibility for any VDC shareholder who chose to also
10 undertake the ADWR statutory review process (after obtaining the Court’s approval) because
11 of uncertainty about the relative authority of the Court and ADWR over S&Ts. SRP agreed
12 to the specific language of the three provisions of Subsections 8.5, 8.7, and 9.5 as an
13 accommodation to the VDC shareholders. That specific language was carefully crafted to
14 expressly provide that “nothing in this MOU **requires** that any filing with ADWR if it is not
15 otherwise required under applicable law.” *See* MOU § 8.5 (last sentence, emphasis added);
16 *see also* parallel provision in MOU §§ 8.7 and 9.5.

17 ADWR’s argument also ignores the fact that the language to which it now objects was
18 inserted at the Court’s direction. In its April 8 minute entry, the Court found that the MOU
19 “needs to provide for the alternative process of either Court issuing orders regarding
20 severance and transfer, or [ADWR] making that determination” April 8, 2015 Minute
21 Entry, at 2. Similarly, in its April 9 minute entry, the Court stated: “Although not resolved,
22 the Court suggested the language be modified to provide that the ADWR process could be
23 voluntary rather than mandatory.” April 9, 2015 Minute Entry, at 2.

24 Although SRP continues to agree with the Court that the provisions at issue in
25 Subsections 8.5, 8.7, and 9.5 are beneficial to the VDC shareholders with respect to future
26 S&Ts and in clarifying that the MOU **does not require** that any shareholder engage in the
27

1 ADWR statutory process, SRP would not oppose deleting one or all of those three provisions
2 if the Court desires to do so.

3 **H. Completion Targets (MOU § 11)**

4 Section 11 of the MOU sets forth “Completion Targets,” which are used solely for
5 providing either Party the right to unilaterally terminate the MOU under Subsection 3.2 with
6 notice if progress under the MOU is not being made. ADWR suggests that the language of
7 Subsection 11.1 be revised from “Historic Water Use” to “water rights.” *See* ADWR
8 Comments, at 11. The language with respect to Orange Lands in Subsection 11.1 would
9 apply either to S&Ts from Green or Purple Lands pursuant to Section 8 or to S&Ts from
10 other (likely non-VDC) lands under Section 9. For that reason, as discussed with respect to
11 ADWR’s comments on Section 8 of the MOU above, the language in Subsection 11.1 was
12 intentionally drafted to refer to “Historic Water Use” rather than “water rights.” *See* Section
13 V(E), *supra*. To the extent that the Court limits its review of S&Ts from Green or Purple
14 Lands to Orange Lands just to the appurtenancy/place of use attribute of a water right, the
15 “Historic Water Use” language is appropriate. Referring to “Historic Water Use” instead of
16 “water rights” in that portion of Subsection 11.1 allows that subsection to apply to both to
17 S&Ts from Green or Purple Lands and to S&Ts from non-VDC lands.

18 **I. Final Settlement Agreement (MOU § 12)**

19 Section 12 of the MOU sets forth the general terms of the Final Settlement Agreement
20 to be executed between VDC and SRP after eighty percent of the Green and Orange Lands are
21 resolved. As with Section 6 of the MOU dealing with the period while the MOU is effective
22 and before the Final Settlement Agreement is approved, ADWR notes that SRP’s agreement
23 not to contest the existence of HWU in Subsection 12.2 does not expressly include Purple
24 Lands. *See* ADWR Comments, at 11-12. Mr. Mollick raised this same issue, and SRP
25 agrees. *See* Section III(A)(10), *supra*. Exhibit 1 contains revisions to the language of
26 Subsection 12.2 to include Purple Lands in the category of lands for which SRP will agree, in
27 the Final Settlement Agreement, not to contest the existence of HWUs. *See* Exhibit 1.

1 **VI. YAN OBJECTIONS**

2 YAN submitted objections to a prior version of the MOU and participated in the March
3 5, 2015 hearing before the Court on those objections. Subsequent to that hearing, VDC and
4 SRP participated in additional meetings and calls with counsel for YAN and other objectors,
5 in an attempt to resolve those objections that had been filed. Several, but not all, of the issues
6 raised by YAN at that time were addressed in the June 15, 2015 revised version of the MOU.
7 YAN filed an additional forty-one pages of objections on July 17, with voluminous
8 attachments. SRP replies to those additional objections below.

9 **A. YAN Objection #1:** YAN's first objection takes issue with SRP's statutory
10 consent rights for S&Ts under A.R.S. § 45-172(A)(5). *See* YAN Objections, at 2-10. To the
11 extent YAN is making the same arguments as Mr. Mollick with respect that issue, SRP's
12 reply is set forth in Section III(A)(1), *supra*.

13 YAN also relies upon A.R.S. § 45-171 to support an argument that Section 45-172
14 cannot apply to rights under the *Hance v. Arnold* judgment. Section 45-171 clearly does not
15 support YAN's contention. The fallacy of YAN's argument can be seen by breaking down
16 Section 45-171 into its component parts. The second sentence of Section 45-171 deals with
17 rights that were in the process of being acquired in 1919. The third clause of the first
18 sentence relates to eminent domain, which is not at issue here. Thus, YAN's argument must
19 be based upon, if anything, the first two clauses of the first sentence of Section 45-171.

20 The first clause of the first sentence of A.R.S. § 45-171 provides that "[n]othing in this
21 chapter [A.R.S. Title 45, Chapter 1] shall impair vested rights to the use of water. . . ." Thus,
22 the statute, on its face, prohibits anything in Chapter 1 from impairing **rights to the use of**
23 **water** that existed when the Surface Water Code was enacted in 1919. *See* 1919 Ariz.
24 Session Laws, 4th Legis., ch. 164, § 56. Section 45-172 affects the movement (severance and
25 transfer) of a water right to a separate property, not the "use of water" on the property to
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1 which it was appurtenant in 1909 or 1919. Thus, Section 45-172 cannot be said to “impair”
2 such rights.¹⁴

3 The second clause of the first sentence of Section 45-171 provides that “[n]othing in
4 this chapter shall . . . affect relative priorities to the use of water determined by a judgment or
5 decree of a court” That provision prohibits anything in Chapter 1 from affecting a
6 **priority date** decreed by a court prior to 1919. Section 45-172 does not do that, either. In the
7 particular context in which Section 45-172 is applied here, for instance, the MOU expressly
8 states that it does not deal with priority dates. *See* MOU Recital H. Thus, SRP’s statutory
9 consent right could not, in this context, affect the priority date of any right. Furthermore,
10 because the 1909 judgment in this case lists no specific lands to which the shares in the Verde
11 Ditch are appurtenant, nothing in the application of Section 45-172 has an impact on the
12 continued effect of that 1909 judgment.

13 YAN spends an inordinate portion of its objections addressing Section 45-172 because
14 it assumes (correctly) that, as an overall doctrinal matter, maintaining its statutory consent
15 right for upstream S&Ts is an important issue to SRP that could derail the MOU process
16 entirely. As discussed above, it is unlikely that SRP’s governing boards would approve SRP
17 moving forward with the MOU if doing so would require SRP to waive its rights under
18 A.R.S. § 45-172(A)(5). *See* Note 6, *supra*. It would be unfortunate if YAN’s unsupported
19 and misguided legal arguments resulted in the waste of the time and resources spent by the
20 Parties in getting to this point with regard to the MOU.

21 YAN attempts to buttress its argument by contending that ADWR must believe that
22 A.R.S. § 45-171 trumps Section 45-172 because ADWR has agreed to refrain from asserting
23 its statutory regulatory authority if the Court elects to review and approve S&Ts. *See* YAN
24 Objections, at 9-10. ADWR can speak for itself on these issues, but SRP has seen nothing in
25 any filing and heard nothing in any oral statement by ADWR to the effect that ADWR

26 ¹⁴ The first clause of the first sentence is part of the basis for SRP’s position that pre-1919 rights are
27 not subject to statutory forfeiture. Unlike regulation of S&Ts, a forfeiture of the water right itself
directly affects the “use of water” on the appurtenant land.

1 believes it lacks authority under Section 45-172 in this instance. What ADWR has said is that
2 ADWR and the Court have concurrent authority over S&Ts and, as an accommodation to the
3 VDC shareholders and the Court, ADWR is willing to not require that S&Ts go through both
4 approval processes. *See generally* ADWR Comments. That is far different from taking the
5 position that Section 45-171 trumps Section 45-172 in this context.

6 As its final attempt to support its argument that SRP's statutory consent provision
7 should not apply, YAN raises the specter that parties to the Adjudication will challenge the
8 S&Ts on that basis. *See* YAN Objections, at 9-10. It is difficult to imagine how (or why) any
9 party to the Adjudication could subsequently challenge an S&T approved by this Court on the
10 grounds that it was subject to the consent of SRP under Section 45-172.

11 The SRP consent rights in Subsections 8.3 and 9.3 need to remain for the MOU
12 process to move forward. That is especially true with respect to Subsection 9.3, which likely
13 will involve S&Ts from lands that are outside the VDC area and, by definition, beyond the
14 scope of the 1909 judgment in this matter.

15 With respect to "intra-VDC" S&Ts under Section 8, SRP already has agreed (in the
16 second sentence of Subsection 8.7), as a matter of contract and as an accommodation to VDC
17 and its shareholders, to use "good-faith efforts in consideration of" any S&T. *See* MOU §
18 8.7. No such "good faith" is required under the plain language of A.R.S. § 45-172. It is
19 unlikely that the SRP governing boards would agree to any further erosion of SRP's statutory
20 S&T consent rights in the MOU. *See* Note 6, *supra*.

21 **B. YAN Objection #2:** YAN's second objection deals with SRP's shares in VDC.
22 *See* YAN Objections, at 10-12. Recital D to the MOU states that SRP owns approximately
23 114.48 acres under the Verde Ditch and holds 23.57 shares in VDC. YAN contends that it is
24 "improper" for the MOU to recite that SRP owns VDC shares. *See* YAN Objections, at 10.
25 That recital is, however, a statement of fact agreed to by the only Parties to the MOU—VDC
26 and SRP. VDC has the records to verify that SRP owns such shares, and there is nothing
27 "improper" about two parties to a contract reciting facts to which they both agree. Neither

1 YAN nor any individual VDC shareholder is bound by the MOU recitals, and YAN retains
2 the ability to quibble over SRP's ownership of those few VDC shares, if it has any legal or
3 factual basis to do so. In fact, the only reason Recital D was included in subsequent drafts of
4 the MOU was that one or more objectors asserted at one of the initial hearings with the Court
5 that SRP was a VDC shareholder and was surreptitiously withholding that fact from the
6 parties.

7 YAN also complains that the maps containing "color" designations that have been
8 produced to date do not show the SRP lands as Green, Purple, or Orange. *See* YAN
9 Objections, at 11. That is because the SRP lands are not Green, Purple, or Orange.
10 Combined, those three designations include only those lands that are "Verde Ditch HWU
11 Lands" or are "currently receiving or using water from the Verde Ditch." *See* MOU § 5.3.
12 The SRP lands at issue, which SRP acquired pursuant to mitigation requirements under the
13 Federal Endangered Species Act, are not "Verde Ditch HWU Lands" because they have no
14 HWU from the Verde Ditch. SRP has not been "currently receiving or using water from the
15 Verde Ditch" for those lands. The SRP lands are physically capable of receiving water from
16 the Verde Ditch, but have no historic legal right to do so and are not doing so.

17 YAN contends that the maps should be revised to "include SRP's Verde Ditch lands
18 with a color designation (Green, Purple or Orange) consistent with the MOU's treatment of
19 all other shareholders on the Ditch." *See* YAN Objections, at 11-12. The existing maps do,
20 however, treat the SRP lands the same as any other similarly situated Verde Ditch lands. If a
21 particular parcel has no HWU and is not "currently receiving or using water from the Verde
22 Ditch," no color designation applies.

23 That SRP acquired VDC shares when it bought the property, even though the land has
24 no Verde Ditch HWU, points out one of the problems that the MOU is intended to resolve. In
25 the past, VDC shares have been bought and sold among landowners, with little or no relation
26 to where HWUs actually occurred. Shares (like the shares acquired by SRP) have been
27 acquired by individuals and entities that own no Verde Ditch HWU Lands. The MOU,

1 particularly Section 10, is intended to set up a process to help address this ongoing problem
2 and to reconcile the respective shares with the presence of HWU Lands. *See* MOU § 10.

3 **C. YAN Objection #3:** YAN's third objection raises issues associated with
4 possible abandonment or forfeiture of water rights associated with Purple Lands. *See* YAN
5 Objections, at 3. Mr. Mollick, Mr. Gordon, and ADWR have raised similar issues, and SRP
6 agrees that the Purple designation is not intended to create an abandonment or forfeiture of
7 any water rights for any VDC parcel. These concerns are addressed by the language to which
8 SRP has agreed for new Subsection 5.5. *See* Exhibit 1. Neither SRP nor VDC intended to
9 "mak[e] legal judgments related to forfeiture and abandonment" based upon the Purple
10 designations. *See* YAN Objections, at 12.

11 **D. YAN Objection #4:** YAN's fourth objection complains that the exhibits to the
12 MOU were not included with the June 15, 2015 draft submitted to the Court for review.
13 Those exhibits were included with the prior drafts of the MOU and were not revised prior to
14 the June 15 submission. The Court directed VDC and SRP to meet with the parties that filed
15 objections to the prior version of the MOU, in an attempt to resolve some or all of those
16 objections. Because those objections did not pertain specifically to the exhibits and the
17 exhibits did not change, they were not refiled with the June 15 revision to the MOU.

18 Contrary to YAN's unsupported assertions to the contrary, no due process issues arise with
19 respect to the fact that the same exhibits were not resubmitted with the subsequent draft of the
20 MOU. *See* YAN Objections, at 13.

21 **E. YAN Objection #5:** YAN's fifth objection asserts that the Final Settlement
22 Agreement, if and when drafted, should be submitted to the VDC shareholders for review.
23 *See* YAN Objections, at 14. SRP agrees that the Court likely should submit that agreement
24 for consideration and comment by the *Hance v. Arnold* parties prior to approving its language.
25 YAN's objection ignores the fact, however, that the Final Settlement Agreement likely will
26 not be executed for several years, when eighty percent of the Green and Orange Lands have
27 been resolved. *See* MOU § 12.1. Although the MOU contains the general terms that will be

1 included in that Final Settlement Agreement, it would not be prudent for the Parties to
2 negotiate and the Court to approve a draft of an agreement that will not be executed until the
3 process is substantially completed. The MOU provides that “the Parties shall prepare and
4 submit to the *Hance v. Arnold* Court for its approval a Final Settlement Agreement” *See*
5 MOU § 12.1. What specific notice is required prior to the Court’s approval of that Final
6 Settlement Agreement is best addressed in a procedural order adopted by the Court that is
7 binding on all parties, and one that is issued closer in time to the Court’s actual review of that
8 agreement.

9 **F. YAN Objection #6:** YAN’s sixth objection relates to the definition of
10 “Historic Water Use” in Subsection 4.11. *See* YAN Objections, at 14-16. YAN first
11 contends that the definition should include “post-1919 water uses that have obtained
12 severance and transfer ‘under applicable law.’” *Id.* at 15. Although SRP believes (as YAN
13 itself asserts) that no S&Ts of post-1919 rights exist on the Verde Ditch, SRP does not oppose
14 the addition of language in Subsection 4.11 to include such rights, if they do exist. Exhibit 1
15 attached hereto includes the revisions YAN proposes to the definition in Subsection 4.11,
16 which SRP does not oppose.

17 In this objection, YAN also finds fault with the term “under applicable law” in
18 Subsection 4.11. It is difficult to determine how a party could be opposed to a provision
19 stating that, in order to be valid, an S&T must be “approved under applicable law,” and YAN
20 states no credible basis for its opposition in Objections. No reason exists to delete that
21 language from Subsection 4.11.

22 **G. YAN Objection #7:** YAN’s seventh objection pertains to the “Working
23 Understandings” language in Subsection 5.1 of the MOU. *See* YAN Objections, at 16-17.
24 YAN expresses concern about the creation of “unfair presumptions or unwarranted burdens of
25 proof” in that subsection. *Id.* at 17. However, Section 5 of the MOU is replete with
26 statements that the “color” designations are “preliminary” and “not binding on the Parties or
27 on any other individual or entity.” *See, e.g.,* MOU § 5.2; *see also id.* § 5.4 & footnote.

1 YAN's proposed addition to the last sentence of Subsection 5.1 is unnecessary, especially
2 given that such subsection pertains only to records that the Parties have reviewed and shared
3 and does not make any designation of Green, Purple, or Orange Lands.

4 **H. YAN Objection #8:** YAN's eighth objection asserts that the final "color"
5 determinations should be made by the Court. *See* YAN Objections, at 17-19. That
6 conclusion is already fully set forth in Subsections 5.4 and 12.4 of the MOU. No additional
7 language is necessary to make that point clear.

8 **I. YAN Objection #9:** In its ninth objection, YAN suggests that the Parties be
9 required "to submit a detailed proposal that clearly sets forth how and when fees and costs can
10 be assessed against a requesting shareholder seeking to obtain information and documents
11 from the VDC and SRP." *See* YAN Objections, at 19-20. As discussed above with regard to
12 Mr. Mollick's concerns about the cost of obtaining documents, SRP has received requests for
13 information from various VDC shareholders and has, to date, provided all of that information
14 free of charge. *See* Section III(A)(13)(d), *supra*. SRP intends to continue that practice, unless
15 future information requests are unduly burdensome in terms of the amount or type of
16 documents requested. *Id.* SRP agrees with YAN that, if and when it ever did occur in the
17 context of the *Hance v. Arnold* case, any institution of fees by SRP would be subject to Rule
18 26 of the Arizona Rules of Civil Procedure. *See* YAN Objections, at 18. VDC largely
19 functions as an arm of this Court, so it is difficult to imagine how the Court would not be able
20 to control any fees or charges instituted by VDC. No reason exists for a "detailed proposal"
21 about how costs will be imposed.

22 **J. YAN Objection #10:** YAN's tenth objection relates to Subsection 6.1 of the
23 MOU. As other objectors have stated, the language relating to the lands for which SRP will
24 not contest the existence of HWUs while the MOU is pending does not include Purple Lands.
25 Exhibit 1 contains language to be added to Subsections 6.1 and 12.2 to include Purple Lands.
26 *See* Sections III(A)(10), IV(A), V(C), and V(I), *supra*.

1 YAN also asserts that, without the MOU, SRP lacks a forum to challenge individuals
2 and entities who are using water without an historic right. *See* YAN Objections, at 21-23.
3 YAN even cites and attaches an order from the Adjudication Court as support for its assertion.
4 *See id.* at 22 & Exhibit F thereto. That assertion is patently false, and counsel for YAN
5 should be well aware of that falsehood based upon their involvement in the Adjudication
6 proceedings. Nothing in Judge Ballinger’s August 3, 2004 order precludes SRP or any party
7 from obtaining interim injunctive relief in the Adjudication. In fact, that very order
8 specifically grants SRP’s 2004 request for evidentiary hearings for injunctive relief against
9 certain parties in the Adjudication. *See id.* Exhibit F, at 4.

10 YAN attempts to be coy in its assertion on page 22 of its Objections by limiting its
11 statement to “preliminary injunctions against Verde Ditch shareholders.” *See* YAN
12 Objections, at 22. As YAN’s counsel is well aware, SRP has sought and obtained injunctive
13 relief against certain parties in the Adjudication based upon their unauthorized water use.¹⁵
14 YAN’s assertion is limited to “Verde Ditch shareholders” because, although SRP filed
15 applications for orders to show cause and requests for injunctions against two VDC
16 shareholders (Chester-Campbell, LLC and Linda S. and Paul R. Robinson), SRP voluntarily
17 dismissed those two applications without prejudice in 2014 in connection with its negotiations
18 with VDC to enter into the present MOU. YAN should not be heard to contend that, because
19 SRP has elected to pursue a less adversarial and more cooperative posture with VDC, SRP “is
20 unable to” obtain judicial recourse without the MOU. In its continued zeal to find fault with
21 any provision of the MOU, YAN has resorted to espousing deliberate fabrications in support
22 of its arguments.

23 **K. YAN Objection #11:** In its eleventh objection, YAN attempts to downplay the
24 benefit to VDC shareholders of entering into an HWU Agreement with SRP. *See* YAN
25 Objections, at 23-24. Among other things, YAN ignores the likely positive effects on the
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27 ¹⁵ *See, e.g.,* Judge Ballinger’s March 25, 2010 Minute Entry regarding NBJ Ranch; Judge Ballinger’s
September 8, 2008 Order regarding Michael L. Golder.

1 marketability of real property resulting from a signed and recorded confirmation regarding
2 water use with the largest downstream user. Whether a particular owner of Green Lands sees
3 any benefit in entering into a HWU Agreement with SRP is up to that landowner, but YAN is
4 incorrect when it asserts that there is little or no benefit of doing so.

5 **L. YAN Objection #12:** YAN’s twelfth objection is merely a further discussion
6 of its Objection #1 regarding SRP’s S&T consent rights under A.R.S. § 45-172(A)(5). SRP’s
7 position on that issue is set forth in Section VI(A), *supra*.

8 **M. YAN Objection #13:** YAN’s thirteenth objection relates to Subsection 7.3 of
9 the MOU. *See* YAN Objections, at 26-27. YAN complains that Subsection 7.3 fails to make
10 it clear to VDC shareholders that the HWU Agreements are private contracts between SRP
11 and the landowner and that this Court will not be reviewing or approving those agreements.
12 YAN ignores the fact the VDC also will be a party to those agreements. *See* MOU § 7.2
13 (“Upon achieving agreement with an owner of Green Lands, the Parties and the landowner
14 will execute an HWU Agreement.”); *id.* § 4.15 (definition of “Parties”). The MOU already
15 makes it sufficiently clear that the HWU Agreements are contracts among the landowner,
16 VDC, and SRP. No additional language is required.

17 **N. YAN Objection #14:** Much of YAN’s fourteenth objection consists of yet
18 another restatement of its Objection #1. *See* YAN Objections, at 27. Section VI(A) above
19 sets forth SRP’s reply with respect to those issues.

20 YAN also asserts that the VDC shareholders should be informed that they are not
21 required to enter into Severance and Transfer Agreements. *See* YAN Objections, at 27.
22 YAN’s statements in this regard demonstrate an apparent misunderstanding by YAN of the
23 nature of the S&T Agreements. *See* MOU §§ 4.19 and 8.2. The MOU contemplates that such
24 agreements would be entered into between the “participants” in the S&T—i.e., the Transferor
25 and the Transferee. *See id.* §§ 4.22, 4.23. It is not contemplated in the MOU that either VDC
26 or SRP would be a party to those agreements. The term “S&T Agreements” describes the
27 private contract entered into between the seller and the buyer. For this Court (at YAN’s

1 urging) to inform VDC shareholders that they can or should enter into those types of
2 transactions without a written contract would be imprudent. Furthermore, because this Court
3 will be reviewing and approving the S&Ts, one would think that the Court would want the
4 terms of the transaction (including, for example, the description of the Transferring Property
5 and the Receiving Property, *see* MOU §§ 4.18 and 4.24) to be committed to writing prior to
6 submission for the Court's approval. Neither the MOU nor the Court's procedural order
7 should contain the suggestion that YAN promotes in its Objection #14.

8 **O. YAN Objection #15:** As with several of its objections, YAN's fifteenth
9 objection constitutes a reiteration of its Objection #1 regarding SRP's S&T consent right
10 under A.R.S. § 45-172(A)(5). *See* YAN Objections, at 28-29. SRP's position on that issue is
11 set forth in Section VI(A), *supra*.

12 YAN also asserts that "SRP should agree that it will not exercise a veto power in those
13 instances where the *Hance v. Arnold* Court agrees to review and approve severance and
14 transfer within the original lands encompassed by the *Hance v. Arnold* Decree. . . ." *See* YAN
15 Objections, at 28 (underlining in original). With respect to S&Ts from Green or Purple Lands
16 under Section 8, SRP has agreed in Subsection 8.7 that it will use "good-faith efforts in
17 consideration of" those S&Ts. *See* MOU § 8.7. Among other things, YAN seeks to expand
18 that concession to include S&Ts not just Green and Purple Lands but those from all "the
19 original lands encompassed by the *Hance v. Arnold* Decree." *See* YAN Objections, at 28.
20 SRP will not agree to make that additional concession to its statutory S&T consent right
21 because, for lands other than Green and Purple Lands, neither VDC nor SRP will have agreed
22 that an HWU exists for those parcels. There is no reason for SRP to agree to the severance
23 and transfer of HWUs that do not even exist. YAN's suggestion in its Objection #15 is again
24 illogical and overreaching.

25 **P. YAN Objection #16:** YAN's sixteenth objection raises issues also addressed
26 by ADWR, wherein those parties desire the MOU to include every detail about how the Court
27 will handle future S&Ts. For the reasons set forth in its reply to ADWR's comments, SRP

1 submits that the MOU is not the proper vehicle for extensive discussion of how the Court will
2 conduct its review of S&Ts. Those issues should be addressed in a separate procedural order
3 issued by the Court that applies to all *Hance v. Arnold* parties, not in the MOU between VDC
4 and SRP. *See* Section V(A), *supra*.

5 **Q. YAN Objection #17:** YAN's seventeenth objection relates to the interplay
6 between the authority of ADWR and the Court to review and approve S&Ts. *See* YAN
7 Objections, at 29-30. As a general matter, SRP disagrees with YAN's assertion that no
8 approval of "intra-Ditch pre-1919 transfers" is required under A.R.S. § 45-172. *See* Section
9 VI(A), *infra*. ADWR has stated that it will refrain from exercising such regulatory authority,
10 but YAN is incorrect to imply that such authority does not exist.

11 YAN also asserts that VDC's Statement of Claimant in the Adjudication should be
12 updated to reflect S&Ts that are reviewed and approved by the Court. *See* YAN Objections,
13 at 30. SRP sees merit in this proposed revision to Subsection 12.6 of the MOU, and such
14 revision is included in Exhibit 1 attached hereto.

15 **R. YAN Objection #18:** YAN's eighteenth objection regarding Subsection 8.6 of
16 the MOU incorporates its Objection #1 by reference. *See* YAN Objections, at 31. SRP's
17 reply to Objection #1 is set forth in Section VI(A), *supra*.

18 **S. YAN Objection #19:** YAN's nineteenth objection reiterates part of its
19 Objection #1. *See* YAN Objections, at 31-32. SRP's reply to Objection #1 is set forth in
20 Section VI(A), *supra*.

21 **T. YAN Objection #20:** YAN's twentieth objection is merely a statement of
22 YAN's agreement with the second sentence of Section 10 of the MOU. *See* YAN Objections,
23 at 32. No reply by SRP is required.

24 **U. YAN Objection #21:** YAN's twenty-first objection relates to the Final
25 Settlement Agreement and Subsection 12.1 of the MOU. *See* YAN Objections, at 32-33. The
26 particular language in Subsection 12.1 to which YAN objects was inserted based upon the
27 Court's direction at prior hearings. *See* April 9, 2015 Minute Entry, at 2; May 15, 2015

1 Minute Entry, at 3. SRP continues to agree with the Court's direction regarding this
2 language.

3 **V. YAN Objection #22:** YAN's twenty-second objection relates to Subsection
4 12.2 of the MOU. *See* YAN Objections, at 33-34. As discussed above, Exhibit 1 attached
5 hereto contains language that would include Purple Lands in the category of lands for which
6 SRP would agree in the Final Settlement Agreement to not contest the existence of HWUs.
7 *See* Sections III(A)(10), IV(A), and V(I), *supra*.

8 **W. YAN Objection #23:** YAN's twenty-third objection relates to Subsection 12.3
9 of the MOU and the definition of "SRP Rights" in Subsection 4.21. *See* YAN Objections, at
10 34-35. YAN is correct that SRP did not intend for the agreement not to contest the SRP
11 Rights to be open-ended as to future amendments to SRP's claims. *Id.* at 35. Rather than
12 make the revision to Subsection 12.3 as YAN suggests, however, Exhibit 1 attached hereto
13 contains a revision to Subsection 4.21 that should have the same effect as YAN's proposed
14 revision. The benefit of making the revision in Subsection 4.21 instead of Subsection 12.3 is
15 that revising the definition of "SRP Rights" in Subsection 4.21 also will apply to Subsection
16 6.2, which YAN neglects to mention.

17 **X. YAN Objection #24:** In its twenty-fourth objection, YAN misconstrues the
18 language of Subsection 12.4 of the MOU. *See* YAN Objections, at 35-36. The phrase "either
19 pursuant to the Court's approval of this MOU or in a separate order" modifies the preceding
20 phrase "Historic Water Use as approved by the *Hance v. Arnold* Court." The intent of the
21 modifying phrase was to state that, if lands were deemed to be Green or Purple in the Court's
22 order approving the MOU (i.e., those lands included in Subsections 5.3.02 and 5.3.03), the
23 Court did not need to make a separate subsequent determination that those lands were "Verde
24 Ditch HWU Lands." The phrase constitutes a benefit in favor of the individual VDC
25 shareholders, not a detriment. If the phrase is deleted as YAN suggests, Subsection 12.4
26 could be construed to mean that the Court needs to enter a separate order designating each
27 particular acre as "Verde Ditch HWU Lands." For those lands that VDC and SRP agree are

1 “Verde Ditch HWU Lands” (those lands designated as Green or Purple) and the landowner
2 does not disagree, no separate subsequent Court order should be necessary.

3 **Y. YAN Objection #25:** YAN’s twenty-fifth objection relates to the reconciliation
4 of shares in Subsection 12.6 of the MOU. *See* YAN Objections, at 36-37. SRP agrees that
5 “the reconciliation of Verde Ditch shares is wholly within the jurisdiction and responsibilities
6 of the *Hance v. Arnold* Court.” *Id.* at 36. Subsection 12.6 merely recites an agreement by the
7 Parties to work together cooperatively to resolve any issues for remaining lands after the Final
8 Settlement Agreement is executed, approved, and recorded. *See* MOU § 12.6. SRP does not
9 oppose YAN’s addition of language regarding the Court’s authority. The requirements for
10 notice and an opportunity to be heard on the reconciliation of shares should be included in a
11 procedural order adopted by the Court and applicable to all parties, and not in the MOU
12 between VDC and SRP. Language stating that the reconciliation of shares will be subject to
13 the Court’s approval is included in Exhibit 1 attached hereto.

14 **Z. YAN Objection #26:** YAN’s twenty-sixth objection refers to Section 20 of the
15 MOU. *See* YAN Objections, at 37. YAN proposes that Section 20 be revised to expressly
16 require the Court’s approval of any amendments or modifications to the MOU. *Id.* SRP
17 agrees with that revision, and Exhibit 1 attached hereto contains the language YAN suggests
18 as to amendments or modifications of the MOU. “Terminations” of the MOU are fully
19 addressed in Section 3 of the MOU, however, and that section gives one or both Parties the
20 right to terminate under certain specific conditions. Exhibit 1 includes revised language for
21 Section 20.

22 **AA. YAN Objection #27:** YAN’s twenty-seventh objection restates Mr. Mollick’s
23 request for a shareholder vote on the MOU. *See* YAN Objections, at 37-39. The Court
24 denied that request in its July 24, 2015 Ruling. YAN also asserts that the MOU “should make
25 absolutely clear that the shareholders are not required to participate in the MOU process”
26 *Id.* at 39. Because only VDC and SRP are Parties to the MOU, that fact is clear on the face of
27 the MOU. No additional language in the MOU is required.

1 **AB. YAN Objection #28**: YAN’s twenty-eighth objection is merely a reiteration of
2 its Objection #7. SRP’s reply to that objection is set forth in Section VI(G), *supra*.

3 **AC. YAN Objection #29**: YAN’s twenty-ninth objection is not an “objection” but
4 rather is a generalized question about how the maps prepared by VDC and SRP depict
5 previously irrigated lands that have since been converted to roads and other uses. *See* YAN
6 Objections, at 41. The MOU is a process document. As clearly stated in Subsection 5.4, the
7 Working Understandings are “preliminary” and subject to change. The depiction of roads and
8 other features on the maps is a fact-specific issue related to individual parcels. Thus, YAN’s
9 generic question likely is not susceptible to a single answer. Those matters will be addressed
10 as the MOU is implemented.

11 SRP has carefully reviewed and considered YAN’s lengthy objections. Although
12 many of those objections appear to have been developed in order to find any fault possible
13 with the MOU, some of them have merit. Exhibit 1 attached hereto presents those revisions
14 that SRP believes can be incorporated into the MOU.

15 **VII. U.S. OBJECTIONS**

16 Unlike all of the other objectors, the United States spends little time addressing the
17 particular provisions of the MOU. *See generally* U.S. Objections. The United States has
18 made almost no effort to make suggestions to improve the MOU. *Id.* Instead, the United
19 States argues simply that the Court has no jurisdiction to do what the MOU calls for it to do.
20 In effect, the United States asserts that this Court, despite its continuing jurisdiction under the
21 1909 judgment, has no authority to do anything and must wait until the Adjudication gets to
22 the Verde Ditch. *Id.*

23 **A. U.S. Jurisdictional Arguments**

24 The Court already has heard all of these arguments from the United States about its
25 purported lack of jurisdiction, and the Court has rejected them. In its April 8 minute entry, for
26 instance, after hearing the arguments presented by Mr. Barry for the United States, the Court
27 found that “it has concurrent jurisdiction, at a minimum, with respect to the severance and

1 transfer of water rights for the Verde Ditch, which this Court is the Master.” April 8, 2015
2 Minute Entry, at 2. In its minute entry issued the next day (April 9), the Court stated:

3 The Court does not find merit to the objections that the Court is without
4 jurisdiction to approve an MOU and modify the original Decree. Issues
5 surrounding the appropriate process for any modifications as well as the merits
6 of modifying the original Decree are yet to be resolved.

7 The Court does not find merit to the objection that the Court in the
8 *General Stream Adjudication* has exclusive jurisdiction over the Verde Ditch as
9 this Court has continuously exercised jurisdiction over the Verde Ditch since
10 the original Decree.

11 April 9, 2015 Minute Entry, at 2.

12 The United States is correct when it points out that SRP shares some of its same
13 concerns about the areas where the Adjudication Court has exclusive jurisdiction and how far
14 this Court can go pursuant to its continuing jurisdiction under the 1909 judgment. *See* U.S.
15 Objections, at 10 n.29. In fact, as the United States recognizes, SRP was careful in its original
16 negotiations with VDC to draft the MOU as a contract between SRP and VDC, with
17 subsequent contracts among SRP, VDC, and the VDC shareholders (e.g., the HWU
18 Agreements). *See* initial draft of MOU presented to the Court; U.S. Objections, at 10. As
19 originally contemplated, for instance, S&Ts would have been submitted to the Court primarily
20 for its consideration of VDC shares and physical capacity in the ditch and then, after receiving
21 the Court’s approval, would have moved on to ADWR for its review and approval under
22 A.R.S. § 45-172.

23 The Court has found that it has jurisdiction to do more, however, and the MOU has
24 been revised to reflect the Court’s finding of its own jurisdiction. Especially in view of those
25 prior findings, each of the United States’ reiterated attacks on that jurisdiction falls short.

26 ...

27 ...

...

1 1. *The MOU does not require that the Court “adjudicate” any water*
2 *rights.*

3 The United States expresses its concern that the Court will “adjudicate” water rights as
4 part of the MOU. *See* U.S. Objections, at 7-10. Although SRP shares its concern that the
5 Court needs to be careful not to engage in “water rights adjudication,” nothing in the MOU
6 requires the Court to do that. The United States spends much of Section VI(A) of its
7 Objections discussing priority dates and contends that litigating priority dates constitutes an
8 impermissible “adjudication” of water rights. *Id.* The MOU deals exclusively with the
9 appurtenancy/place of use attribute of a water right, however, and specifically provides that it
10 does not address priority dates. *See* MOU Recital H. If the Court decided to address the
11 relative priorities of the various rights **and if** assessing priority dates is not within the Court’s
12 continuing jurisdiction under the 1909 judgment, the United States might be correct. SRP has
13 seen no indication that the Court will address priority dates in any activity related to the
14 MOU, and SRP has no intention of asking the Court to take up such issues.¹⁶

15 The United States points to three parts of the MOU process in which it asserts the
16 Court will be “adjudicating water rights.” *See* U.S. Objections, at 8. First, the United States
17 argues that the Court will be “adjudicating water rights” by reviewing and approving S&Ts.”
18 *Id.* As discussed throughout this Reply, the Court has not yet determined the scope of its
19 S&T approval process. SRP has stated that the scope of that review would best be set forth in
20 a procedural order issued by the Court, not in this MOU between VDC and SRP. SRP agrees
21 with the United States that the Court needs to be thoughtful of how far it goes in the S&T
22 approval process (e.g., whether to address HWUs or “water rights”). At this juncture,
23 however, the Court has issued no order that would provide a basis to conclude that the Court
24 will exceed its continuing jurisdiction under the 1909 judgment in reviewing and approving
25 S&Ts.

26 _____
27 ¹⁶ The United States even concedes that, “[t]o be sure, the MOU does not purport to apply the
doctrine of prior appropriation to determination of rights to use Verde River water.” U.S. Objections,
at 8.

1 Second, the United States asserts that the Court's approval of the Final Settlement
2 Agreement and the resulting prohibition on VDC delivering water to certain lands, will
3 constitute an "adjudication of water rights." *See U.S. Objections*, at 9. The Court has
4 continuing jurisdiction under the 1909 judgment, however, and has for decades acted in the
5 capacity of the "Master of the Verde Ditch" pursuant to that jurisdiction. The United States
6 has submitted no legal authority for the proposition that the "Master of the Verde Ditch" lacks
7 authority to prevent deliveries from the Verde Ditch to properties with no Historic Water Use,
8 especially given how broadly that term is defined in Subsection 4.11 of the MOU (and
9 considering the additional revisions to that subsection set forth in Exhibit 1 attached hereto).

10 Third, the United States asserts that the Court's role in making a final designation of
11 specific lands as Green, Purple, or Orange constitutes "adjudicating water rights." *See U.S.*
12 *Objections*, at 9-10. As with the United States' arguments regarding the Final Settlement
13 Agreement and Section 12 of the MOU, the United States has submitted no authority to
14 support the proposition that the "Master of the Verde Ditch" lacks authority to perform that
15 task.

16 SRP shares the United States' concerns that the Court, in implementing the MOU,
17 needs to be careful about how far it goes in "adjudicating water rights." VDC and SRP, in
18 preparing the MOU, have been mindful of that consideration and, as the United States
19 generally agrees, those Parties have "attempt[ed] to craft a legal document that would enable
20 the Court to settle the matter pending before the Gila Court, **to the extent the law will**
21 **allow.**" *See U.S. Objections*, at 4 n.13 (emphasis added). The last clause of that statement is
22 an important point, and it is admittedly a relatively fine line for the Court to walk. The fact
23 that it is a difficult task does not mean that it should not be done, however. SRP is confident
24 that the United States and other parties will remain vigilant in assisting the Court to remain
25 within its jurisdiction as it oversees implementation of the MOU, and SRP will do that, also.
26 Nothing in the MOU requires the Court to exceed its jurisdiction in "adjudicating water
27 rights."

1 2. *The MOU does not require the Court to infringe upon the statutory*
2 *jurisdiction of the Maricopa County Superior Court in the*
3 *Adjudication.*

4 The United States next expresses concerns about the Court infringing upon the
5 authority of Judge Brain from the Maricopa County Superior Court under the Adjudication
6 statutes. *See* U.S. Objections, at 11-13. SRP shares some of those same concerns and has
7 been mindful of that issue during the entire course of its negotiation of the MOU with VDC.

8 The United States cites various prior Arizona cases and the general adjudication
9 statutes in A.R.S. Title 45 as support for its concerns. *See* U.S. Objections, at 11. At least as
10 far as SRP is aware, however, in none of the cases upon the United States relies (or any other
11 published Arizona decision) has there been a situation in which the court in question had
12 continuing jurisdiction under a prior judgment, as this Court has under the 1909 *Hance v.*
13 *Arnold* judgment. Thus, the issue is arguably one of first impression in Arizona, and neither
14 *Yavapai-Apache Nation v. Fabritz-Whitney*, 227 Ariz. 499, 260 P.3d 299 (App. 2011), nor
15 *Gabel v. Tatum*, 146 Ariz. 527, 707 P.2d 325 (App. 1985), resolves that specific issue.

16 The United States' argument that the *res* is already before the Adjudication Court
17 further spotlights the unique nature of this situation. *See* U.S. Objections, at 12. Here, the *res*
18 (or at least some portion of it) was already **before this Court** prior the current general
19 adjudication statutes being enacted or the present Adjudication commencing. Thus, the
20 United States' arguments regarding the "pendency of a prior action" actually cut both ways in
21 this instance. If, in *Allen v. Superior Court*, 116 Ariz. 536, (App. 1977), for instance, the
22 Maricopa County Superior Court had an action pending before it prior to the Cochise County
23 action being filed, that decision might have gone the other way. *See* U.S. Objections, at 12
24 n.33.

25 As with the United States' more general concerns about "adjudicating water rights,"
26 nothing in the MOU requires this Court to infringe upon Judge Brain's statutory jurisdiction
27 in this Court's role of overseeing implementation of the MOU. SRP agrees, however, that the

1 Court needs to remain mindful of those jurisdictional issues as it proceeds and especially as it
2 determines the scope of its involvement in matters such as reviewing and approving S&Ts.

3 **3. The Court should not stay proceedings on the MOU.**

4 The United States' fall-back argument is that, if the Court disagrees with the United
5 States' legal assertions about jurisdiction, the Court should nevertheless exercise its discretion
6 to stay any proceedings on the MOU. *See* U.S. Objections, at 13-14. Although the United
7 States carefully avoids asserting how long the MOU approval should be stayed, the logical
8 result of its jurisdictional arguments is that the stay should be in effect until the Adjudication
9 reaches the Verde Valley.

10 If it was anticipated that the Adjudication would reach the VDC area in the near future,
11 SRP might agree with that argument. In fact, if the Adjudication was looming on the
12 imminent horizon, neither SRP nor VDC likely would have spent the time and money they
13 have to date to pursue the MOU; they would have just waited for the Adjudication. The fact
14 is, however, that, although the Verde River Watershed is the next basin in line for
15 adjudication after the San Pedro, no party can reasonably predict that Adjudication
16 proceedings will begin in earnest in the next year or two.

17 One of the reasons SRP has continued to spend resources to negotiate and seek
18 approval of the MOU is that the 1909 judgment in this matter, this Court's involvement, and
19 its role as the "Master of the Verde Ditch" all provide a relatively unique opportunity for
20 some progress to be made in resolving at least some of the issues that otherwise might wait
21 for the Adjudication. The MOU, and the spirit in which VDC and SRP have engaged in this
22 process, allow for these issues to be resolved in less adversarial and (hopefully) less costly
23 and time-consuming manner. All of those factors weigh heavily against the United States'
24 request that the Court exercise its discretion to indefinitely stay any further progress on the
25 MOU.

26 ...

27 ...

1 **B. Other Assertions Made by the United States**

2 In the course of presenting its jurisdictional arguments, the United States makes other
3 assertions, some of which are incorrect.

4 **1. Exchange of Information between VDC and SRP**

5 For instance, the United States alleges that VDC violated some confidentiality
6 requirement when it provided documents and other “private shareholder information” to SRP
7 “without this Court’s knowledge or permission.” *See* U.S. Objections, at 5 & n.16. As an
8 initial matter, SRP understands, based upon representations made by the Commissioners and
9 counsel for VDC, that they have kept the Court apprised of their negotiations with SRP and
10 the exchange of information from the beginning of this process. Although SRP was not
11 involved in the earliest of these communications with the Court, SRP understands and
12 believes that they occurred. Over the last year or two, SRP itself has participated in several
13 conferences and hearings with the Court at which the general scope of the contemplated MOU
14 and the ongoing exchange of information were addressed. The United States’ allegation that
15 VDC has somehow improperly provided information to SRP “without the Court’s knowledge
16 or permission” lacks factual or legal basis.

17 Furthermore, the United States has not even shown that any of the information
18 provided to SRP was confidential. VDC has not provided, and SRP has not requested from
19 VDC, any information that would be subject to the attorney-client privilege or any other
20 applicable privilege. VDC and the Commissioners essentially exist as an arm of this Court,
21 which is a public entity. *See generally* A.R.S. §§ 39-121 to -128. Although the Court need
22 not decide the “confidentiality” of the VDC records in this instance because it was aware of
23 the ongoing exchange of information with SRP, it is clear that there is no support in Arizona
24 law for the United States’ assertion that that VDC did anything improper in that regard.¹⁷

25
26 _____
27 ¹⁷ Furthermore, because the Adjudication is an *in rem* proceeding where each holder of a water right
is essentially adverse to every other right holder, the United States’ flawed logic would preclude VDC
from providing any information to any VDC shareholder.

1 2. Classification of SRP Lands

2 The United States also complains that the lands owned by SRP in the VDC area have
3 not been classified “in the manner that other shareholders’ lands, including those of the
4 United States and the Yavapai Nation, are classified.” See U.S. Objections, at 5 n.17. That
5 assertion is incorrect, as discussed in SRP’s reply to the same assertion made by YAN. See
6 Section VI(B), *supra*.

7 3. MOU Recitals

8 In footnote 13 of its Objections, the United States attempts to create conflicts within
9 the recitals to the MOU where none exists. See U.S. Objections, at 4 n.13. For example, the
10 United States notes that Recital E provides that one purpose of the MOU, among other things,
11 is “to avoid the time and cost of extensive litigation regarding entitlement to Verde River
12 water” and Recital H states that “[n]othing in this MOU is intended to provide a guarantee of
13 any VDC shareholder or water user that its right to use water delivered from the Verde River
14 through the Vere Ditch may not be challenged by parties other than VDC or SRP, in the
15 Adjudication or otherwise.” See *id.* There is nothing contradictory about these two recitals.
16 The MOU, if implemented and successful, will resolve disputes about the appurtenancy/place
17 of use attribute (i.e., whether an HWU exists) for the VDC lands. Thus, it will avoid the time
18 and cost of litigation in the Adjudication between SRP and the landowner in the Adjudication,
19 precisely as Recital E states. It will not, however, settle any issues (even with regard to SRP)
20 about other water right attributes and will not resolve any disputes with parties other than
21 SRP, as Recital H makes clear. Nothing about Recital E, Recital H, or any of the other
22 recitals to the MOU is “incoherent or incohesive” [sic]. See U.S. Objections, at 4 n.13.

23 4. “Working Understandings” in MOU § 5

24 The United States also ignores the plain language of Section 5 of the MOU and
25 attempts to distort the process through which the Parties have arrived at their preliminary
26 “Working Understandings.” Although Section 5 clearly recites (as the Court knows is
27 correct) that the Parties have been working together for several years to share information and

1 reach a consensus on various lands, the United States alleges that “SRP has decided, and
2 VDC—if permitted by this Court—is prepared to agree that” various lands have been
3 designated as Green, Purple, and Orange. *See* U.S. Objections, at 5. To the contrary, the
4 “color” designations were developed based upon numerous meetings between VDC
5 Commissioners and staff and SRP staff. That process was not one-sided in favor of SRP, as
6 the United States now, with no support, asserts.

7 Furthermore, the three items that the United States asserts (and attempts to characterize
8 as nefarious) on page 5 of its Objections are entirely consistent with law. It is difficult to
9 imagine how one can find fault with the proposition that VDC has a duty to serve lands with
10 HWUs (Green and Purple Lands) or that VDC has no duty to serve lands that have no HWUs
11 (Orange Lands). *See* U.S. Objections, at 5. Although (as Section 5 of the MOU clearly
12 provides) it remains to be finally determined which lands are Green, Purple, or Orange, there
13 should be no disagreement that VDC has a duty to serve only lands with HWUs. To imply
14 otherwise is contrary to the doctrine of prior appropriation upon which the United States so
15 heavily relies in its Objections.

16 **5. Purported “Burden” on Adjudication Parties Adverse to VDC and SRP**

17 The United States also points to, as a consequence of the MOU, a “cost[] and
18 burden[]” on all parties to the Adjudication of having to “uncover[] pre-modification Yavapai
19 County property records.” *See* U.S. Objections, at 6 n.21. The United States ignores the fact
20 that same burden exists today, with or without the MOU. When the Adjudication reaches the
21 Verde Valley (as will be the case for every other watershed), parties will need to perform their
22 due diligence in preparing to adjudicate the asserted claims. SRP, the United States, YAN, or
23 any other party has the ability today to enter into private settlement agreements and record
24 them with the County Recorder. The MOU creates no additional burden on parties to the
25 Adjudication.

26 The Court already has heard and rejected the United States’ jurisdictional arguments.
27 Those arguments are no more persuasive today than they were in April. None of the other

1 criticisms that the United States asserts in its Objections has substantial legal or factual
2 support. Nothing in the U.S. Objections warrants revision to or rejection of the MOU.

3 **VIII. SUMMARY AND REQUESTED ACTION**

4 For the reasons set forth herein, SRP requests that the Court approve the June 15, 2015
5 version of the MOU. To the extent that the Court finds the revisions to that version of the
6 MOU set forth in Exhibit 1 attached hereto to be appropriate and beneficial, SRP does not
7 oppose those revisions. SRP believes that the revisions contained in Exhibit 1 would not
8 require reconsideration of the MOU by the SRP governing boards, such that SRP would be
9 prepared to execute the MOU promptly upon the Court's approval, even if the Exhibit 1
10 revisions are included.

11 DATED this 31st day of July, 2015.

12 SALMON, LEWIS & WELDON, P.L.C.

13
14 By Mark A. McGinnis

15 John B. Weldon, Jr.
16 Mark A. McGinnis
17 2850 East Camelback Road, Suite 200
18 Phoenix, Arizona 85016
19 Attorneys for SRP
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25
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27

1 ORIGINAL of the foregoing hand-delivered
2 for filing this 31st day of July, 2015 with:

3 Clerk of the Court
4 Yavapai County—Division I
5 120 South Cortez Street
6 Prescott, AZ 86303

7 AND COPY hand-delivered this 31st day
8 of July, 2015 to:

9 Hon. David L. Mackey
10 Judge of the Superior Court
11 Yavapai County Courthouse
12 120 South Cortez Street, RM207
13 Prescott, AZ 86303

14 AND COPY sent by e-mail and U.S.
15 mail this 31st day of July, 2015, to:

16 L. Richard Mabery
17 Law Offices of L. Richard Mabery, P.C.
18 234 North Montezuma Street
19 Prescott, AZ 86301
20 *maberypc@cableone.net*

21 Douglas E. Brown
22 David A. Brown
23 J Albert Brown
24 Brown & Brown Law Offices, P.C.
25 Post Office Box 489
26 Eager, AZ 85929
27 *douglasbrown@outlook.com*
david@b-b-law.com

Patrick Barry
U.S. Department of Justice
Indian Resources Section, ENRD
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
patrick.barry@usdoj.gov
yosef.negose@usdoj.gov

1 Susan B. Montgomery
2 Robyn L. Interpreter
3 Montgomery & Interpreter, P.L.C.
4 4835 E. Cactus Rd., Suite 210
5 Scottsdale, AZ 85254-4194
6 *rinterpreter@milawaz.com*
7 *smontgomery@milawaz.com*

8 Carrie J. Brennan
9 Theresa M. Craig
10 Office of the Attorney General
11 1275 W. Washington
12 Phoenix, AZ 85007-2997
13 *NaturalResources@azag.gov*

14 Janet L. Miller
15 Nicole D. Klobas
16 Arizona Department of Water Resources
17 3550 N. Central Avenue
18 Phoenix, AZ 85012
19 *jlmiller@azwater.gov*
20 *ndklobas@azwater.gov*

21 Karen Phillips
22 1861 N. River View Drive
23 Camp Verde, AZ 86322
24 *karen.phillips@honeywell.com*

25 Peter J. Mollick
26 3124 W. Sunnyside Avenue
27 Phoenix, AZ 85029
pmollick@cox.net

28 AND COPY sent by U.S. mail
29 this 31st day of July, 2015 to:

30 Don Ferguson
31 1695 W. Bronco Drive
32 Camp Verde, AZ 86322

33 ...

34 ...

1 Leroy Miller
2 1733 W. Park Verde Road
3 Camp Verde, AZ 86322

4 *Francis Ford Bush*
5

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7
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EXHIBIT 1

SALT RIVER PROJECT'S REPLY TO OBJECTIONS TO REVISED PROPOSED MEMORANDUM OF UNDERSTANDING

Hance v. Arnold (Yavapai County Superior Court, Case No. P100 CV4772)

Revisions Proposed by Objectors That Would Be Acceptable to SRP

MOU Section	Issue Raised By	Substance of Proposed Revision	Proposed Language
4	Mr. Mollick	Specifically defining "Landowners."	** SRP does not believe this revision is necessary or beneficial to the VDC shareholders but would not oppose it if desired by the Court and VDC.
4.11	YAN	Stating that valid S&Ts of a post-1919 certificate of water right, if any exist in the VDC area, are included within the definition of "Historic Water Use."	Insert "valid" before "severance and transfer" in the last line and delete "pre-1919" in that line.
4.21	YAN	Clarifying that "SRP Rights" includes only those rights claimed by SRP prior to January 1, 2014.	Insert "asserted prior to January 1, 2014" after "claims to rights" in the first line.
New 5.5 (making existing 5.5 new 5.6)	Mr. Mollick; Mr. Gordon; ADWR	Stating that the designation of a parcel as Purple is not evidence of forfeiture or abandonment of any water right for that parcel.	"The preliminary designation of certain lands as Purple and not currently receiving or using water from the Verde Ditch was based upon limited information available to the Parties. Such designation is not intended to form the basis for any assertion that any water rights for the parcel have been forfeited or abandoned pursuant to applicable law."
6.1	Mr. Mollick; Mr. Gordon; ADWR	Specifically stating that, during the pendency of the MOU, SRP will agree not to contest the existence of Historic Water Use for Purple Lands.	Insert "or Purple" after the word "Green" at the end of the third line.

7.2	ADWR	Attaching a form HWU Agreement as an exhibit to the MOU.	** SRP does not believe this revision is necessary or beneficial to the VDC shareholders but would not oppose it if desired by the Court and VDC.
8.1 and 9.2	Mr. Mollick; Mr. Gordon	Further clarifying that any severance and transfers from Green or Purple Lands to Orange Lands will be voluntary and with the full consent of the landowners.	"All transactions between the landowners for the severance and transfers will be voluntary."
8.5	YAN	Providing that VDC's Statement of Claimant in the Adjudication will be updated to reflect S&Ts reviewed and approved by the Court.	Add the following sentence after the first sentence: "VDC will also promptly file an amendment or amendments to VDC's Statement of Claimant in the Adjudication to ensure that a proper record of the severances and transfers are available to ADWR as the technical advisor to the Adjudication Court."
8.5, 8.7, and 9.5	ADWR	Delete provisions stating that the MOU does not require any VDC shareholder to undertake the separate ADWR statutory approval process after it obtains the Court's approval of an S&T.	** SRP does not believe this revision is necessary or beneficial to the VDC shareholders but would not oppose it if desired by the Court and VDC.
9.1 and 9.2	ADWR	Revise language to refer to "water rights" instead of "Historic Water Use."	** SRP does not believe this revision is necessary or beneficial to the VDC shareholders but would not oppose it if desired by the Court and VDC.
11.1	Mr. Mollick; Mr. Gordon; ADWR	Clarifying that efforts will be made to agree upon the existence of Historic Water Uses for Purple Lands.	Insert "and Purple" after "Green" in the middle of the third line.
12.2	Mr. Mollick; Mr. Gordon; ADWR	Specifically stating that, in the Final Settlement Agreement, SRP will agree not to contest the existence of Historic Water Use for Purple Lands.	Insert "or Purple" after the word "Green" near the end of the second line.

12.6	YAN	Clarifying that reconciliation of Verde Ditch shares is wholly within the jurisdiction and responsibilities of the <i>Hance v. Arnold</i> Court.	Insert the following sentence at the end of that subsection: "All reconciliations of shares in the Verde Ditch shall be submitted to the Court for final approval."
17	Mr. Mollick	Deleting the express attorneys' fees and costs provision.	** SRP does not believe this revision is necessary or beneficial to the VDC shareholders but would not oppose it if desired by the Court and VDC.
20	YAN	Providing that any amendment or modification to the MOU is subject to the approval of the <i>Hance v. Arnold</i> Court. Also removing the words "or termination" from this Section because it is fully addressed in Section 3.	Revise this section to state: "Any amendment or modification of this MOU shall be effected only by an instrument executed and acknowledged by each of the Parties or their successors in interest and approved by the <i>Hance v. Arnold</i> Court."