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11:00 O'Clock, *4* M

JUN 28 1989

1 L. Richard Mabery, Esquire
2 101 E. Gurley St., Suite 203
3 Prescott, Arizona 86301
4 (602) 778-1116
5 Arizona State Bar I.D. No. 005188

By *Carol P. King*
ETHEL BOUTON, Clerk
Deputy

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

8	GEORGE W. HANCE, et al.)	
9	Plaintiff,)	No. 4772
10	vs.)	Division 1
11	WALES ARNOLD, et ux., et al.)	PETITION FOR ORDER TO
12	Defendant.)	SHOW CAUSE

13
14 VINCE V. HIGGINBOTHAM, GLEN W. EVERETT, HOWARD D.
15 FERGUSON, and JOHN REDDELL, appointed and acting Commissioners of
16 the Verde Ditch, respectfully submit the attached proposed Order
17 Promulgating New Rules and Regulations for the Operation of the
18 Verde Ditch and request that the Court set a date and time for
19 any interested party to show cause why the Order Promulgating New
20 Rules and Regulations for the Operation of the Verde Ditch should
21 not be approved and placed into effect.

22 Petitioners further request that the Court order that
23 any objections, suggestions or modifications to the proposed
24 new Rules and Regulations be filed with the Court and a copy sent
25 to the Verde Ditch Commissioners not less than seven (7) days
26 prior to the date of hearing.

27 * * * * *

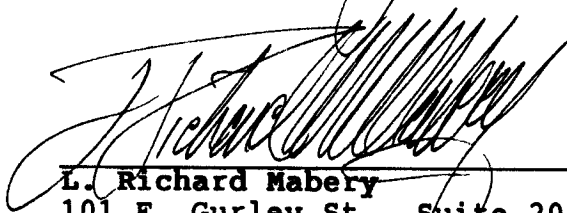
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LAW OFFICES OF
L. RICHARD MABERY, P.C.
101 E. GURLEY • SUITE 203
PRESCOTT, ARIZONA 86301
(602) 778-1116

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RESPECTFULLY SUBMITTED this 20th day of June,

1989.



L. Richard Mabery
101 E. Gurley St., Suite 203
Prescott, Arizona 86301
Counsel for VERDE DITCH COMPANY

LAW OFFICES OF
L. RICHARD MABERY, P.C.
101 E. GURLEY • SUITE 203
PRESCOTT, ARIZONA 86301
(602) 778-1116

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

GEORGE W. HANCE, et al.)	
)	No. 4772
Plaintiff,)	
)	Division 1
vs.)	
)	ORDER PROMULGATING NEW RULES
WALES ARNOLD, et ux., et al.)	AND REGULATIONS FOR THE
)	OPERATION OF THE VERDE DITCH
Defendant.)	
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THIS MATTER having been fully considered by the Court; the Court finds that by virtue of an Order issued March 23, 1909 by the then District Court of the Fourth Judicial District of the Territory of Arizona, and continued by subsequent orders of the Yavapai County Superior Court, broad directives were promulgated to govern the operation and maintenance of the Verde Ditch and to insure adequate funding to defray operational costs. Since 1909, the affairs of the Verde Ditch have been conducted as efficiently as possible under the broad guidelines originally laid down by the Court; customs, needs and practices have changed. Existing procedures must be revised and amended if the water necessary for the welfare and needs of all of the Verde Ditch shareholders is to be available now and in the future.

Therefore, the following Rules and Regulations are promulgated to be effective as of the date hereon.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

* * * * *

1 1. The Verde Ditch shall be divided into three (3)
2 districts consisting of the following:

3 A. District One - All lands served by the
4 Ditch between the dam and Interstate 17;

5 B. District Two - All lands served by the
6 Ditch from Interstate 17 to the north end
7 of Windy Point; and

8 C. District Three - All lands served by the
9 Ditch existing downstream from the north
10 end of Windy Point.

11 A commissioner shall be appointed by the Court for
12 each of the three districts and the Court shall further appoint
13 two commissioners-at-large. The commissioners shall elect a
14 chairman and a secretary/treasurer, and shall engage or hire such
15 other employees, bookkeepers, accountants, attorneys, engineers
16 and other persons or entities as the commissioners shall deem
17 reasonable and prudent for the proper operation of the Verde
18 Ditch.

19 Each commissioner shall be an officer of the court
20 and shall serve at the pleasure of the court for a staggered term
21 as determined by the court.

22 The commissioners shall be entitled to reasonable
23 compensation for all work performed on behalf of the Verde Ditch
24 Company.

25 2. The commissioners, their agents and/or employees,
26 using appropriate equipment, shall have the right of useage at
27 all times to the work areas adjacent to and on both sides of the
28 ditch for the purposes of maintenance, repair, and operation of
the Verde Ditch. Private property may be crossed in order to
gain access to the Verde Ditch.

* * * * *

1 3. Construction or installation of gates, buildings,
2 posts, fences, cross-fences or any other obstruction along or
3 over the ditch or in the area adjacent to the ditch which inter-
4 feres with the flow of the Verde Ditch or the ability of the
5 Verde Ditch commissioners, agents or employees to move necessary
6 equipment up and down the ditch and ditch banks is prohibited.

7 Leaky gates shall be repaired or replaced by leak-
8 proof gates by the shareholder at the shareholder's expense, or
9 will be sealed off. Repaired or replaced headgates shall be
10 approved by the Verde Ditch commissioners as to type, location
11 and size prior to installation.

12 4. Water will be available in the ditch at all times
13 except when prohibited by acts of God, when water is prevented
14 from entering the ditch for purposes of maintenance or repair, or
15 to protect the ditch from damage.

16 5. Unrestricted numbers of headgates or takeoff gates
17 at the ditch will not be allowed. Special conditions requiring
18 additional headgates or takeoff gates from the ditch shall be
19 submitted to the commissioners for consideration and approval
20 prior to installation. All work shall be accomplished in a good
21 workmanlike manner and shall meet or exceed any local, county,
22 state and federal restrictions or requirements. Failure to
23 construct the improvement in accordance with the submitted and
24 approved plans or proper construction methods will require prompt
removal of the improvement or work.

25 6. All shareholders shall be assessed, and their land
26 subject to, an assessment determined as the respective percentage
27 of the shareholder's irrigated acreage or useage, whichever is
28

1 greater. The minimum assessment shall be one acre. Separate
2 parcels, whether contiguous or not, shall be assessed individual-
3 ly. All assessment statements submitted to shareholders are pay-
4 able not later than the tenth of the month following the month in
5 which the statement is issued. If not paid by the tenth of the
6 following month, the assessment shall be considered delinquent
7 thereafter.

8 All assessments that are delinquent shall bear
9 interest at the rate of one and one-half percent per month.

10 All expenses of collection of unpaid assessments
11 including, but not limited to, reasonable attorney's fees or
12 costs, shall be paid by the shareholder in addition to the delin-
13 quent assessment and interest.

14 In addition thereto, there shall be a minimum
15 delinquent penalty of ten dollars or ten percent of the unpaid
16 assessment amount, whichever is greater. For good and reasonable
17 cause, the delinquent penalty may be waived by a majority vote of
18 the commissioners or by order of the court.

19 7. When a shareholder sells or transfers part or all
20 of the property subject to a Verde Ditch assessment, as provided
21 herein, it is the shareholder's sole responsibility to notify the
22 Verde Ditch Company of the name and address of the new share-
23 holder. New owners of property shall be subject to all current
24 or past due assessments on the lands purchased or transferred.

25 8. The amount of water allocated to each shareholder
26 is a percentage of the water in the ditch at any time; it is not
27 a fixed quantity and is not to be considered as an inflexible
28 number of miner's inches, acre feet or cubic feet per second.

1 9. Whenever it becomes necessary to issue a schedule
2 for the use of water, such schedule will be published in the
3 local newspaper and/or on the public notice board of the Town of
4 Camp Verde and/or by the U.S. Mail. Any restrictions as to the
5 use of water published in the schedule shall be followed by all
6 shareholders. Residents of subdivisions or other large user
7 groups shall prepare a requirement schedule representing their
8 proposed use of water and present it to the commissioners for
9 approval.

10 10. Wasting, misuse or nonbeneficial use of water will
11 not be tolerated. Shareholders shall be in control of their
12 water use and application at all times and shall be solely
13 responsible for any damages sustained by adjoining landowners,
14 shareholders, or the Verde Ditch Company. Shareholders or land-
15 owners abutting the Verde Ditch shall be liable and responsible
16 for any damages resulting to the Verde Ditch banks or structures
17 as the result of improper or negligent use of water or the
18 improper removal of water from the Verde Ditch.

19 11. An annual meeting of shareholders shall be held on
20 the first Monday of October of each year for the purposes of an
21 accounting by the commissioners as to fiscal matters, water
22 assessments, ditch maintenance and repair, water delivery sched-
23 ules and other pertinent information regarding the operation,
24 maintenance, and expenses of the Verde Ditch. The commissioners
25 shall file the annual accounting with the court.

26 At the annual meeting, ditch matters may be
27 referred to the shareholders for decision. Shareholders shall be
28 entitled to vote on the basis of their valid shares in the Verde

1 Ditch. Voting will be done either in person or by court-approved
2 written proxies filed with the Verde Ditch Company at least five
3 days prior to the meeting. Any matter referred to the share-
4 holders for voting shall require at least fifty-one percent
5 approval of the shareholders entitled to vote (either in person
6 or by proxy) at the meeting. Any shareholder delinquent in any
7 assessment at the time of the meeting shall not be entitled to
8 vote. A quorum of shareholders shall be fifty-one percent of the
9 total shareholders eligible to vote and in attendance at the
10 meeting.

11 At any annual meeting where a commissioner's term
12 expires or where a vacancy exists for a commissioner's position,
13 the shareholders and commissioners may recommend candidates for
14 the available commissioner's position. The court will select the
15 commissioner.

16 12. The Verde Ditch will keep an office within the Town
17 of Camp Verde in order to carry out every day business and for
18 the convenience of shareholders.

19 13. Commissioners are authorized and empowered to
20 undertake the following actions as the result of any violation or
21 infraction of these Rules and Regulations:

- 22 A. Meet with the shareholder and seek a
23 prompt resolution;
- 24 B. Seal off the shareholder's headgate;
- 25 C. Deny a shareholder usage of the Verde
26 Ditch waters;
- 27 D. Bring an action in the appropriate court
28 against the shareholder.

Any shareholder or adjoining landowner aggrieved by
a decision or action of a Verde Ditch commissioner (other than

1 13(D) above) shall file at the Verde Ditch office a request for
2 hearing before the full board of the Verde Ditch commissioners.
3 The commissioners shall provide a hearing within fifteen days
4 after written request and shall make a determination in writing
5 not less than five days thereafter. Any person not satisfied
6 with the final decision of the commissioners after the hearing
7 shall be entitled to file an Order to Show Cause with the Master
8 of the Verde Ditch seeking a review of the commissioners' deci-
9 sion.

10 14. The Verde Ditch Company shall indemnify and hold
11 the commissioners, their agents and employees harmless from any
12 and all liability, including but not limited to, attorney's fees,
13 court costs or damages sought by a shareholder or any other per-
14 son or entity asserting a claim, action or liability against a
15 commissioner or commissioners, their agents and employees by
16 reason of the action(s) of a commissioner or commissioners in the
17 maintenance and operation of the Verde Ditch Company and/or the
18 enforcement of these Rules and Regulations.

19 15. The Verde Ditch Company office shall maintain a
20 notice board at the Verde Ditch Company office for display of any
21 notices, notices of meetings, or other matters, or may publish
22 such notices in the local newspaper, and/or may send such notices
23 regular mail to the shareholders. Minutes of all meetings of the
24 Verde Ditch Company shall be filed with the court no later than
25 thirty days after the date of the meeting.

26 16. Any shareholder may attend commissioners' meetings.
27 To address and express concerns to the commissioners at such
28 meetings, a shareholder may speak during the call to the public

1 portion of the agenda or upon prior written notification to the
2 commissioners, the shareholder will be placed formally on the
3 meeting agenda.

4 DONE IN OPEN COURT this _____ day of _____,
5 1989.

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8 MASTER OF THE VERDE DITCH and
9 JUDGE OF THE SUPERIOR COURT IN
10 AND FOR THE COUNTY OF YAVAPAI
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