

1 DOUGLAS E. BROWN - SBN 010791
DAVID A. BROWN - SBN 006827
2 J ALBERT BROWN - SBN 030918
BROWN & BROWN LAW OFFICES, P.C.
3 Post Office Box 489
Eagar, Arizona 85925
4 Phone: (928) 333-4717
DouglasBrown@outlook.com
David@b-b-law.com
5 JABrown@b-b-law.com

6 *Attorneys for the Monroe Lane Neighborhood Coalition*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF YAVAPAI**

9 GEORGE W. HANCE, *et al.*,

10 Plaintiff,

11 vs.

12 WALES ARNOLD, *et ux., et al.*,

13 Defendant.

14 In the matter of the VERDE DITCH
15 COMPANY

No. P1300 CV4772

Division 1

**MOTION FOR EXTENSION OF TIME
TO OBJECT**

17 The undersigned counsel represents the Monroe Lane Neighborhood
18 Coalition ("the Coalition") in the above-captioned proceedings. Members of the Coalition
19 are identified in ATTACHMENT A. The Coalition includes a number of shareholders of
20 the Verde Ditch Company. The Verde Ditch Company is represented by L. Richard
21 Mabery.

22 Attorney Douglas E. Brown of Brown & Brown Law Offices contacted
23 attorney Rick Mabery on February 3, 2015, to discuss an extension of the February 17,
24 2015, deadline to file objections to the proposed Memorandum of Understanding (later
25

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2015 FEB 12 PM 2:25

DONNA McQUALITY, CLERK ✓

BY: J YOUNT

1 defined in this motion). Mr. Mabery said that he did not object to a 60-day extension of
2 time to file objections, but stated that he did not have the authority to stipulate to such an
3 extension of time.

4 Accordingly, and for the reasons set forth in this Motion, the Coalition
5 requests that the Court grant an extension of the current February 17, 2015, deadline to
6 object to the Memorandum of Understanding and that it vacate other deadlines and/or
7 hearing dates so that they may be rescheduled after the new objection deadline. A separate
8 motion for an expedited ruling and order is being simultaneously filed with this Motion.

9 **MEMORANDUM.**

10 A. History and Background.

11 The Verde Ditch Company operates the Verde Ditch, which is used to divert
12 water from the Verde River to irrigate lands in and near Camp Verde, Arizona. These
13 landowners hold shares in the Verde Ditch Company (“the Shareholders”). The shares
14 correspond with a percentage of acreage served by the Verde Ditch. The Shareholders
15 include the Coalition members, who constitute a portion of all the Shareholders.

16 The water that is diverted via the Verde Ditch is subject to a court decree
17 that was issued on March 23, 1909, in the above-styled case, *Hance v. Arnold* (“the
18 Decree”). On December 1, 2014, the Verde Ditch Company filed a petition with the Court
19 that requested approval and implementation of the Memorandum of Understanding that
20 was being negotiated (“the Petition” and “the Memorandum of Understanding,” as the case
21 may be). On December 4, 2014, the Court ordered that the Verde Ditch Company notify its
22 shareholders of the Petition and the Memorandum of Understanding. By letter, dated
23 December 19, 2014, the Verde Ditch Company notified the Shareholders of the Petition,
24 the Memorandum of Understanding, and the associated deadlines for reviewing and
25 objecting to the Memorandum of Understanding. A number of Coalition members did not

1 receive the December 19 notice from the Verde Ditch Company until after Christmas. In
2 some cases, Shareholders who are now members of the Coalition did not receive the
3 December 19 notice until the second week of January 2015.

4 B. The Significance of the Matter before the Court.

5 Coalition members began to request representation by the undersigned
6 counsel on January 23, 2015. Due to conflict checks and their resolution, undersigned
7 counsel was not retained by the Coalition until February 4, 2015. The Coalition members
8 procured legal counsel because they recognized the significance of the proposed
9 Memorandum of Understanding and its potential impact on their water uses. For example:

10 1. The Memorandum of Understanding contemplates the most
11 substantive modification of the Decree in the Decree's entire 110-year-plus history.

12 2. Determination of the historically irrigated acreage under the Decree
13 is the primary scope of the Memorandum of Understanding; however, different
14 numbers have been presented, leaving an opportunity for adjusting the number of
15 acres served by the Verde Ditch. The Petition states that there are approximately
16 1,100-1,400 acres of land receiving or believed to be entitled to receive water from
17 the Verde Ditch. The December 19 notice letter states that there are currently over
18 1,200 acres of land that are receiving water or entitled to receive water from the
19 Verde Ditch. Finally, the Memorandum of Understanding states that less than
20 1,100 acres are being irrigated. The Coalition believes that it should have a
21 reasonable opportunity to review, comment and possibly object to the irrigated
22 acreage identified in the Memorandum of Understanding and related materials. The
23 Coalition also believes that it should have a reasonable opportunity to review,
24 comment and possibly object to the procedures identified in the Memorandum of
25 Understanding and related materials.

1 C. Practical Considerations Concerning the Timeframe.

2 The December 19, 2014, notice from the Verde Ditch Company identified
3 the following deadlines that were set by the Court in its December 4, 2014, Order
4 Regarding Petition for Approval of a Memorandum of Understanding and Authority for the
5 Verde Ditch Commissioners to Proceed (“the December 2014 Court Order”):

- 6 • **February 17, 2015** – Shareholders’ objections to the Memorandum
7 of Understanding are due.
- 8 • **March 5, 2015** – A hearing in *Hance v. Arnold* will be held at 1:30
9 p.m. at the Camp Verde Judicial Center, Camp Verde, Arizona.
- 10 • **August 3, 2015** – A hearing is scheduled re: *Hance v. Arnold* at 9:00
11 a.m. for the Court to consider modification of the Decree if the
12 Memorandum of Understanding is approved.

13 The February 17, 2015, objection deadline provides less than two weeks for counsel to
14 review the technical and legal issues in the Memorandum of Understanding and the Petition
15 and to review the Coalition members’ respective historical irrigation uses. The historically
16 irrigated acreage issues are too complex to be understood in a two-week period. The
17 Coalition intends to work with Herb Dishlip, the undersigned counsel’s consultant who was
18 at one time the Deputy Director of the Arizona Department of Water Resources. Mr.
19 Dishlip is unable to meet with the Coalition and undersigned counsel until February 24.
20 The Coalition members are currently gathering information about historical irrigation uses
21 to review with him.

22 In addition to a 60-day extension of time to file objections to the
23 Memorandum of Understanding, undersigned counsel believes that it would be prudent to
24 vacate all of the other court hearings currently set in the December 2014 Court Order. For
25 example, a half day hearing on the Memorandum of Understanding and potential objections
26

1 is currently set for March 5, 2015. If the 60-day extension is granted, this would occur
2 before the parties had an opportunity to file their objections. The undersigned counsel
3 believes that many issues associated with the Memorandum of Understanding can be
4 resolved through negotiation and settlement. Brown & Brown Law Offices has
5 successfully achieved settlements on the West Clear Creek Decree in the Verde Valley with
6 the assistance of this Court. If settlement cannot be reached, then the Court may need to
7 order discovery deadlines, deadlines for briefs and motions, hearings, and so forth – all of
8 which cannot reasonably be accomplished by August 3, 2015, which is the date the
9 December 2014 Court Order suggests the Decree be modified.

10 D. Proposed Extension and Process.

11 As proposed by the undersigned counsel, the new and extended deadline to
12 file objections to the Memorandum of Understanding will be Friday, April 17, 2015. After
13 the parties have had an opportunity to review the objections, they should confer with the
14 Court in a telephonic status conference scheduled sometime in May.¹ At this status
15 conference, the Court and the parties can determine whether some issues can be settled or
16 how the case should proceed.

17 CONCLUSION.

18 The Coalition and its counsel request that the Court extend the deadline to
19 file objections to the Memorandum of Understanding from 17 February 2015 to 17 April
20 2015. As additional relief, the Coalition and its counsel ask the Court to vacate all hearings
21 set forth in the December 2014 Court Order so that future hearings may be set in a May
22 2015 telephonic status hearing.

23
24
25 ¹ Brown & Brown's attorneys will not be available from Tuesday, May 26 through Friday, May 29,
26 2015.

1 RESPECTFULLY SUBMITTED this 9th day of February 2015.

2 BROWN & BROWN LAW OFFICES, P.C.

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Douglas E. Brown
David A. Brown
J Albert Brown
Post Office Box 489
Eagar, Arizona 85929

8 ORIGINAL of the foregoing mailed for
9 filing this 9th day February, 2015 to:

10 Clerk of the Superior Court
11 Yavapai County - Division I
12 120 South Cortez Street
13 Prescott, Arizona 86303

14 COPIES of the foregoing mailed and
15 emailed this 9th day of February, 2015, to:

16 Honorable David L. Mackey
17 Judge of the Superior Court and
18 Master of the Verde Ditch
19 Yavapai County Courthouse
20 120 South Cortez Street RM207
21 Prescott, Arizona 86303

22 L. Richard Mabery, Esq. (maberypc@cableone.net)
23 Law Offices of L. Richard Mabery, P.C.
24 234 North Montezuma Street
25 Prescott, Arizona 86301
26 Attorney for Verde Ditch Company

Kennir Isaacson

ATTACHMENT A

Members of the Monroe Lane Neighborhood Coalition

1
2
3 Alan Cooley
4 1697 South Monroe Lane
5 Camp Verde, Arizona 86322

6 Steven M. Borruso
7 1925 South Monroe Lane
8 Camp Verde, Arizona 86322

9 Tim and Tamira Woodward
10 1725 Saki Minie Road
11 Camp Verde, Arizona 86322

12 Delbert "Chip" Norton Jr. and Kathleen Mary Davis
13 Post Office Box 1671 (Mailing)
14 1825 Monroe Lane (Physical)
15 Camp Verde, Arizona 86322

16 Larry Watkins and Roxanne Stell
17 Post Office Box 30368
18 Flagstaff, Arizona 86003-0360

19 Kevin Norton
20 536 West Sact Minie Road
21 Camp Verde, Arizona 86322

22 Rhonda Besanceney
23 1925 South Monroe Lane
24 Camp Verde, Arizona 86322

25 Evelyn Hatcher
26 1855 South Gamble Trail
Camp Verde, Arizona 86322

James and Lorraine Acheson
Post Office Box 4544
1955 South Monroe Lane
Camp Verde, Arizona 86322