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12 *Improvement and Power District and Salt River*  
13 *Valley Water Users' Association*

14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
15 **IN AND FOR THE COUNTY OF YAVAPAI**

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

17 Plaintiff,

18 vs.

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

20 Defendants,

21 In the matter of the VERDE DITCH  
22 COMPANY

No. P1300 CV4772

**SALT RIVER PROJECT'S  
MOTION FOR EXTENSION OF  
TIME TO FILE RESPONSE TO  
MOTION TO MODIFY MASTER'S  
ORDER TO INCLUDE SERVICE  
OF SUMMONS ON CLAIMANTS  
ARCP RULE 53(h)**

(Assigned to the Hon. David L.  
Mackey)

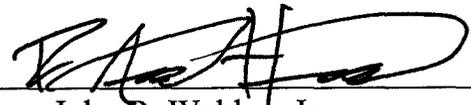
23 The Salt River Project Agricultural Improvement and Power District and the Salt River  
24 Valley Water Users' Association (collectively, "SRP") seeks leave to file its response in  
25 opposition to the motion filed by Peter Mollick on or about June 8, 2016 to "Modify Masters  
26 Order To Include Service of Summons on Claimants ARCP Rule 53(h)" ("Motion") on July  
27 19, 2016. Counsel for SRP originally mailed its response to the Court and the parties on June

1 21, 2016 (*see Exhibit A*), and also provided all of the parties with an electronic copy via e-  
2 mail on the same date (*See Exhibit B*).

3 It came to SRP Counsel's attention that Yavapai County Superior Court Clerk's July  
4 19, 2016, Supplement to Index of Record included only one response to the Motion, when  
5 two were provided to the parties (by SRP and the Verde Ditch Company). When SRP  
6 contacted the Clerk's office, it became clear that the original response that was mailed to the  
7 Court had not been filed for unknown reasons.

8 Although Mr. Mollick subsequently withdrew his motion on June 29, 2016, SRP asks  
9 the court to grant it leave to file its response on July 19, 2016 in order to preserve a complete  
10 and correct record. There is no prejudice to the other parties because: (A) the motion has  
11 been withdrawn, and (B) all of the parties were provided an electronic copy of the response  
12 within the applicable timeframe. SRP requests that the Court enter the attached order  
13 granting SRP's extension of time to file its response on July 19, 2016, the date upon which  
14 such response was actually filed with the Clerk of the Court.

15  
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1 ORIGINAL of the foregoing mailed  
2 for filing this 19th day of July, 2016 with:

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

7 AND COPY e-mailed this  
8 19th day of July, 2016 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 *jjaramil@courts.az.gov*

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16 19th day of June, 2016, to:

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18 vs.

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21 In the matter of the VERDE DITCH  
22 COMPANY

No. P1300 CV4772

**SALT RIVER PROJECT'S  
23 RESPONSE TO MOTION TO  
24 MODIFY MASTER'S ORDER TO  
25 INCLUDE SERVICE OF  
26 SUMMONS ON CLAIMANTS ARCP  
27 RULE 53(h)**

(Assigned to the Hon. David L.  
Mackey)

28 The Salt River Project Agricultural Improvement and Power District and the Salt River  
29 Valley Water Users' Association (collectively, "SRP") hereby respond in opposition to the  
30 motion filed by Peter Mollick on or about June 8, 2016 to "Modify Masters Order To Include  
31 Service of Summons on Claimants ARCP Rule 53(h)" ("Motion"). Mr. Mollick's Motion is  
32 premature, contrary to established Arizona law, and ill-advised. The Court should deny or  
33 defer ruling on the Motion, for at least three reasons.

1 First, as the Court is aware, after the August 26, 2015 filing of the Court's order  
2 regarding the Memorandum of Understanding ("MOU"), the United States filed a notice of  
3 appeal of that Order. *See* Notice of Appeal (September 23, 2015). The filing of that appeal  
4 raises jurisdictional questions that the Court should bear in mind when determining what, if  
5 any actions it can take while the appeal is pending, including the actions suggested by Mr.  
6 Mollick in his Motion. For the reasons set forth in Salt River Project's Joinder in Verde Ditch  
7 Company's Motion to Delay Filing of the Order Regarding Proceedings Pursuant to the  
8 Memorandum of Understanding filed on October 20, 2015, SRP reiterates its request that the  
9 Court defer any further action relating to the MOU until after the Court of Appeals rules on  
10 the appeal. Thus, **even if** the Court were to agree with any of the actions proposed by Mr.  
11 Mollick in his Motion, the jurisdictional questions counsel strongly against taking any of  
12 those actions at this time.

13 Second, Mr. Mollick's call for the Court to compel the Verde Ditch Commissioners to  
14 serve notice of an "adjudication" of water rights is contrary to Arizona law and again begs the  
15 question with respect to the pending appeal. A summons notifying all the Verde Ditch  
16 landowners of a pending "adjudication of water use and rights" has previously been served  
17 pursuant to A.R.S. § 45-253. That summons was served in the adjudication that is already  
18 pending and which covers the area of the Verde Ditch—the Gila River General Stream  
19 Adjudication (Maricopa County Superior Court Nos. W-1 through W-4). That summons was  
20 served several decades ago, and one of the issues in the pending appeal involves the  
21 interaction between that adjudication and this Court's proceedings pursuant to its continuing  
22 jurisdiction under the pre-existing *Hance v. Arnold* judgment. Although those jurisdictional  
23 issues remain to be decided by the Court of Appeals, it is beyond reasonable dispute under  
24 Arizona law that a second general stream adjudication under A.R.S. § 45-253 cannot be  
25 commenced within the same geographic area that already is subject to an ongoing  
26 adjudication. *See generally Gabel v. Tatum*, 146 Ariz. 527, 707 P.2d 325 (App. 1985).

27

1 Third, to the extent that Mr. Mollick is asking that Verde Ditch landowners should  
2 receive the parcel and water use information that has been compiled by the Verde Ditch  
3 Commissioners and SRP sooner rather than later, Mr. Mollick's request for an order by this  
4 Court to that effect is premature. In the time since the United States' appeal was filed, SRP  
5 has continued to work on and compile information for the various parcels. SRP intends to  
6 continue with that work while the appeal is pending and to provide information to individual  
7 landowners in the near future. Due to the jurisdictional issues discussed above, however,  
8 such continuing efforts during this interim period can be only voluntary and as the result of a  
9 spirit of ongoing cooperation among SRP, the Commissioners, and the landowners. An order  
10 by this Court requiring the Commissioners or SRP to do anything in furtherance of the MOU  
11 itself would be inappropriate while the case is pending before the Court of Appeals.

12 For the reasons set forth herein, SRP requests that the Court deny Mr. Mollick's  
13 Motion. Alternatively, SRP requests that the Court defer ruling on the Motion until after the  
14 pending appeal has been resolved.

15 DATED this 21st day of June, 2015.

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

17 By Mark A. McGinnis

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3 Clerk of the Court  
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6 Prescott, AZ 86303

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## Francine Ford-Bush

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**Cc:** Mark A. McGinnis; Jeff Heilman; John B. Weldon  
**Subject:** Case No. P1300 CV4772 (Verde Ditch)  
**Attachments:** SRP's Response to Motion to Modify Master's Order to Include Service of Summons on Claimants ARCP Rule 53(h).pdf

Attached is Salt River Project's Response to Motion to Modify Master's Order to Include Service of Summons on Claimants ARCP Rule 53(h).

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21 In the matter of the VERDE DITCH  
22 COMPANY

No. P1300 CV4772

**(PROPOSED) ORDER GRANTING  
SRP'S MOTION FOR EXTENSION  
OF TIME TO FILE ANSWERING  
BRIEF**

(Assigned to the Hon. David L.  
Mackey)

23 Pursuant to the motion by the Salt River Project Agricultural Improvement and Power District  
24 and the Salt River Valley Water Users' Association (collectively, "SRP") and good cause  
25 appearing therefor, IT IS HEREBY ORDERED granting SRP an extension of time to file its  
26 response to Mr. Mollick's June 8, 2016, motion in this matter with the Clerk of the Court on  
27 July 19, 2016.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.

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Hon. David L. Mackey  
Judge of the Superior Court

ORIGINAL of the foregoing filed this \_\_\_\_  
day of \_\_\_\_\_, 2016 with:

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3 Clerk of the Court  
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