

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

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SARDA K. HANNAH, CLERK
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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. P1300CV4772
)
Plaintiffs,) Division 1
)

vs.)

WALES ARNOLD, et us., et al.,) PETITION FOR TEMPORARY USE OF A
In the matter of VERDE DITCH COMPANY) PORTION OF THE SPECIAL
ASSESSMENT FUNDS

Defendants.) (Ex Parte)
)

In the Matter of the VERDE DITCH)
COMPANY,)
)

Albert Dupuy, Jr., John Teague, Vernon Hilbers, Jeff Cochrane and David Myers, Commissioners of the Verde Ditch Company, respectfully request that the Court approve the temporary use by the Verde Ditch Company of up to \$35,000.00 of the Verde Ditch Company's Special Assessment fund to be used solely to provide immediate funding so that the improvements to be constructed and installed pursuant to the U.S. Forest Service Grant number 13-DG-11030905-004 are completed in January/February 2013. This Petition is supported by the Memorandum of Points and Authority incorporated herein.

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MEMORANDUM OF POINTS AND AUTHORITY

History.

The Verde Ditch Commissioners have been actively pursuing possible sources for funds to make improvements to the Verde Ditch which will increase the efficiency and functionality of the Ditch and add safety features and monitoring ability above what the income derived from the regular assessments would otherwise allow. As a result of those efforts, the Verde Ditch Company was successful in obtaining the U.S. Forest Service Grant 13-DG-11030905-004 (hereinafter "Grant") for \$71,286.00 and which this Court approved on December 5, 2012. The U.S. Forest Service executed the Grant Contract on December 17, 2012.

Changed Circumstances.

The original plan for funding the costs and expenses of the projects encompassed by the Forest Service Grant was that the Verde Ditch Company would use the reserves from the Regular Assessments account to fund the project and seek reimbursement from the U.S. Forest Service as various segments of the Grant project were completed. However, given the continuing drought conditions, the Verde Ditch Company continued to provide water to the various Verde Ditch Shareholders until recently. Depending on the winter moisture, the Verde Ditch may need to return water to the Ditch by March 2013. Much of the work to implement the Grant improvements require a dry ditch (further influenced by winter moisture), thereby reducing the originally contemplated time between billing for work performed and reimbursement by the U.S. Forest Service. Furthermore, it was envisioned that the Grant contract documents would be signed and funding reimbursements available months ago. However, the final Grant documents were unfortunately delayed in completion and once received had to be submitted to the Court for approval.

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The reserves in the Regular Assessment account for the Verde Ditch Company are not adequate to provide for the normal winter dry ditch maintenance projects and the total cost of the extra Grant improvements both of which will occur during the dry ditch period. This combination of factors make it unlikely that the Verde Ditch Company can fund all of the normal winter maintenance work and the Grant improvements before the reintroduction of water into the ditch. Originally, the fall back plan was to complete any remaining Grant work during the 2013/2014 dry ditch period, if necessary. However, there is a concern, given the economic stalemate in Washington D.C., that any incomplete Grant improvements will be fundable after the current Grant period ends in September 2013. The Commissioners believe it to be in the best interest of the shareholders of the Verde Ditch Company to complete the Grant projects during the current dry ditch period, rather than risk that unused funds will not be renewed and available next year.

Accordingly, to ensure that the Grant improvements are completed while the ditch is dry and be assured of full reimbursement under the existing Grant, the Verde Ditch Commissioners propose to use up to \$35,000.00 from the Special Assessment fund. The U.S. Forest Service has agreed to request expedient reimbursement upon presentment of actual invoices and billings which should reduce the reimbursement time frame to two or three weeks after submission. However, even with the U.S. Forest Service cooperation, the ability to use just the Regular Assessment funds and periodic partial reimbursements now appears insufficient to assure completion of the Grant projects during the current dry ditch season.

The Special Assessment fund have been specifically segregated pursuant to Court order and presently consists of over \$90,000.00. While work continues within the parameters of the Special Assessment projects, it is anticipated that the Special Assessment fund expenses through the first half of 2013 will be substantially less than one-half of the current Special Assessment fund. Accordingly,

the use of up to \$35,000.00 of the Special Assessment fund will not impede or imperil the ability to continue the work of the Special Assessment projects but will allow all of the normal winter maintenance and Grant projects to be completed. The complete reimbursement to the Special Assessment fund from the Grant reimbursement should be completed by April 2013.

Conclusion.

With the Court's approval of the temporary use of a portion of the Special Assessment funds, the Verde Ditch Commissioners believe that the completion of the improvements and enhancements contemplated by the U.S. Forest Service Grant can be completed by the end of February 2013; that completion of the Grant projects will eliminate the potential evaporation of the Grant reimbursements and ensure that the improvements and enhancements made possible by the Grant are fully functioning for the 2013 irrigation season. In addition, the Special Assessment account should be fully refunded by April 2013 without any hinderance or limitation on the continuing Special Assessment projects.

For all the foregoing reasons, it is respectfully submitted that the Commissioners Petition be approved authorizing the Commissioners to use up to \$35,000.00 of the Special Assessment funds to provide immediate funding of the Grant improvements and enhancements.

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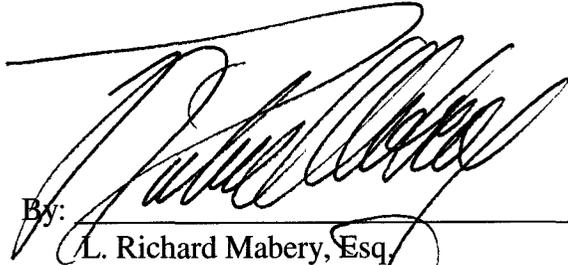
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RESPECTFULLY SUBMITTED this 19th day of December, 2012

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By: _____

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