

FILED

1:00 O'Clock, M

APR 10 1990

ETHEL BOSTON Clerk

By *[Signature]*
Deputy

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

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 Plaintiffs,) No. 4772
10 vs.) Division 1
11 WALES ARNOLD, et al.,) MOTION FOR ISSUANCE OF
12 Defendants.) ORDER TO SHOW CAUSE

13
14 VINCE V. HIGGINBOTHAM, GLEN W. EVERETT, HOWARD D.
15 FERGUSON, JOHN REDDELL and GORDON BROCKER, Commissioners of the
16 VERDE DITCH COMPANY, for and on behalf of the VERDE DITCH COM-
17 PANY, respectfully request the issuance of an Order to Show Cause
18 requiring JIM DAVIS and COLLEEN DAVIS, his wife, to appear and
19 show cause, if any they have, why they should not be found in
20 violation of this Court's existing Orders, and why they should
21 not be ordered to remove all unauthorized structures they have
22 placed along the Verde Ditch.

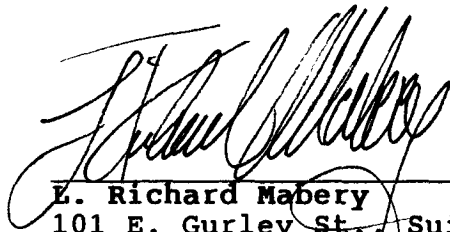
23 This motion is supported by the Memorandum of Points and
24 Authorities and the Affidavit filed herewith, both of which are
25 incorporated herein by reference.

26 RESPECTFULLY SUBMITTED this 10th day of April, 1990.

27 * * * * *

28 * * * * *

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Counsel for VERDE DITCH COMPANY

MEMORANDUM OF POINTS AND AUTHORITIES

On March 23, 1909, the then District Court of the Fourth Judicial District of the Territory of Arizona, predecessor to the Superior Court in and for the County of Yavapai, established Commissioners of the Verde Ditch to be responsible to the court with duties of managing the affairs of the Verde Ditch. In order to help guide the Commissioners in the management of the affairs of the Verde Ditch, in 1963 Judge Jack L. Ogg promulgated Rules and Regulations for the operation of the Verde Ditch. Included in those Rules are the following sections:

2. The Commissioners, their agents, employees and equipment shall have the right of usage at any time of necessary work areas adjacent to the Ditch in pursuit of maintenance, repair and operation of the facility. * * *

3. Construction or installation of gates, buildings, cross-fences, or any other obstruction over the Ditch or in the work area which may interfere with usage of the work area or Ditch is forbidden.
* * *

On August 8, 1989, to further protect the welfare and needs of the Verde Ditch and its shareholders, Richard Anderson, Yavapai County Superior Court Judge and Master of the Verde Ditch, issued an Order Promulgating New Rules and Regulations for the Operation of the Verde Ditch, which Order included the following rules:

2. The commissioners, their agents and/or employees, using appropriate equipment, shall have the right of useage at all times to the work areas adjacent to and on both sides of the ditch for the

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1 purposes of maintenance, repair, and operation of
2 the Verde Ditch. Private property may be crossed
in order to gain access to the Verde Ditch.

3 3. Construction or installation of gates, build-
4 ings, posts, fences, cross-fences or any other
5 obstruction along or over the ditch or in the area
6 adjacent to the ditch which interferes with the
7 flow of the Verde Ditch or the ability of the Verde
8 Ditch commissioners, agents or employees to move
9 necessary equipment up and down the ditch and ditch
10 banks is prohibited.

11 On or about a date or dates subsequent to February,
12 1989, Jim Davis and Colleen Davis, his wife, owners of private
13 property located in Yavapai County adjacent to the right bank of
14 the Verde Ditch, constructed or caused to be constructed, fence
15 posts and connecting pipe approximately three (3) feet from the
16 edge of the ditch, an iron fence down to the ditch and an elec-
17 tric fence running parallel to the ditch. Further, Jim Davis and
18 Colleen Davis, his wife, have planted, or have indicated they in-
19 tend to plant, young trees along the ditch bank. The construc-
20 tion of such fences, fence posts and trees impedes and prohibits
21 the ability of the Verde Ditch Commissioners, their employees and
22 machinery to move freely along the Verde Ditch to maintain,
23 repair and operate the ditch. Such obstructions are improper and
24 without authorization, and despite requests by the **VERDE DITCH**
25 **COMPANY**, Jim Davis and Colleen Davis, his wife, have failed and
26 refused to remove such obstructions.

27 Accordingly, the **VERDE DITCH COMPANY** is without adequate
28 remedies unless the Court orders Jim Davis and Colleen Davis, his
wife, to show cause why:

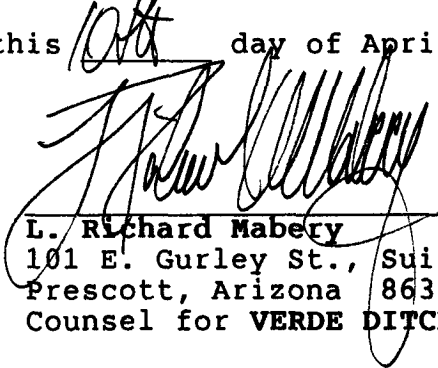
1. An appropriate order should not be entered against
them requiring them to remove the obstructions they have placed
along the Verde Ditch;

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2. Requiring them to pay the VERDE DITCH COMPANY's attorney's fees and court costs incurred herein; and

3. Such other and further relief as the Court deems just and proper under the circumstances should not be granted.

RESPECTFULLY SUBMITTED this 10th day of April, 1990.



L. Richard Mabery
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Counsel for VERDE DITCH COMPANY

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A F F I D A V I T

1
2 STATE OF ARIZONA,)
3) ss:
4 County of Yavapai.)

5 VINCE V. HIGGINBOTHAM, GLEN W. EVERETT, HOWARD D.
6 FERGUSON, JOHN REDDELL and GORDON BROCKER, being first duly
7 sworn, depose and state:

8 1. Affiants are Commissioners of the Verde Ditch
9 Company.

10 2. The Verde Ditch is over eighteen (18) miles in
11 length and services approximately five hundred (500) water users.

12 3. The Verde Ditch Company has repeatedly requested
13 that JIM DAVIS and COLLEEN DAVIS, his wife, remove the fences,
14 fence posts and trees they have placed and planted along the
15 Verde Ditch, but they have failed and refused to do so.

16 4. Unless the obstructions placed along the Verde
17 Ditch by Jim Davis and Colleen Davis, his wife, are removed, the
18 ditch cannot be adequately maintained, repaired and operated in a
19 proper manner.

20 5. The inability of the Verde Ditch Company to proper-
21 ly maintain, repair and operate the ditch existing on the Davis
22 property will not only cause damage to the ditch and increase
23 maintenance and repair expenses and costs, but may ultimately
24 result in the authorized water users of the ditch being unable to
25 receive ditch water in the future.

26 Further Affiants sayeth not.

27 
28 Vince V. Higginbotham

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Glen W. Everett
Glen W. Everett

Howard D. Ferguson
Howard D. Ferguson

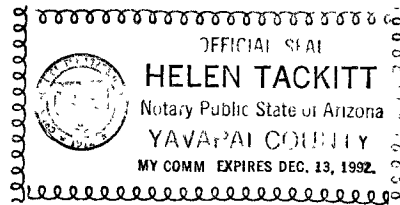
John Reddell
John Reddell

Gordon Brocker
Gordon Brocker

SUBSCRIBED AND SWORN TO before me this 6 day of
April, 1990, by VINCE V. HIGGINBOTHAM, GLEN W. EVERETT, HOWARD D.
FERGUSON, JOHN REDDELL and GORDON BROCKER.

Helen Tackitt
Notary Public

My Commission Expires:
Mh/10/10



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