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JUL 20 1989

ETHEL BOUTON, Clerk
By *Jayne Genta*
Deputy

LAW OFFICES

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STATE BAR NO. 005418

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

1	GEORGE W. HANCE, et. al,)	No. 4772
2)	
3	Plaintiff,)	Division 1
4)	
5	vs.)	OBJECTION TO PROPOSED
6)	ORDER ON ORDER TO SHOW
7	WALES ARNOLD, et. ux., et. al.))	CAUSE
8)	
9	Defendant.)	(Assigned to the Hon.
10)	Richard Anderson)
11)	
12)	

13 Pursuant to the Court's Order to Show Cause dated
14 June 28, 1989, Sandra Halma, an interested party and property
15 owner within the legal boundaries of the Verde Ditch Company
16 objects to certain provisions of the proposed Order
17 promulgating new rules and regulations for the operation of
18 the Verde Ditch.

19 The objections and comments are attached hereto as
20 Exhibit 1.

21
22 Law Office - DAVID W. EAGLE

23
24 By *David W. Eagle*

25 David W. Eagle
26 80 E. Columbus Avenue
27 Phoenix, Arizona 85012
28 Attorney for Sandra Halma

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OBJECTIONS TO PROPOSED ORDER

OBJECTION TO PARAGRAPH 1.

Although the original Judgment in this case was entered in 1909, the present Arizona Rules of Civil Procedure govern the trial court's authority. An individual with authority to take possession of property is a receiver. See A.R.C.P. Rule 66. As such, although the court Order calls the "commissioner," Rule 66 applies. The court should clarify that commissioners have the powers and are subject to the responsibilities of a receiver as set forth in the Rule.

Additionally, the legal descriptions for Districts 1, 2, and 3 are not clearly specified. This creates a possible cloud upon unrelated property owners if this Order is ever recorded. A proper legal should be included in the Order signed by the Court.

OBJECTION TO PARAGRAPH 6.

As the proposed Order is in reality a Judgment of the Court enforced by creating a lien against the real property within the confines of the Verde Ditch District, A.R.S. 44-1201 provides that the maximum rate of interest on any Judgment entered by the Court shall be 10% per annum. See A.R.S. 44-1201(A). Provisions relating to a minimum delinquent penalty are not authorized by statute and

1 consequently not within the jurisdiction of the Court.

2 OBJECTION TO PARAGRAPH 11. Annual Meetings/Procedures.

3 On page 6 at lines 8-10 quorum requirements are
4 proposed including attendance requirements. As a practical
5 matter, this requirement is not reasonable and is not
6 workable. First, the average person will be unfamiliar with
7 the procedure in which the court would choose to approve the
8 proxies. The procedure would be expensive. The proposed
9 order does not specify whether a hearing is to occur to obtain
10 "approval" and how objections are to be handled. Further,
11 such an application for approval probably requires the posting
12 of an appearance fee in this matter. As a practical matter,
13 there would never be a proxy. The procedure outlined at page
14 6 lines 8-10 requiring actual attendance of 51% of the total
15 share holders eligible to vote is also impractical as a
16 substantial minority of the property owners within the
17 district live out of state. At a minimum such provision
18 should indicate that attendance may be in person or by
19 authorized proxy.

20 OBJECTION TO PARAGRAPH 13.

21 Paragraph 13 (c) empowers the commissioners as
22 agents of the court to deny a shareholder usage of Verde Ditch
23 waters without requiring a minimum due process notice and an
24 opportunity to be heard by the Court prior to such a
25 determination.

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OBJECTION TO PARAGRAPH 15.

As the commissioners of the Verde Ditch Company are quasi public officers, this paragraph should make reference to provisions to the Arizona Open Meeting Law and require notifying the public of its meetings and proposed agenda pursuant to the requirements of that statute.

GENERAL OBJECTION TO CONTINUED MAINTENANCE OF THE VERDE DITCH COMPANY.

Although the undersigned recognize the historical origins of the Verde Ditch Company as stemming from a 1909 Judgment entered by the District Court of the 4th Judicial District of the Territory of Arizona, this court should give much consideration as to the advisability of continuing the Ditch Company in its present form. In 1909, the original parties owned substantially all of the property involved. There are now many individual property owners. Each has rights and differing interests which need to be heard and considered. Each has a concern about the amount assessments which are in reality taxes which can be imposed by the commissioners with court approval. They have no actual opportunity to elect their representatives and to approve the taxes so levied. The very order submitted to the court for approval is a tacit acknowledgment that there are insufficient rules and guidelines for the court to use in continued governance of this entity in the future. It is not inconceivable that at some future time a substantial amount

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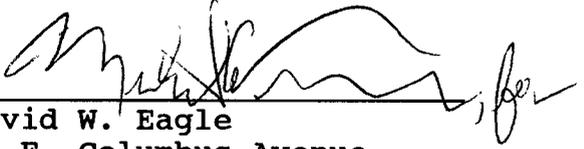
of money might be needed to make capital improvements to the district which must be assessed against individual property owners and paid by the revenues generated. Such decisions when made by municipal corporations are submitted to the taxpayers for determination and perhaps the issuance of municipal bonds or other financing techniques. It seems unworkable for this court to continue to administer this district in the long term and to perform the function which is usually performed by an elected board for a municipal corporation. As such, the court is directed to the provisions of A.R.S. Sections 48-2901 - 48-3256 dealing with irrigation and water conservation districts and to the provisions in A.R.S. Sections 48-901 et. seq. dealing with County Improvements Districts. Continuing administration of the Ditch Company must be a continuing drain upon the court's time. For a permanent solution, the court should direct the commissioners to circulate a petition among the title holders of properties within the confines of the ditch company to request the Yavapai County Board of Supervisors to form an irrigation district or improvement district to take over the affairs now managed by the Court. The legislature has established exhaustive rules for many situations which this Court can now handle only on a case by case basis and by cretaing after the fact rules. As an alternative, perhaps the Court should re-evaluate the proposed Order in light of the provisions of administration of an irrigation district set

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forth in A.R.S. Section 48-2971 and either adopt the provisions or incorporate them by reference as a much better system of rules for governing the district.

DATED this 14th day of July, 1989.

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