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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA ✓
2013 OCT 29 PM 4:06
SANDRA K MARKHAM, CLERK
BY: V. REISINGER

State Bar I.D. No. 005188

Attorney for The Verde Ditch Company

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

GEORGE W. HANCE, et al.,)

Plaintiffs,)

vs.)

WALES ARNOLD, et us., et al.,)

Defendants,)

THE VERDE DITCH COMPANY,)

Petitioner,)

v.)

BERNADINE A. LIPPINCOTT, as Trustee)

of the BERNADINE A. LIPPINCOTT)

LIVING TRUST, dated November 16, 1984,)

Respondent.)

No. P1300CV 4772

Division 1

APPLICATION FOR ORDER
TO SHOW CAUSE

(OSC Hearing Requested)

Law Offices of
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The Verde Ditch Company, through undersigned counsel, respectfully requests that the Court enter an Order to Show Cause as to why Bernadine A. Lippincott, as Trustee of the Bernadine A. Lippincott Living Trust dated November 16, 1984, should not be ordered to appear and show cause why judgment should not be entered against the Respondent for the failure to comply with the Court's Order Promulgating New Rules and Regulations for the Operation of the Verde Ditch dated August 8, 1989, (recorded on October 17, 1989 at Book 2192, Page 24, Official Records of Yavapai County), and or Paragraph (4) of the Order for Authorization and Approval of a Special Assessment filed with the Court on September 27, 2005.

The Lippincott Trust has failed and refused to pay the regular and special Verde Ditch assessments since 2009. This Application is supported by the following Memorandum of Points and Authorities and the Affidavit of a Verde Ditch Commissioner, filed herewith and incorporated herein by reference.

There are currently the following amounts due:

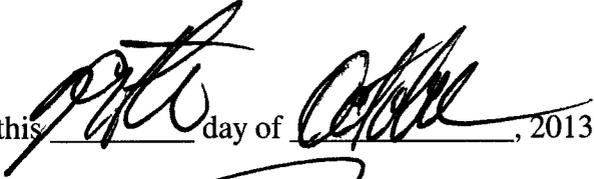
		<u>Amount</u>	<u>Interest</u>	<u>Penalty</u>
A.	2009 Special Assessment	\$101.25	\$1.68	
B.	2010 Assessments	344.25	34.42	
C.	2010 Special Assessment	101.25	10.12	\$54.67
D.	2011 Assessments	344.25	34.42	
E.	2011 Special Assessment	101.25	10.12	99.22
F.	2012 Assessments	344.25	34.42	
G.	2012 Special Assessment	101.25	10.12	143.77
H.	2013 Assessments	425.25	<u>35.40</u>	<u>186.30</u>
I.	2013 Special Assessment	<u>101.25</u>		
		\$1964.25	\$170.70	\$483.96

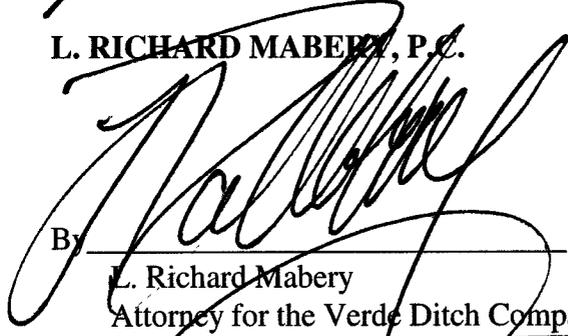
The total amount of delinquent assessments is \$1964.25; plus interest of \$170.70, late payment penalties in the amount of \$483.96, and reasonable attorney's fees and costs of not less

than \$ 800.00 if uncontested, or such reasonable amount as the Court may deem appropriate if contested. Repeated attempts have been made to collect these past due assessments by the Verde Ditch, to no avail.

The Verde Ditch Company further requests that Bernadine A. Lippincott be ordered to appear and show cause why judgment shall not be entered against them for the total amount due, including penalties, interest, reasonable attorney's fees and costs incurred herein, pursuant to Paragraph 6 of the Rules and Regulations for the Operation of the Verde Ditch dated August 8, 1989, and Paragraph (4) of the Order for Authorization and Approval of a Special Assessment, filed with the Court on September 27, 2005.

RESPECTFULLY SUBMITTED this 10th day of October, 2013.


L. RICHARD MABERY, P.C.

By 

L. Richard Mabery
Attorney for the Verde Ditch Company
234 North Montezuma Street
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/dm

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MEMORANDUM OF POINTS AND AUTHORITIES

The Verde Ditch Commissioners operate under promulgated Rules and Regulations regarding the operation of the Ditch and to defray cuts, costs and expenses. Verde Ditch first established in 1909 with revisions in 1963 and 1989, (the current Rules and Regulations).

Rule 6 (page 3, line 25-27):

“All shareholders shall be assessed, and their land subject to, an assessment determined as the respective percentage of the shareholder’s irrigated acreage or usage, whichever is greater. The minimum assessment shall be one acre.”

(page 4, line 8 & 9):

“All assessments that are delinquent shall bear interest at the rate of ten percent per annum.”

(Page 4, line 13-15)

“In addition thereto, there shall be a minimum delinquent penalty of ten dollars or ten percent of the unpaid assessment amount, whichever is greater.”

In regards to Special Assessment, Verde Ditch Commissioners have petitioned the Superior Court to reduce the 2012-2013 Special Assessment from fifty dollars (\$50.00) to twenty-five dollars (\$25.00).

Despite repeated requests Bernadine A. Lippincott, as Trustee of the Bernadine A. Lippincott Living Trust, dated November 16, 1984, has failed to respond to any assessment notices and should be ordered to appear and show cause why judgement shall not be entered against her for the total amount due, including penalties, interest, reasonable attorneys’ fees and cost incurred herein.

/dm