FILED
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DONNA McQUALITY, Clerk
By: J YOUNT

Patrick Barry, 006056
United States Department of Justice
Environment and Natural Resources Division
Indian Resources Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(202) 305-0269
patrick.barry@usdoj.gov

Attorneys for the United States of America

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

GEORGE W. HANCE, *et al.*, Plaintiffs v. WALES ARNOLD, *et ux.*, *et al.*, Defendants In the matter of the VERDE DITCH COMPANY	No. P1300CV4772 Division 1 **RESERVING JURISDICTION:** **THE UNITED STATES FILES OBJECTIONS TO THE MOU SUBMITTED BY THE VERDE DITCH COMMISSIONERS FOR APPROVAL.**

I

INTRODUCTION

A. Background.

By Petition dated December 1, 2014, the Verde Ditch Company ("VDC") sought authorization from this Court to enter into a Memorandum of Understating ("MOU") with the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association (collectively "SRP"), to "come to a comprehensive agreement on the delineation of lands served by the Verde Ditch that have Historic Water Use." *See* MOU at 1, ¶ D. The VDC Petition, the Court's Order, and the MOU are attached hereto as Attachment One. Thereafter, the Court directed that "a copy of the [Court's Order], along with a copy of the MOU, *shall be served* by first class mail, postage prepaid to every Shareholder of the Verde Ditch at the last known address of the Shareholder on file at the Verde Ditch office." *Id.* (Emphasis added).

No other form of service of the MOU was authorized by the Court. *See* Order of December 4, 2014 ("Order"). The Order also notified all Shareholders that the Court intended to hold a hearing on March 5, 2015, to consider any objection to the VDC's request to enter into the MOU. Objections to the MOU were to be filed on or before February 17, 2015.

The United States of America is a Shareholder in the Verde Ditch Company. The United States did not receive notice of either the Court's Order or the MOU from the Verde Ditch Company. The United States did receive information regarding this matter from the Yavapai-Apache Nation on February 3, 2015. The Yavapai-Apache Nation alleges that it received notice on January 6, 2015. There is no service list attached to the Order or the MOU, nor has the United States been able to locate any filing with the Court that the VDC completed service as directed.

B. The MOU.

The "Parties" to the MOU are defined as SRP, an agency that is not a party to the judgment and decree in *Hance v. Arnold*, and does not hold shares in the VDC; and the VDC. The stated purpose of the MOU is:

> In an effort to avoid the time and cost of extensive litigation regarding entitlement to Verde River water and to reduce the frustration, expense, and uncertainty for Verde Ditch shareholders and SRP, the Parties have met in an attempt to come to a comprehensive agreement on the delineation of the lands served by the Verde Ditch that have Historic Water Use.

MOU at 1, ¶ D. "Historic Water Use" is a defined term meaning "use of waters of the Verde River System that was (a) commenced on a particular parcel prior to June 2, 1919 or (b) commenced after June 12, 1919 pursuant to a certificate of water right issued by ADWR or other state agency of similar jurisdiction prior to January 1, 2014 or pursuant to a severance and transfer of a pre-1919 right approved by SRP." MOU at 3-4, ¶ 4.11. "The Parties intend for this MOU to set forth a process whereby they can work together, along

with the water users on the Verde Ditch to agree, as among the Parties, upon the existence of Historic Water Use for specific parcels served by the Verde Ditch; to attempt to resolve issues with respect to lands served by the Verde Ditch that do not have Historic Water Use or have disputes regarding the existence of Historic Water Use . . .." *Id.* However, the MOU specifically excludes "any lands or uses claimed by the Yavapai-Apache Camp Verde Nation . . .." *Id.* at 6.

From a reading of the MOU, it appears that, over time, some Verde Ditch Shareholders may have changed the place of use of their water right without seeking leave of court. Accordingly, the Verde Ditch Commissioners seek to "facilitate severance and transfer so that lands receiving water from the Verde Ditch *are amended* appropriately and have a recognized right that is protectable under state law." Id. at 8, ¶ 8.1. (Emphasis added).

The MOU is a vehicle to reconfigure water rights locations, modify the Judgment in *Hance v. Arnold*, and, seek an adjudication of rights as between the Verde Ditch and SRP. *See* MOU at 12, ¶12.4 ("[A]pproval of the Final Settlement Agreement will modify the existing judgment and decree in *Hance v. Arnold* . . ."). Finally the VDC agrees that it will forever forgo a "contest the existence of the SRP Rights in any Proceeding" and it will not "not to provide financial or other assistance to any other person or entity in contesting such rights." *Id.* at 12.3. Presumably, this paragraph prohibits the VDC from forever assisting its Shareholders, including the United States in contesting any rights SRP may claim.

The United States is a Shareholder in the Verde Ditch Company and has made reserved water rights claims to water in the Verde Valley on behalf of the Yavapai

Apache Nation as wells as claims to Verde Ditch water. See United States Statement of Claimant, filed in *In Re General Adjudication of All Rights to Use Water in the Gila River System and Source,* Maricopa County Superior Court Casue Nos. W-1 though W-4, consolidated ("*Gila Adjudication*"), November 29, 1985, Attachment Two hereto. (Attachment Two references Claim 36-76228 which is the VDC filing to protect the same right.) The United States' claims are adversarial to SRP's claims on the Verde River.

II

UNITED STATES OBEJCTION

A. Service.

This Court's Order unambiguously states that every Verde Ditch Shareholder shall be served "by first class mail at the last known address of the Shareholder on file at the Verde Ditch office." Order at 2. There is no offered substitute. Publication is allowed for future "hearings" but not for the original service.

Failure to serve the United States with the VDC MOU not only violates the Court's Order, but also Arizona law. *See Taylor v. Tempe Irrigating Canal Co.,* 21 Ariz. 574, 581, 193 P. 12, 15 (1920) ("In an application to the court for a confirmation or enforcement of the experimental standard for a change of that standard, 'as conditions may require and develop,' all of the appropriators and users of water under the defendant canal company's canal should be served with notice and permitted to appear; for it is apparent that all such are vitally interested").

In the instant case, there is no evidence that the United States received or was served with notice. Most troubling is that although the VDC, through its attorney, made an *ex parte* application to the Court for authority to provide notice, no effort was made to formally identify who was entitled to notice. Consequently, no certificate of service was filed with the Court or

served upon Shareholders. Moreover, no Notice of Compliance was filed with the Court to demonstrate to whom service was made. Objectors are left to guess whether they were mailed Notice or simply left off the list. Compliance with the Court's Order was not given the respect due, in light of the fact that this matter concerns the initiation of a process whose stated goal is to modify the *Hance v. Arnold,* Decree.

B. This Court is without jurisdiction to modify the *Hance v. Arnold* Decree.

VDC and SRP seek to enter into a final settlement that "will modify the existing judgment in *Hance v. Arnold.*" *See* MOU at 12, ¶12.4. As noted above, the Arizona Supreme Court held in *Taylor v. Tempe Irrigating Canal Co.,* that notice is required when seeking to modify an existing decree. However, in that specific case, the "court retained the power to [do so in limited circumstances] '*upon application* to the court in this suit hereafter as conditions may require or develop after due trial of such [issue].'" *Taylor,* 21Ariz. at 580, 12 P. at 14. No such reservation is provided for in the *Hance v. Arnold* judgment or decree.

"In Arizona where there is no set term of court, the inherent power of the court to vacate or modify its judgment does not extend beyond the point at which the judgment becomes final, except as authorized by law." *Preston v. Denkins*, 94 ariz. 214, 219, 382 P.2d 686, 689 (1963). There exists no motion by either SRP (not a party to the judgment in *Hance v. Arnold*) or the Verde Ditch Company citing any rule of law that would allow the modification of the *Hance v. Arnold* judgment. Should that argument be made, however, the United States reserves the right to respond.

C. When an adjudication of water rights is already pending, and a party has been noticed as a claimant, that general adjudication is the exclusive forum in which the notices party may adjudicate water rights at issue in the action.

The MOU concedes that there are pending in the *Gila Adjudication*, claims filed by the

Verde Ditch Company to protect its claimed rights under the Verde Ditch – including the United States' claims under the Verde Ditch. MOU at 1, ¶ A. The MOU also recognizes that individuals and others also have filed claims in the Gila Adjudication claiming a right to receive water from the Verde Ditch. *Id.* By reconfiguring the lands upon which claims in the *Gila Adjudication* are based, in contrast to confirming rights under or enforcing the *Hance v. Arnold* Decree, the MOU intends to modify the rights now before the Adjudication Court. The Court is without jurisdiction to do so.

When a general adjudication of water rights is already pending, that general adjudication is the exclusive forum in which water rights are to be adjudicated. *See Gabel v. Tatum*, 146 Ariz. 527, 529, 707 P.2d 325, 327 (App. 1985) ("Subject matter jurisdiction abates when another county has already assumed jurisdiction in the same matter.") SRP's and the Verde Ditch Commissioners' assurance that their modification of the judgment in *Hance v. Arnold* "shall not be deemed an adjudication of water rights for any particular parcel of land that would otherwise be determined in the [Gila] Adjudication" is an empty promise. The Court in *Gable* recognized that such illusory distinctions are without merit. Entering into settlement negotiations with a non-party to the Verde Ditch can only be seen as an attempt to provide a different basis for water rights claimed before the Gila Adjudication court more than 30 years ago.

D. The United States and the Yavapai-Apache Nation have been left out of the process proposed by the MOU.

Currently, the United States claims to Verde River water, in its own right and for the benefit of the Yavapai-Apache Nation, conflict with claims to water of SRP. Nevertheless, the VDC should not be permitted to exclude either the United States or the Yavapai-Apache Nation from any benefits that may be derived from the proposed MOU (notwithstanding our objections). As a

shareholder in the VDC, the United States is certainly entitled to any benefits that accrue to shareholders generally. The VDC has not explained why it purposefully excluded the United States from this process.

III

CONCLUSION

For the reasons stated above, the Verde Ditch Commissioners' request to enter to the MOU should be denied.

Respectfully submitted this 17th day of February, 2015.

Patrick Barry
Attorney, Department of Justice
Environment & Natural Resources
Division
Indian Resources Section
P. O. Box 44378
Washington, D.C. 20026-4378
(202) 305-0254

VERDE DITCH COMPANY
P. O. Box 2345
Camp Verde, Arizona 86322
(928) 300-3103

December 19, 2014

Special Meeting
Verde Ditch Company
January 24, 2015

Dear Shareholder:

The Verde Ditch Company is hosting an informational meeting for all Shareholders commencing at 10:00 a.m. on the 24th day of January, 2015, at the Multi-Use Complex, 280 Camp Lincoln Road, Camp Verde High School, Camp Verde, Arizona. All Shareholders are urged to attend this important meeting.

The Verde Ditch Company will be providing background information regarding the analysis and process that laid the groundwork in the formation of the proposed Memorandum of Understanding (MOU) with Salt River Project (SRP), a copy of which is enclosed.

The Memorandum of Understanding provides a procedure for Shareholders to protect and confirm their historic water use through an amendment to the *Hance v. Arnold* Decree. For the Shareholders that have a historical use challenge, the MOU provides a process to assist those owners to obtain a confirmable historical use.

The Verde Ditch Company and the Court want to hear your concerns, objections or comments to the terms of the MOU. We understand that there will be questions and this will be an opportunity for Shareholders to receive detailed information and consider others' comments on the MOU before the deadline to file a formal objection with the Court.

In 1909, the territorial court for Yavapai County issued a judgment commonly referred to as the *Hance V. Arnold* Decree. At that time, there were 16 property owners claiming the right to receive Verde River water through the Verde Ditch. Currently, there are over 563 Shareholders and over 1200 acres receiving water or entitled to receive water from the Verde Ditch.

The Commissioners of the Verde Ditch Company have undertaken a multi-year effort to research and document the historic use of water to every parcel of land that currently receives or may be entitled to receive water from the Verde Ditch (except for the Yavapai Apache Tribal claims and uses). This effort has been in cooperation with the Salt River Project. It includes the review of a variety of information and culminated in the proposed Memorandum of Understanding, which requires Court approval.

Fortunately, the vast majority of the current water users historic uses are supported by the records and are easily confirmed. However, there are over 100 acres presently receiving water from the Verde Ditch where there are questions and/or potential challenges in documenting a historical use predating 1919.

Please review the documents enclosed carefully as every Shareholder needs to be knowledgeable as to the impact of the terms of the MOU. A hearing is now set for March 5, 2015 at 1:30 p.m. at the Camp Verde Judicial Center, Camp Verde, Arizona for consideration of the MOU. Any objections to the MOU must be filed on or before February 17, 2015.

The Verde Ditch Company will hold multiple workshops commencing in March, 2015 to provide every interested Shareholder detailed documentation that has been compiled as to a parcel's historical water use. A hearing has been set for August 3, 2015 commencing at 9:00 a.m. for the Court to consider modification of the *Hance v. Arnold* Decree resulting from the Verde Ditch Report to be filed with the Court if the Court approves the MOU.

The Verde Ditch Commissioners recommend that every Shareholder consider the information compiled as to their property and join in the supplementation of existing information to corroborate a parcel's historical water use.

Thank you,

The Verde Ditch Commissioners

The Verde Ditch Company, the Commissioners of the Verde Ditch and the Verde Ditch staff can not provide legal advice to an individual Shareholder. Every Shareholder is urged to consult their personal legal advisor regarding their specific situation and the potential ramifications of the proposed Memorandum of Understanding.

LRM/clr

L. Richard Mabery, Esq.
L. RICHARD MABERY, P.C.
234 North Montezuma Street
Prescott, Arizona 86301
(928) 778-1116
maberypc@cableone.net

State Bar I.D. No. 005188

Attorney for Verde Ditch Company

ORIGINAL FILED THIS
DAY OF DEC -1
SANDRA KLIA KH
Clerk of Superior Court
By: _____
Deputy M McCULLOCH

Law Offices of
L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, Arizona 86301-3008

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.	)	**PETITION FOR APPROVAL OF A MEMORANDUM OF UNDERSTANDING AND AUTHORITY FOR THE VERDE DITCH COMMISSIONERS TO PROCEED**
WALES ARNOLD, et ux., et al.,	)	
Defendants.	)	
In the matter of the VERDE DITCH COMPANY	)	

The Verde Ditch Company, through the Court-appointed Commissioners, Albert Dupuy, Jr.,Vernon Hilbers, John Teague, Craig Cooley and David Myers, and in furtherance of the Application to allow the Verde Ditch Commissioners to negotiate a Memorandum of Understanding filed February 14, 2014, request that the Court adopt a Scheduling Order for the approval of the Memorandum of Understanding (MOU) and authority for the Verde Ditch Commissioners to proceed to implement the MOU on behalf of the Verde Ditch once approved

COPY

The Verde Ditch Company has undertaken a multi-year study to obtain and compile historical records from various sources and to document current Shareholders and places of use of water obtained from the Verde Ditch pursuant to the Orders and Rules established under the *Hance v. Arnold* Decree entered March 23, 1909. The Commissioners have reviewed multiple documents including Verde Ditch records, Shareholder ledgers, written statements, maps, Yavapai County GIS records, surveys, photographs, patent applications, affidavits, pictures and other information to assist in the documentation and correlation of historical water uses to lands supplied Verde River water by the Verde Ditch.

The Verde Ditch Company has, and will in the future, engaged surveyors, engineers, hydrologists, attorneys, Verde Ditch staff and others to assist in the compilation and examination of documents and correlate the historical water uses with the current water uses delivered from the Verde Ditch. Currently, there are approximately 1,100 - 1,400 acres receiving or believed to be entitled to receive water from the Verde Ditch. Since the establishment of the Verde Ditch in the 1860s, changes have occurred as to the historical water uses and it is in the best interests of the Verde Ditch Company and Shareholders, utilizing all of the available information, to correlate, supplement and confirm the historical water uses for lands included within the *Hance v. Arnold* Decree determinations.

Attached hereto is a copy of the latest version of a proposed Memorandum of Understanding (MOU) between the Verde Ditch Company, the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users Association (collectively SRP). (Exhibit 1).

The Verde Ditch Company is governed by the 1909 *Hance v. Arnold* Decree and subsequent orders entered by the Yavapai County Superior Court. The Rules and Regulations of the Verde Ditch (promulgated August 8, 1989) do not address or provide specific authority for the

Law Offices of
L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, Arizona 86301-3008
(928) 778-1116

Commissioners to execute Memorandum of Understanding or undertake any of the provisions to be performed by the Verde Ditch Company.

Accordingly, the Verde Ditch Company requests that the Court:

1. Set a date for a hearing for consideration of any Shareholder objections to the execution by the Verde Ditch Commissioners on behalf of the Verde Ditch of the Memorandum of Understanding with SRP and for the Verde Ditch Company to undertake all actions necessary to implement the MOU pursuant to the terms and conditions of the MOU or as may be modified by the Court.

2. Require that any Shareholder objections to be filed in writing with the Court not less than 15 calendar days prior to a hearing.

3. Authorize the Verde Ditch Commissioners (and designated agents) to facilitate public workshops and meetings with the Shareholders to review and examine the information compiled as to the historical water use on the respective property(s) owned by a Shareholder. A Shareholder with additional information regarding the historical water use on a parcel served by the Verde Ditch and desires that such information be considered in the preparation of the Verde Ditch Report to the Court shall provide copies to the Verde Ditch Company for review and consideration.

4. Direct that the Verde Ditch Company file a preliminary report with the Court regarding the documented historical water uses and the report shall be made available to all Shareholders not less than 60 days prior to any hearing.

5. Set a date for a hearing for the Court to consider confirmation of the historical water uses as stated in the Preliminary Report (or as may be modified from time to time by

Law Offices of
L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, Arizona 86301-3008
(928) 778-1116

the Court) and which describes the acreage with an historical water use and entitled to receive Verde River water from the Verde Ditch.

6. Establish a deadline for any Shareholder objections to a Verde Ditch Report or historical water use be filed in writing and not less than 30 days prior to a scheduled hearing.

7. Authorize the Verde Ditch Company to provide notice to all Shareholders as follows:

   A. Self-addressed, stamped envelope delivered via first-class U. S. mail, postage prepaid, to every current Shareholder of the Verde Ditch at the last known address of the Shareholder as shown on the records of the Verde Ditch Company.

   B. Publication of a notice of the hearing to be published in a newspaper of local circulation once a week for a minimum of four weeks and the first publication shall be not less than 60 days prior to the hearing.

   C. Copies of all Petitions, Orders, Notices and a copy of the MOU shall be posted on the Verde Ditch website.

   D. Copies of all Petitions, Orders, Notices and copies of the MOU shall be available at the Verde Ditch office, 432 South 1st Street, Camp Verde, Arizona for any Shareholder.

8. Direct and authorize such further notices or actions by the Verde Ditch Commissioners as deemed appropriate to implement and fulfill the conditions of the MOU to be performed by the Verde Ditch Company.

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Law Offices of
L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, Arizona 86301-3008
(928) 778-1116

RESPECTFULLY SUBMITTED this 1 day of [illegible], 2014.

L. RICHARD MABERY, P.C.

By: _____

L. Richard Mabery, Esq.
Law Offices of L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, Arizona 86301
Attorney for Verde Ditch Company

klr

Law Offices of
L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, Arizona 86301-3008
(928) 778-1116

MEMORANDUM OF UNDERSTANDING REGARDING SETTLEMENT PROCESS

This Memorandum of Understanding Regarding Settlement Process is entered into this _____ day of _____, 2014, by and among the Verde Ditch Company, the Salt River Project Agricultural Improvement and Power District, and the Salt River Valley Water Users' Association. Capitalized terms used herein are defined in Section 4 below.

RECITALS

A. VDC, on behalf of the water users receiving water from the Verde Ditch, claims certain rights to divert and use the waters of the Verde River, with claimed priority dates as early as 1868. VDC has filed Statement of Claimant No. 39-50029 in the Adjudication to protect these claimed rights and other claimed rights. Individuals and other organizations have filed individual Statements of Claimant wherein they claim the right to receive water from the Verde Ditch.

B. VDC is an unincorporated association that operates through five Commissioners appointed by and acting pursuant to the authority of the *Hance v. Arnold* Court, Yavapai County Case No. 4772. The Verde Ditch Commissioners executing this MOU on behalf of VDC do so with the express prior approval and authority of the *Hance v. Arnold* Court, which has continuing jurisdiction and remains the Master of the Verde Ditch.

C. SRP and the shareholders of the Association claim certain rights to divert and use the waters of the Verde River, with claimed priority dates as early as 1869. SRP has filed Statements of Claimant Nos. 39-50053 (as amended), 39-50054 (as amended), and 39-50055 (as amended) in the Adjudication to document and protect these claimed rights and other claimed rights.

D. In an effort to avoid the time and cost of extensive litigation regarding entitlement to Verde River water and to reduce the frustration, expense, and uncertainty for Verde Ditch shareholders and SRP, the Parties have met in an attempt to come to a comprehensive agreement on the delineation of the lands served by the Verde Ditch that have Historic Water Use.

E. The execution and implementation of this MOU is believed to be appropriate to provide long-term certainty for landowners served by the Verde Ditch, to assist the Verde Ditch in long term planning and implementation of improvements for increased efficiency and management of water delivery and to promote and assist in continued economic stability as a result of such certainty for the lands that the Parties agree are legally entitled to receive water from the Verde Ditch and will, among other things, facilitate the resolution of pending order to show cause proceedings previously filed by SRP or which might arise hereafter against certain water users served by the Verde Ditch.

F. The Parties intend for this MOU to set forth a process whereby they can work together, along with the water users on the Verde Ditch, to agree, as among the Parties, upon the existence of Historic Water Use for specific parcels served by the Verde Ditch; to attempt to resolve issues with respect to lands served by the Verde Ditch that do not have Historic Water Use or have disputes regarding the existence of Historic Water Use; and to provide a process to ensure that only lands that have Historic Water Use receive and use water from the Verde Ditch.

G. This MOU is not intended to address or resolve any attributes of any water rights other than that Historic Water Use exists for particular parcels of land. Issues such as priority date, quantity, purpose of use, and season of use are specifically left for resolution in some other forum or agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises stated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals and Exhibits.** The recitals set forth above and all attached exhibits are hereby expressly incorporated and included as part of this MOU.

2. **Effectiveness.** This MOU shall become effective upon the Execution Date.

3. **Term and Termination.** This MOU shall continue in force for a period of five (5) years from the Execution Date and shall thereafter be automatically renewed for additional periods of two (2) years, unless and until terminated as follows:

3.1. This MOU may be terminated at any time upon mutual written consent of the Parties.

3.2. This MOU may be terminated by any Party, upon thirty (30) days' written notice to the other Party, if any of the Completion Targets are not met, as long as such failure to meet the Completion Targets is not the result of an intentional act by the terminating Party.

3.3. This MOU may be terminated by either Party if the other Party is in breach of a material provision of this MOU and such breach remains uncured for a period of sixty (60) days after written notice delivered by the non-breaching Party pursuant to Section 19. SRP shall be considered to be one Party for purposes of this Subsection 3.3.

3.4. For good cause shown, this MOU may be terminated by either Party by filing an appropriate pleading with the *Hance v. Arnold* Court and entry of an appropriate order reciting the good cause shown as the basis for terminating this MOU.

4. Definitions.

4.1. "Adjudication" shall mean *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, Maricopa County Superior Court Cause Nos. W-1 through W-4 consolidated.

4.2. "ADWR" shall mean the Arizona Department of Water Resources, an agency of the State of Arizona.

4.3. "Association" shall mean the Salt River Valley Water Users' Association, an Arizona territorial corporation.

4.4. "Completion Targets" shall mean those cumulative completion goals set forth in Section 11.

4.5. "District" shall mean the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, established pursuant to Title 48, Chapter 17 of the Arizona Revised Statutes.

4.6. "Execution Date" shall mean the date upon which this MOU is fully executed by the Parties and approved by the *Hance v. Arnold Court.*

4.7. "Final Settlement Agreement" shall mean, as set forth in Section 12, that written settlement agreement regarding Historic Water Use for lands served by the Verde Ditch expected to be executed by the Parties and submitted to the *Hance v. Arnold* Court for review and approval.

4.8. "Green Lands" shall mean those lands described in Subsection 5.3.02 and depicted on Exhibit 1.

4.9. "*Hance v. Arnold*" shall mean that case in the Yavapai County Superior Court captioned as "*George W. Hance, et al. v. Wales Arnold, et al.*" (Case No. 4772).

4.10. "*Hance v. Arnold* Court" shall mean the Yavapai County Superior Court, and any appellate court or successor court (including federal courts) with continuing jurisdiction over *Hance v. Arnold.*

4.11. "Historic Water Use" or "HWU" shall mean use of the waters of the Verde River System that was (a) commenced on a particular parcel prior to June 12, 1919 or (b)

commenced after June 12, 1919 pursuant to a certificate of water right issued by ADWR or other state agency of similar jurisdiction prior to January 1, 2014 or pursuant to a severance and transfer of a pre-1919 right approved by SRP.

4.12. "Historic Water Use Agreement" or "HWU Agreement" shall mean an agreement executed pursuant to Section 7.

4.13. "MOU" or "this MOU" shall mean this Memorandum of Understanding Regarding Settlement Process, including all exhibits hereto.

4.14. "Orange Lands" shall mean those lands described in Subsection 5.3.04 and depicted on Exhibit 1.

4.15. "Party" or "Parties" shall mean SRP and VDC.

4.16. "Proceeding" shall include any judicial, administrative, or legislative proceeding.

4.17. "Purple Lands" shall mean those lands described in Subsection 5.3.03 and depicted on Exhibit 1.

4.18. "Receiving Property" shall mean the property to which a severance and transfer is made pursuant to a Severance and Transfer Agreement.

4.19. "Severance and Transfer Agreement" shall mean an agreement to sever and transfer pursuant to Section 8 or 9.

4.20. "SRP" or "Salt River Project" shall collectively mean the District and the Association.

4.21. "SRP Rights" shall mean any rights or claims to rights to use water on land included within the Salt River Reservoir District, a map of which is set forth in Exhibit 2, regardless of whether such rights are claimed or held by the District, the Association, or Association shareholders.

4.22. "Transferee" shall mean a person or entity owning the property to which a severance and transfer is made pursuant to a Severance and Transfer Agreement.

4.23. "Transferor" shall mean a person or entity owning the property from which a severance and transfer is made pursuant to a Severance and Transfer Agreement.

4.24. "Transferring Property" shall mean the property from which a severance and transfer is made pursuant to a Severance and Transfer Agreement.

4.25. "VDC" shall mean the Verde Ditch Company, an unincorporated association that operates and maintains the Verde Ditch pursuant to the March 23, 1909 order issued in *Hance v. Arnold*, as subsequently modified or amended.

4.26. "Verde Ditch" shall mean the ditch and associated water delivery system from the Verde River located near Camp Verde, Arizona, and operated and maintained by VDC pursuant to orders issued by the *Hance v. Arnold* Court.

4.27. "Verde Ditch HWU Lands" shall mean those lands that are described in Subsection 5.3.01 and depicted on Exhibit 1.

4.28. "Working Understanding" shall mean one or more of a series of preliminary and common understandings reached by the Parties with regard to the existence of Historic Water Use for particular parcels of land served by the Verde Ditch, as documented by this MOU or as may be subsequently modified as provided herein.

5. Working Understanding on Verde Ditch HWU Lands, Green Lands, Purple Lands, and Orange Lands.

5.1. As part of the negotiation of this MOU, the Parties have reviewed and shared their records regarding (a) which lands are currently receiving and using water from the Verde Ditch, (b) which lands served by the Verde Ditch have Historic Water Use, (c) which lands are owned by individuals or entities who possess shares to the Verde Ditch based upon *Hance v. Arnold*, and (d) which lands are entitled to receive water based upon the historical records of VDC and SRP.

5.2. Upon comparison of their respective records, the Parties have come to Working Understandings regarding various issues with respect to the lands served by the Verde Ditch and their respective Historic Water Use. For purposes of this MOU, those Working Understandings are preliminary and are not binding on the Parties or on any other individual or entity. The Working Understandings are compilations of multiple records and sources to further the process of ultimately ensuring that only lands that have Historic Water Use receive and use water from the Verde Ditch.

5.3. The Parties have come to a Working Understanding that:

.01. Approximately 1,067.7 acres served by the Verde Ditch have Historic Water Use. Those lands are referred to herein as Verde Ditch HWU Lands and are generally depicted on Exhibit 1. The designation of Verde Ditch HWU Lands by the Parties does not include any lands or uses claimed by the Yavapai Apache Camp Verde Nation, and the exclusion of those lands is not intended to imply the existence of Historic Water Use or lack thereof on those lands.

.02. Approximately 914.3* acres of Verde Ditch HWU Lands are currently receiving and using water from the Verde Ditch. Those lands are referred to herein as "Green Lands" and are shown in green on Exhibit 1.

.03. Approximately 155.7* acres of Verde Ditch HWU Lands are not currently receiving or using water from the Verde Ditch. Those lands are referred to herein as "Purple Lands" and are shown in purple on Exhibit 1.

.04. Approximately 153.8* acres are currently receiving or using water from the Verde Ditch but which appear to lack records that support Historic Water Use. Those lands are referred to herein as "Orange Lands" and are shown in orange on Exhibit 1.

5.4. The Parties recognize and acknowledge that individual water users on the Verde Ditch or others might have information that would conflict with or supplement the information upon which the Parties have utilized in the review and compilation of Verde Ditch HWU Lands, Green Lands, Purple Lands, and Orange Lands. The Parties agree to review any additional information in good faith and, upon a common determination by the Parties that one or more aspects of a Working Understanding were incorrect or incomplete, to modify this MOU to reflect a revised Working Understanding, to inform the *Hance v. Arnold* Court to that effect in writing, and to proceed accordingly as set forth in this MOU. Notwithstanding any provision herein, nothing provided herein shall limit or restrict any user of water from the Verde Ditch from presenting information or supplemental alternatives or evidence to the Master of the Verde Ditch for consideration at an evidentiary hearing set for that purpose on or before March 1, 2015.

* The number of acres, as to any category or designation, remains preliminary and subject to further changes as additional information is obtained and reviewed.

6. Interim Actions During Pendency of this MOU.

6.1. During the time between the Execution Date of this MOU and the date when the Final Settlement Agreement entered into pursuant to Section 12 becomes effective, SRP agrees to not contest, in any Proceeding, the existence of Historic Water Use for (a) Green Lands or (b) Orange Lands for which Severance and Transfer Agreements have been executed, approved by the Parties, and recorded. SRP further agrees to not provide financial or other assistance to any other person or entity in contesting such Historic Water Use.

6.2. During the time between the Execution Date of this MOU and the date when the Final Settlement Agreement entered into pursuant to Section 12 becomes effective, VDC agrees to (a) not contest the existence of the SRP Rights in any Proceeding and (b) not provide financial or other assistance to any other person or entity in contesting such rights.

6.3. Subsections 6.1 and 6.2 shall not survive the termination of this MOU pursuant to Section 3 at any time prior to the date when the Final Settlement Agreement becomes effective.

7. Agreement upon the Existence of Historic Water Use for Green Lands.

7.1. Upon and after the Execution Date, the Parties agree to work cooperatively and to meet with individual water users on the Verde Ditch who own Green Lands, in order to achieve agreement upon the existence of Historic Water Use for those Green Lands.

7.2. Upon achieving agreement with the relevant landowner(s) upon the existence of Historic Water Use for a particular parcel, the Parties and the landowner will execute an HWU Agreement. In the HWU Agreement, SRP shall agree, in writing, to not contest the existence of Historic Water Use for the Green Lands at issue in that agreement in any Proceeding. Also in the HWU Agreement, the owner of the Green Lands shall agree, in writing, to not claim Historic Water Use for any other lands on the parcel in question (as the scope of that parcel is defined in the HWU Agreement) as against SRP in any Proceeding; (b) to not sell, transfer, or otherwise convey any VDC shares to another parcel unless such conveyance is made in conjunction with a severance and transfer performed pursuant to the procedures set forth in this MOU; and (c) to not expand water use on the parcel except in conjunction with the acquisition of other water rights pursuant to the procedures set forth in this MOU.

7.3. Upon execution by all necessary parties of an HWU Agreement for a particular parcel of Green Lands, the HWU Agreement shall be recorded in the real property records of the Yavapai County Recorder.

8. Facilitating Severance and Transfers.

8.1. The Parties agree to work cooperatively, with each other and with other water users on the Verde Ditch, to facilitate severance and transfers so that lands receiving water from the Verde Ditch are amended appropriately and have a recognized right that is protectable under state law. The Parties will seek to encourage voluntary transactions between the owners of Purple Lands and the owners of Orange Lands to accomplish this purpose.

8.2. The Parties anticipate that, upon agreement between two willing participants regarding a severance and transfer, the participants will execute a Severance and Transfer Agreement.

8.3. Any severance and transfer pursuant to Section 9 shall be subject to the consent of SRP pursuant to A.R.S. § 45-172. The request for SRP's consent will be submitted to the District Board of Directors and the Association Board of Governors concurrently with a Severance and Transfer Agreement executed by the landowners involved and any other forms required by SRP for such purposes.

8.4. Any severance and transfer pursuant to this Section 8 shall be subject to review and approval by the *Hance v. Arnold* Court. As a matter of accommodation and convenience, on or before February 15 of each year, the Parties will coordinate the filing of a combined severance and transfer application with the *Hance v. Arnold* Court to seek approval of severance and transfers that have been agreed to between owners of the lands affected for the prior calendar year. This provision shall not preclude the Parties or individual landowners from individually filing severance and transfer applications with the *Hance v. Arnold* Court during the course of the calendar year, but the Parties will work cooperatively to submit one combined annual filing, to the extent possible, on or before February 15 of each year if severance and transfers exist for which applications have not otherwise been submitted to the *Hance v. Arnold* Court prior that date.

8.5. Promptly upon execution a Severance and Transfer Agreement for a particular transfer from Purple Lands to Orange Lands, consent to such severance and transfer by SRP, and approval of the severance and transfer by the *Hance v. Arnold* Court, the records of VDC will be amended to reflect such changes, the Transferee should proceed with necessary filings with ADWR, and the Transferor shall cause the Severance and Transfer Agreement to be recorded in the real property records of the Yavapai County Recorder.

8.6. On or before May 1 of each year or as soon after obtaining the approvals specified in Subsections 8.3, 8.4, and 8.5 as reasonably practicable, the Parties will coordinate the filing of a combined severance and transfer application with ADWR to seek agency approval of severance and transfers that have complied with the provisions of

Subsections 8.3, 8.4, and 8.5 for the prior calendar year. This provision shall not preclude the Parties or individual landowners from filing severance and transfer applications with ADWR during the course of the calendar year, but the Parties will work cooperatively to submit one combined annual filing, to the extent possible, if severance and transfers exist for which applications have not otherwise been submitted to ADWR prior that date.

8.7. The Parties agree to work cooperatively to assist the landowners involved in preparing and submitting the annual combined severance and transfer application to ADWR; provided, however, that nothing in this Section 8 shall require any Party to pay or contribute to the filing fees or other consideration for any severance and transfer.

8.8. Upon approval by ADWR of any severance and transfer application pursuant to this Section 8, the Parties will work cooperatively with the Transferee to negotiate and execute a HWU Agreement for the Receiving Property, which shall be recorded with the Yavapai County Recorder's office. In the HWU Agreement, SRP shall agree, in writing, to not contest the existence of Historic Water Use for the Receiving Property in any Proceeding. Also in the HWU Agreement, the Transferee shall agree, in writing, (a) to not claim Historic Water Use for any other lands on the parcel in question (as the scope of that parcel is defined in the HWU Agreement) as against SRP in any Proceeding; (b) to not sell, transfer, or otherwise convey any VDC shares to another parcel unless such conveyance is made in conjunction with a severance and transfer performed pursuant to the procedures set forth in this MOU; and (c) to not expand water use on the parcel except in conjunction with the acquisition of other water rights pursuant to the procedures set forth in this MOU.

8.9. Nothing contained herein shall preclude or prohibit an individual landowner from pursuing all rights and remedies to obtain a severance and transfer independent of the process set forth herein under state law. However, neither Party is obliged to approve a severance and transfer under the terms of the MOU but shall use their best forth efforts in consideration of any such transfer. In the event either Party receives an application for a severance and transfer affecting an Historic Water Use served by the Verde Ditch, the Party receiving the application will provide notice to the other.

9. Securing Additional Water Rights If Purple Lands Are Not Sufficient.

9.1. The Parties acknowledge that the number of acres of Historic Water Use from the Purple Lands might or might not be sufficient to provide Historic Water Use for all acres of Orange Lands, even if all such available acres of Historic Water Use from Purple Lands are severed and transferred to Orange Lands.

9.2. If the Parties determine that no additional acres of Historic Water Use are reasonably available for severance and transfer from Purple Lands to satisfy the remaining needs for such Historic Water Use on Orange Lands, the Parties agree to work cooperatively

to attempt to locate additional sources of water rights, as evidenced by Historic Water Use, for the remaining Orange Lands; provided, however, that nothing in this Section 9 shall require any Party to provide financial assistance for the purchase, lease, or other acquisition of water rights.

9.3. Any severance and transfer pursuant to this Section 9 shall be subject to the consent of SRP pursuant to A.R.S. § 45-172. The request for SRP's consent will be submitted to the District Board of Directors and the Association Board of Governors concurrently with the Severance and Transfer Agreement executed by the landowners involved and any other forms required by SRP for such purposes.

9.4. Any severance and transfer pursuant to this Section 9 shall be subject to review and approval by the *Hance v. Arnold* Court. Such severance and transfers to Orange Lands may be included in the annual submittal for approval by the *Hance v. Arnold* Court pursuant to Subsection 8.4 hereof and in the combined severance and transfer application filed with ADWR pursuant to Subsection 8.6 hereof.

9.5. Promptly upon execution a Severance and Transfer Agreement for a particular transfer from other lands to Orange Lands and consent to such severance and transfer by SRP and approval of the severance and transfer by the *Hance v. Arnold* Court, the records of VDC will be amended to reflect such changes, the Transferee should proceed with necessary filings with ADWR, and the Transferor shall cause the Severance and Transfer Agreement to be recorded in the real property records of the Yavapai County Recorder.

9.6. The Parties agree to work cooperatively to assist the landowners involved in preparing and submitting the annual combined severance and transfer application to ADWR, as set forth in Subsection 8.6; provided, however, that nothing in this Section 9 shall require any Party to pay or contribute to the filing fees for any severance and transfer.

9.7. Upon approval by ADWR of any severance and transfer application pursuant to this Section 9, the Parties will work cooperatively with the Transferee to negotiate and execute an HWU Agreement for the Receiving Property, which shall be recorded in the Yavapai County Recorder's Office. In the HWU Agreement, SRP shall agree, in writing, to not contest the existence of Historic Water Use for the Receiving Property in any Proceeding. Also in the HWU Agreement, the Transferee shall agree, in writing, (a) to not claim Historic Water Use for any other lands on the parcel in question (as the scope of that parcel is defined in the HWU Agreement) as against SRP in any Proceeding; (b) to not sell, transfer, or otherwise convey any VDC shares to another parcel unless such conveyance is made in conjunction with a severance and transfer performed pursuant to the procedures set forth in this MOU; and (c) to not expand water use on the parcel except in conjunction with the acquisition of other water rights pursuant to the procedures set forth in this MOU.

9.8 VDC will consider any Severance and Transfer application submitted pursuant to this Section 9, but such approval is conditioned upon the consideration of all factors and impacts to the Verde Ditch and conditional upon approval of the *Hance v. Arnold* Court.

10. Reconciliation of Verde Ditch Shares.

10.1. Upon approval by ADWR of the combined severance and transfer application submitted by the Parties for each year, the Parties shall work cooperatively, with each other and with water users on the Verde Ditch, to reconcile the respective shares in the Verde Ditch with the associated Historic Water Use existing after approval of the severance and transfer applications.

10.2. Within a reasonable time after ADWR's approval of the combined severance and transfer application for each year, the Parties shall submit an application to the *Hance v. Arnold* Court, in its continuing jurisdiction, to modify any applicable orders or judgments to reflect the revised allocations of ditch shares based upon the severance and transfers completed in that year.

11. Reasonable Progress Toward Completion.

11.1. The Parties agree that, although obtaining the severance and transfer of sufficient Historic Water Use to all Orange Lands and agreement upon the existence of Historic Water Use for Green Lands could be time-consuming and difficult tasks, they will make diligent efforts toward completing these tasks in a timely manner.

11.2. The Parties have established cumulative Completion Targets for execution of Severance and Transfer Agreements for the Orange Lands and for execution of HWU Agreements for the Green Lands:

December 31, 2015	20% of all Orange Lands and 20% of all Green Lands
December 31, 2016	40% of all Orange Lands and 40% of all Green Lands
December 31, 2017	60% of all Orange Lands and 60% of all Green Lands
December 31, 2018	80% of all Orange Lands and 80% of all Green Lands
December 31, 2019	90% of all Orange Lands and 90% of all Green Lands

12. Final Settlement Agreement on Verde Ditch Historic Water Use.

12.1. Upon approval by ADWR of severance and transfer applications to provide Historic Water Use for eighty (80) percent of the Orange Lands and execution and recording of HWU Agreements for eighty (80) percent of the Green Lands, the Parties shall prepare and submit to the *Hance v. Arnold* Court for its approval a written Final Settlement Agreement settling all Historic Water Use for such lands among the Parties. The *Hance v.*

Arnold Court's approval of the Final Settlement Agreement will modify the existing judgment in *Hance v. Arnold* but shall not be deemed an adjudication of the water rights for any particular parcel of land that would otherwise be determined in the Adjudication.

12.2 In the Final Settlement Agreement, SRP shall agree, in writing, to not contest, in any Proceeding, the existence of Historic Water Use for (a) Green Lands for which HWU Agreements have been executed, approved by the Parties, and recorded and (b) Orange Lands for which Severance and Transfer Agreements have been executed, approved by the Parties, and recorded. SRP further shall agree to not provide financial or other assistance to any other person or entity in contesting such Historic Water Use.

12.3. In the Final Settlement Agreement, VDC shall agree, in writing, to (a) not contest the existence of the SRP Rights in any Proceeding and (b) not provide financial or other assistance to any other person or entity in contesting such rights.

12.4. The Final Settlement Agreement shall provide that VDC will not undertake any actions to permit or allow water from the Verde Ditch to serve any lands that do not have Historic Water Use as set forth pursuant to this MOU and approved by the *Hance v. Arnold* Court. The lack of an HWU Agreement for any particular parcel of land shall not preclude VDC from serving such parcel, so long as the parcel is designated as having Historic Water Use by this MOU or by an Order of the *Hance v. Arnold* Court entered pursuant to this MOU.

12.5. Upon approval by the *Hance v. Arnold* Court of the Final Settlement Agreement, the Parties shall execute such agreement. The Final Settlement Agreement, when approved by the *Hance v. Arnold* Court and executed by the Parties, shall constitute a final and binding agreement among the Parties.

12.6. After execution of the Final Settlement Agreement and until the termination of this MOU, the Parties will continue to cooperate in good faith, with each other and with water users on the Verde Ditch, to (a) negotiate and execute HWU Agreements for any remaining Green Lands; (b) resolve any issues relating to any remaining Orange Lands; (c) obtain ADWR approval necessary for any severance and transfers to any remaining Orange Lands; and (d) to reconcile any remaining discrepancies regarding Verde Ditch shares for those lands under *Hance v. Arnold.*

13. **Binding Agreement**. This MOU is binding upon and inures to the benefit of the Parties, their heirs, executors, successors, and assigns.

14. **Waiver.** The failure of any Party to insist on any one or more instances upon strict performance of any of the obligations of any other Party pursuant to this MOU or to take advantage of any of its rights hereunder shall not be construed as a waiver of the

performance of any such obligation or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

15. **Controlling Law, Jurisdiction, and Venue.** This MOU shall be interpreted and construed according to Arizona law. The Parties agree that jurisdiction and venue in any action to enforce the provisions of this MOU shall be proper in the *Hance v. Arnold* Court, or, if the *Hance v. Arnold* Court is not in existence at such time, in the Superior Court in and for Yavapai County, Arizona.

16. **Transactions Costs.** Each Party agrees to bear its own attorneys' fees, consultants' fees, and other costs associated with negotiating, drafting, and executing this MOU.

17. **Attorneys' Fees and Costs.** In any future dispute or action arising under this MOU, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred therein, including expert witness fees as may be awarded by the Court.

18. **Entire Agreement.** This MOU and the exhibits attached and incorporated herein constitute the entire understanding of the Parties and supersede any previous agreement or understandings on the subjects discussed herein.

19. **Notice; Change of Name or Address.**

19.1. All notices, requests, demands, and other communications under this MOU shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following mailing, by registered or certified mail, postage prepaid, return receipt requested, whichever is earlier, addressed as set forth below:

(a) If to SRP:

Bruce Hallin, Director
Water Rights and Contracts
Salt River Project, MS PAB 110
1521 Project Drive
Tempe, AZ 85281-1298

With copies to:

Frederic L. Beeson, Senior Director
Law Services—Litigation
Salt River Project, MS PAB 341
1521 Project Drive
Tempe, AZ 85281-1298

Corporate Secretary's Office
Salt River Project
1521 Project Drive, MS PAB 215
Tempe, AZ 85281-1298

(b) If to VDC:

Verde Ditch Company
P.O. Box 2345
Camp Verde, AZ 86322

L. Richard Mabery, Esq.
Law Offices of L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, AZ 86301-3008

19.2. Any Party may change the addressee or address to which communications or copies are to be sent by giving notice of such change of addressee or address in conformity with the provisions of this Section 19 for giving notice.

20. **Amendments.** Any amendment, modification, or termination of this MOU shall be effected only by an instrument executed and acknowledged by each of the Parties or their successors in interest.

21. **Time of Essence.** Time is of the essence under this MOU. Any extension of time for performance under this MOU by any Party must be in writing.

22. **Severability.** If any provision or any portion of a provision of this MOU is deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining portion of that provision or of any other provision of this MOU, unless the invalid, illegal, or unenforceable provision defeats the primary and essential purposes of the parties as expressed herein.

23. **Not Partners.** Neither this MOU, nor any activity of the Parties in connection herewith, shall constitute the Parties as partners or any other entity or association for any purposes whatsoever.

24. **Interpretation.** The Parties acknowledge and agree that each has been given the opportunity to independently review this MOU with legal counsel, and that this MOU is the result of negotiations among the Parties. In the event of any ambiguity in or dispute regarding the interpretation of this MOU, the interpretation shall not be resolved by any rule

of interpretation providing for the interpretation against the party who caused the uncertainty to exist or against the draftsman.

25. **Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be deemed an original, with the same force and effect as if all signatures were appended to one instrument.

26. **Not Precedent.** The Parties have negotiated this MOU to resolve specific issues relating to the lands served by the Verde Ditch. The terms and conditions of this MOU are not intended to have any value as precedent with respect to other ditch companies in the area or other situations.

27. **Individual Rights.** Notwithstanding any provision herein, an individual landowner receiving water from the Verde Ditch is the owner of any water right appurtenant to the land. The owner of the land is solely responsible for the use, misuse, and compliance with state law in regards to any water right or authorized uses.

28. **No Third-Party Beneficiaries.** Notwithstanding any provision or section of this MOU, the terms and provisions contained herein do not constitute or create a third-party beneficiary entitled to enforce or demand that any party perform or undertake any act or filing by the Commissioners of VDC or the Officers/Directors of SRP.

IN WITNESS HEREOF, this MOU is executed by the Parties and made effective on the Execution Date.

VERDE DITCH COMPANY

By _____
Commissioner

Date: _____, 2014

By _____
Commissioner

Date: _____, 2014

By _____
Commissioner

Date: _____, 2014

By _____
Commissioner

Date: _____, 2014

By _____
Commissioner

Date: _____, 2014

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

By _____

Its _____

Date: _____, 2014

Attest: _____
Secretary

Date: _____, 2014

Approved as to form:

_____

Date: _____, 2014

SALT RIVER VALLEY WATER USERS' ASSOCIATION

By _____

Its _____

Date: _____, 2014

Attest: _____
Secretary

Date: _____, 2014

Approved as to form:

_____

Date: _____, 2014

EXHIBIT 1

MAP SHOWING VERDE DITCH HWU LANDS, GREEN LANDS, PURPLE LANDS, AND ORANGE LANDS

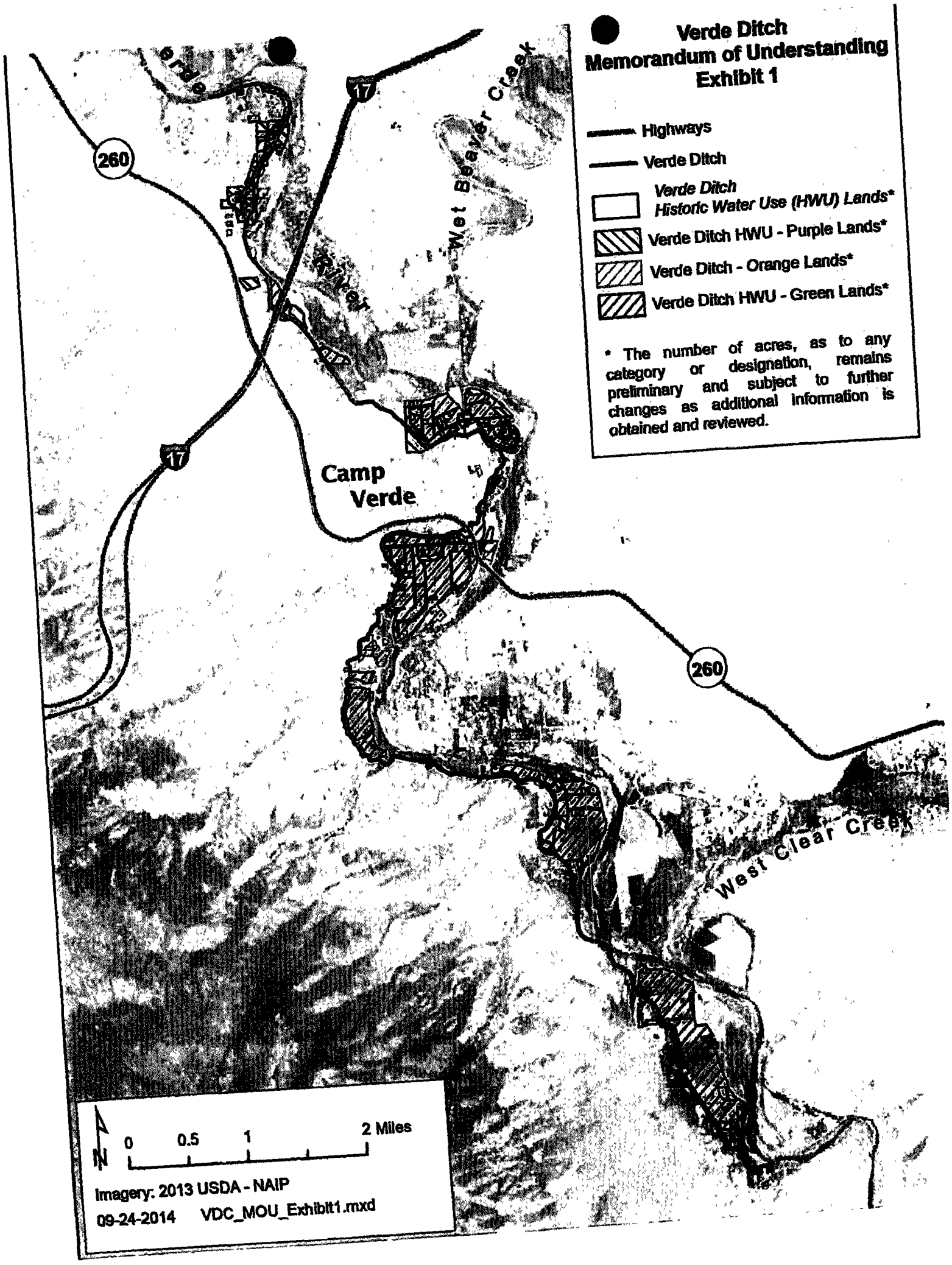
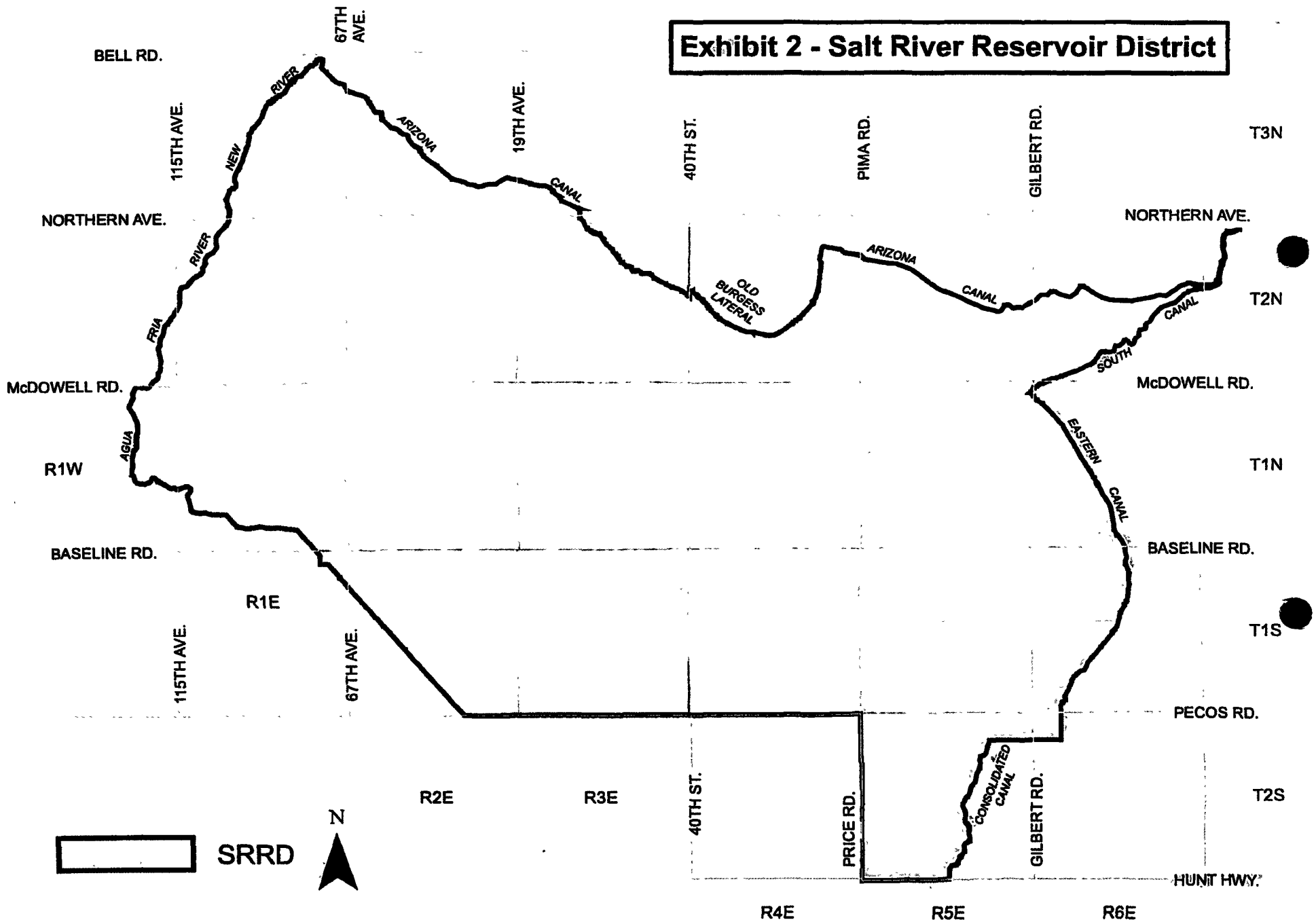

Verde Ditch
Memorandum of Understanding
Exhibit 1
Highways
Verde Ditch
Verde Ditch
Historic Water Use (HWU) Lands*
Verde Ditch HWU - Purple Lands*
Verde Ditch - Orange Lands*
Verde Ditch HWU - Green Lands*
* The number of acres, as to any category or designation, remains preliminary and subject to further changes as additional information is obtained and reviewed.
Verde
River
West Beaver Creek
West Clear Creek
Camp Verde
260
17
0
0.5
1
2 Miles
N
Imagery: 2013 USDA - NAIP
09-24-2014 VDC_MOU_Exhibit1.mxd

Exhibit 2 - Salt River Reservoir District



srrd_tr.mxd 9/24/2

L. Richard Mabery, Esq.
L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, Arizona 86301
(928) 778-1116
maberypc@cableone.net

State Bar I.D. No. 005188

Attorney for Verde Ditch Company

Law Offices of
L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, Arizona 86301-3008
(928) 778-1116

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.	)	**NOTICE OF HEARING ON PETITION FOR APPROVAL OF A MEMORANDUM OF UNDERSTANDING AND AUTHORITY FOR THE VERDE DITCH COMMISSIONERS TO PROCEED**
	)	
WALES ARNOLD, et ux., et al.,	)	
	)	
Defendants.	)	
	)	
In the matter of the VERDE DITCH COMPANY	)	

A Petition for Approval of a Memorandum of Understanding and Authority for the Verde Ditch Commissioners to Proceed has been filed with the Yavapai County Superior Court.

Division 1 of the Yavapai County Superior Court on December 4, 2014, set a hearing to consider approval of a Memorandum of Understanding (MOU) between the Verde Ditch Company and the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users Association (collectively SRP).

The hearing will be held on March 5, 2015, with one-half day allotted, commencing at 1:30 p.m. at the Verde Valley Judicial Center, 2840 N. Commonwealth Drive, Camp Verde, Arizona.

Any Shareholder wishing to file an objection to the Petition, the Memorandum of Understanding (MOU) or the relief requested in the Petition, shall file such objections in writing with the Yavapai County Clerk of the Court on or before February 17, 2015 and provide a copy to counsel for the Verde Ditch Company, 234 N. Montezuma Street, Prescott, Arizona 86301.

Copies of the Petition, Order and MOU are available from the Clerk of the Court; the Verde Ditch website at www.verdeditch.com or from the Verde Ditch office at 432 South 1st Street, Camp Verde, Arizona.

DATED this 19th day of December, 2014.

Verde Ditch Commissioners

Law Offices of
L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, Arizona 86301-3008
(928) 778-1116

/clr

W10

FILED
12:1 o'Clock P.M. ✓
DEC - 4 2014
SANDRA K. MARKHAM, Clerk
By: K MORTENSON

L. Richard Mabery, Esq.
L. RICHARD MABERY, P.C.
234 North Montezuma Street
Prescott, Arizona 86301
(928) 778-1116
maberypc@cableone.net

State Bar I.D. No. 005188

Attorney for Verde Ditch Company

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.	)	**ORDER REGARDING PETITION FOR APPROVAL OF A MEMORANDUM OF UNDERSTANDING AND AUTHORITY FOR THE VERDE DITCH COMMISSIONERS TO PROCEED**
WALES ARNOLD, et ux., et al.,	)	
Defendants.	)	
In the matter of the VERDE DITCH COMPANY	)	

The Court having fully considered the Petition filed by the Verde Ditch Commissioners and good cause appearing,

IT IS HEREBY ORDERED:

1. Setting a hearing on March 5, 2015 at 1:30 p.m., with one-half day allotted, regarding the Court's consideration of approval of the Memorandum of Understanding (MOU); the authority to the Verde Ditch Commissioners to execute the Memorandum of

(X) Plts/Atty Mabery(e) ( ) Arb w/file
( ) Deft/Atty _____ TOTAL 0
( ) _____ ( ) Arbiter _____
( ) Disco Clk w/file ( ) Other _____

Understanding on behalf of the Verde Ditch Company; and to undertake the actions required as set forth in the MOU by the Verde Ditch Company.

2. Any Shareholder of the Verde Ditch that wishes to file objections to the Court's consideration of the approval for the Commissioners to execute the MOU or any term of the MOU shall do so in writing and such objection shall be filed on or before February 17, 2015 with the Court.

3. The Verde Ditch Company shall file its Preliminary Report regarding the initial determinations of the historical water uses and possible modifications to the *Hance v. Arnold* Decree pursuant to the terms of the MOU with the Court and the Report shall be made available to all Shareholders on or before June 2, 2015.

4. Setting a hearing for August 3, 2015 commencing at 9:00 a.m., with one full day allotted, for the Court to consider the approval of the Verde Ditch Preliminary Report regarding the results of and recommendations contained in the Preliminary Report, any proposed modification to the *Hance v. Arnold* Decree, and implementation of the Settlement Agreement by the Verde Ditch Company as provided in the MOU.

5. Any Shareholder of the Verde Ditch that wishes to file objections to the Verde Ditch Report shall file their objections in writing on or before July 2, 2015 with the Court.

6. The Verde Ditch shall provide notice to all Shareholders as follows:

   a. A copy of the Petition and Order, along with a copy of the MOU or a Court approved summary of the MOU, shall be served by first class mail, postage prepaid to every Shareholder of the Verde Ditch at the last known address of the Shareholder on file at the Verde Ditch office.

   b. Publication of a notice of any scheduled hearings shall be published in a

Law Offices of
L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, Arizona 86301-3008
(928) 778-1116

newspaper of local circulation in Yavapai County for a minimum of four consecutive weeks and the first publication of the notice shall be not less than 60 days prior to the scheduled hearing.

c. Copies of the Petition, Order, MOU and Notices shall be available for any Shareholder at the Verde Ditch office, 432 South 1st Street, Camp Verde, Arizona.

d. Copies of the Petition, Order, MOU and Notices shall be posted on the Verde Ditch website at www.verdeditch.com.

7. All hearings shall be held in the Verde Valley Judicial Center, 2840 N. Commonwealth Drive, Camp Verde, Arizona at the noticed dates and times unless otherwise stated or hereinafter modified by the Court.

DONE IN OPEN COURT this 4th day of December, 2014.

David L. Mackey
Judge of the Superior Court, Division 1
Master of the Verde Ditch

Law Offices of
L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, Arizona 86301-3008
(928) 778-1116

For Departmental Use Only

File No. 39- 54025

Date Filed: 11-29-85

WFN

RECEIVED NOV 29 1985 DEPT. OF WATER RESOURCES

STATEMENT OF CLAIMANT FORM FOR OTHER USES[1]

VERDE RIVER WATERSHED
SUPERIOR COURT OF MARICOPA COUNTY

1. Claimant Name: United States Department of the Interior, Bureau of Indian Affairs on behalf of the Yavapai-Apache Indian Tribe

   Claimant Address: 3030 N. Central City Phoenix

   State: Arizona Zip Code 85011 Telephone 241-2310

2. Basis of Claim:

   A. [X] Appropriation Right acquired prior to June 12, 1919. 1974 Water Rights Registration Act Registry No. 36-76109, 36-76228

   B. [ ] Appropriation Right acquired after June 12, 1919. Application No. _____, Permit No. _____, or Certificate of Water Right No. _____

   C. [X] Decreed water right. Principal litigants, court, date and case no.: _____

   D. [ ] Right to withdraw groundwater.

   E. [X] Other, describe: Federal reserved water right (see attached text)

3. Claimed Priority Date: Time immemorial (month/day/year) and in the alternative various priority dates under state law.

4. Use:

   A. [X] Municipal

   B. [X] Commercial or Industrial

   C. [X] Mining

   D. [X] Stockwatering other than from a stockpond

   E. [X] Recreation, Fish & Wildlife

   F. [X] Other, describe: (see attached claims data)

5. Source of Water:

   A. [X] Stream: name (see attached claims data), tributary to _____

   B. [ ] Spring: name _____, tributary to _____

   C. [ ] Lake or Reservoir: name _____, tributary to _____

   D. [X] Groundwater

6. Legal description of the Point of Diversion: (attach additional sheet if required) (see attached claims data)

   ____¼, ____¼, ____¼, Section ____, Township ____ N/S, Range ____ E/W

7. If there are Irrigation, Domestic or Stockpond uses also supplied from the Point of Diversion, describe: _____

8. Means of Diversion: (see attached claims data)

   A. [ ] Instream pump

   B. [ ] Gravity flow into ditch, canal or pipeline.

   C. [ ] Well: Arizona State Land Department, Arizona Water Commission or Arizona Department of Water Resources Intent to Drill File No. _____

   D. [ ] Other, describe _____

[1] *See Instructions for explanation of uses in this category*

9. Means of Conveyance:

A. ☐ Ditch, canal or pipeline. If the means of conveyance is owned and/or operated by some other entity, please give name and address: (see attached claims data)

B. ☐ Other, describe:

10. Place of Use, if other than point of diversion: (attach additional sheet if required)

County Yavapai

Legal Subdivision	Section	Township	Range
(see attached claims data)		N/S	E/W
		N/S	E/W

11. Claimed Right: (see attached claims data)

A. Maximum Flow Rate: ☐ cubic-feet per second ☐ gallons per minute ☐ Arizona miner's inches

B. Annual Volume of Water Use: acre-feet

C. Storage Right: acre-feet

12. Attach photographs, maps or sketches necessary to show the point of diversion, storage reservoir(s), place(s) of use and means of conveyance.

13. It may be necessary for a representative from the Department of Water Resources to inspect the diversion, conveyance and place of use. Your signature following will grant permission to enter your property for the purpose of inspection: Signature of Claimant Contact Bureau of Indian Affairs

14. Should it be necessary for a representative of the Department to contact you as the claimant or your representative, are there any special instructions regarding time of day or address to aid in locating the specified person? Rights Protection Office, Bureau of Indian Affairs, Phoenix, AZ.

15. Attach Filing Fee to Form. Mail form(s) and fee(s) to: Department of Water Resources, P.O. Box 2920, Phoenix, AZ 85062.

16. Additional comments:

(attach additional sheet if required)

17. Notarized Statement:

I (We) Jan H Steven

the claimant(s) named in this claim, do hereby certify under penalty of perjury, that the information contained and statements made herein are to the best of my(our) knowledge and belief true, correct and complete.

Florence L. Burgess

(seal)

My Commission Expires: March 14, 1987

Notary Public

or,

Authorized Personnel of the Department of Water Resources

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IN THE SUPERIOR COURT

MARICOPA COUNTY, STATE OF ARIZONA

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	))))	Nos. W-1, W-2, W-3, and W-4 Verde River Basin Claims

WATER RIGHTS CLAIM OF THE
UNITED STATES AS TRUSTEE FOR THE
CAMP VERDE YAVAPAI-APACHE TRIBE

A. Introduction

The attached water rights claim is submitted by the United States of America as trustee for the Camp Verde Yavapai-Apache Indian Tribe. It is the position of the United States that this claim does not in any way effect a waiver of the Tribe's immunity from suit. It is the position of the government that the Tribe's immunity from suit has not been waived by the McCarran Amendment (43 U.S.C. §666). The Tribe can become a party to this proceeding only if it chooses to intervene in its own behalf.

In order to provide some visual representation of the irrigable lands portion of the claim, maps have been attached which indicate the general location of the irrigable lands for which water rights have been claimed herein. However, since some of the irrigation water rights claim involves land which has not been historically irrigated, the maps cannot indicate with precision the areas that will actually be cultivated in the future. Accordingly, it is hereby expressly provided that the claim for the irrigation water right is governed by the amount claimed in that portion of the written claim and is not governed by the maps which are attached to this claim.

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B. Legal basis for the claim

The legal basis for this claim is the federal reserved water rights doctrine as recognized by the Supreme Court of the United States. See Winters V. United States, 207 U.S. 564 (1908), Arizona v. California, 373 U.S. 546 (1963), and United States v. Cappaert, 426 U.S. 128 (1978). The claim asserted herein is based on the intention of the Congress and the President to create a homeland for the Camp Verde Yavapai-Apache Indians in a geographical area where water "...would be essential to the life of the Indian People and to the animals they hunted and the crops they raised" (Arizona v. California, supra, 373 U.S. at 599), and for the development of the "arts of civilization" (Winters v. United States, supra, 207 U.S. at 576). Through this claim the United States claims sufficient water to provide for the agricultural, recreational, municipal/domestic, industrial, power development, mineral, development, wildlife, stockgrazing and other present and future water uses to fulfill the purposes of the Camp Verde Yavapai-Apache Reservation and to maintain the reservation as a permanent tribal homeland for the Camp Verde Yavapai-Apache Indians. In addition, it is the position of the United States that the reserved water rights doctrine applies with equal force to acquired lands and to public domain Indian allotments.

C. Priority date for the water rights claimed

The Camp Verde Yavapai-Apache Indians have occupied the area of their present reservation and adjacent lands for many hundreds of years. See The Yavapai(and other groups of Indians) v. United

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States, No. 22-E, 15 Indian Claims Commission 68 (March 3, 1965). Accordingly, this entire water rights claim is made on the basis of a priority date of time immemorial.

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The Present Camp Verde Yavapai-Apache Indian Reservation is made up of a number of parcels of land acquired at various times:

1. The Lower Verde parcel - approximately 55 acres acquired on November 1, 1909.

2. The Middle Verde parcel - 240 acres acquired on June 10, 1915; 55 acres acquired on July 6, 1915; 80 acres acquired on February 20, 1917; and 80 acres acquired on February 27, 1917.

3. The Camp Verde parcel - 2.0254 acres acquired on October 7, 1954.

4. The Rimrock parcel - 3.7594 acres acquired on September 20, 1967.

5. The Clarkdale parcel - 27.13 acres acquired on March 17, 1969; and 31.37 acres acquired on March 17, 1969.

6. The Montezuma Interchange parcel - 74.84 acres acquired on June 24, 1974.

In addition, there is included in this claim a public domain allotment originally issued to Dianah Hood covering 79.64 acres; trust patent No. 926562.

D. Future water uses

A significant portion of the water rights claim asserted herein relates to anticipated future water needs which will be required to make the Reservation a useful and productive homeland for the Camp Verde Yavapai-Apache Indians. Due to a variety of

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circumstances, specific plans and time schedules are not available at this time in relation to the anticipated future uses. When such plans and time schedules become available to the United States, the government will submit the plans and schedules to the Court.

E. Subsequent revision of claim

This water rights claim is based on the best information availabe to the United States as of November 29, 1985, and is as accurate and complete as that information allows. However, the United States intends to continue on-the-ground investigations in order to refine existing data. Such refinement may necessitate the amendment of this claim sometime in the future in order to reflect updated information. In fact, an additional parcel of land may be added to the Camp Verde Reservation in the near future, which will necessitate a revision of this claim.

F. Payment of fees

In support of this claim the United States is tendering the fees required by A.R.S. §45-254(F). However, this suit was not instituted by the United States. Rather, the United States was required to participate in order to protect its rights to use water against the interests of other parties. Jurisdiction over the United States in this case is governed by the McCarran Amendment, 43 U.S.C. §666 (1952). United States v. Superior Court, 144 Az 265, 697 P.2d 658 (1985). The McCarran Amendment provides in part that "no judgment for costs shall be entered against the United States in any such suit." This proviso restates and reinforces the common law rule that, in absence of a statute directly authorizing the courts

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could not give judgment against the United States for costs and expenses.[1/]

The McCarran Amendment constitutes a waiver of the sovereign immunity of the United States by permitting it to be joined as a defendant in a suit quantifying water rights. Colorado River Water Conservation District v. United States 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983). In Block v. North Dakota, 461 U.S. 273 (1983), the Supreme Court repeated the familiar rule of construction of statutes which waive federal sovereign immunity:

> The basic rule of federal sovereign immunity is that the United States cannot be sued at all without the consent of Congress. A necessary corollary of this rule is that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied. (Citations omitted.) Id. at 287.

The Court went on to hold that there is no reason why the federal sovereignty rule should not be applied to states. Id. at 288-289. And in Aycrigg v. United States, 124 F.Supp. 416, 418 (N.D. Cal. 1954) the Court held that the rule of strict construction of the sovereign immunity waiver was applied to costs "with especial rigor."

1/ In 1966, Congress, by enactment of Public Law 89-507, waived the government's sovereign immunity from a judgment of costs and expenses insofar as that immunity was based on common law principles rather than on a statutory prohibition. Act of July 18, 1966, 80 Stat. 308, as amended 28 U.S.C. §2412. However, the 1966 waiver does not apply to cases, such as this case, where the immunity from a judgment for costs is "specifically provided for by statute." 28 U.S.C. §2412(a).

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The United States intends to seek recovery of all filing fees tendered in this case as well as other legitimate costs associated with this litigation after final judgment has been rendered.

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SUMMARY OF THE RESERVED WATER RIGHT CLAIMS
CAMP VERDE INDIAN RESERVATION
VERDE RIVER BASIN

Water Demand
(Acre-Feet per Year)

Water Use	Present	Future Additional	Total
Irrigation	1,475	185	1,660
Domestic	61	782	843
Commercial	24	117	141
Mining	0	13	13
TOTAL	1,560	1,097	2,657

Dinah Hood Allotment

Irrigation		291	291

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Irrigation Water Use

Camp Verde Indian Reservation
Verde River Basin, Arizona

Description of Water Use

Present use of surface water for irrigation and the diversion of water from the Verde River to serve additional future irrigable lands.

Location and Source of Water Use

There are 164 acres of currently irrigated land receiving water from the Verde River. There are also 37 acres of potentially irrigable land that could be irrigated by water from the Verde River. Both the presently irrigated land and the future irrigable land are shown on Map No. 1.

Estimated Annual Water Demand (Acre-Feet/Year)

Present irrigation water use	1,475
Future additional irrigation water use	185
Total potential irrigation water use	1,660

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Domestic Water Use

Camp Verde Indian Reservation
Verde River Basin, Arizona

Description of Water Use

Domestic water use for homesteads and farmsteads, including garden plots.

Location and Source of Water Use

The source of water for both present and future domestic uses is surface water from the Verde River and its tributaries, and ground water present in the alluvium (shallow ground water) of the Verde River and its tributaries and/or the Verde Formation which underlies the various parcels of the Reservation.

Estimated Annual Water Demand (Acre-Feet/Year)

	Ground Water	Surface Water	Total
Present domestic water use	61	0	61
Future additional domestic water use	495	287	782
Total potential domestic water use	556	287	843

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Commercial Water Use

Camp Verde Indian Reservation
Camp Verde River Basin, Arizona

Description of Water Use

Present commercial water use includes, but is not limited to, a visitor center, visitor center landscaping and a recreational vehicle campground. Proposed additional future water uses may include increased use of existing facilities, restaurant, motel, museum, picnicking, fishing, camping and commercial enterprises with landscaping.

Location and Source of Water Use

The source of water for both present and future commercial uses is surface water from the Verde River and its tributaries, and ground water present in the alluvium (shallow ground water) of the Verde River and its tributaries and/or the Verde Formation which underlies the various parcels of the Reservation.

Estimated Annual Water Demand (Acre-Feet/Year)

Present commercial water use	24
Future additional commercial water use	117
Total potential commerical water use	141

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Mining Water Use

Camp Verde Indian Reservation
Verde River Basin, Arizona

Description of Water Use

Water consumption for dust control, seepage, evaporation and water lost during hauling of gravel.

Location and Source of Water Use

The source of water for both present and future mining uses is surface water from the Verde River and its tributaries, and ground water present in the alluvium (shallow ground water) of the Verde River and its tributaries and/or the Verde Formation which underlies the various parcels of the Reservation.

Estimated Annual Water Demand (Acre-Feet/Year)

Present mining water use	0
Future additional mining water use	13
Total potential mining water use	13

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Irrigation Water Use

Camp Verde Indian Reservation
Verde River Basin, Arizona
Dinah Hood Allotment

Description of Water Use

There is presently no use of Verde River water on the Dinah Hood Allotment.

Location and Source of Water Use

It is anticipated that 47 acres of irrigable land would be served from water diverted from the Verde River.

Estimated Annual Water Demand (Acre-Feet/Year)

Present irrigation water use	0
Future additional water use	291
Total potential irrigation water use	291

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Patrick Barry, 006056
United States Department of Justice
Environment and Natural Resources Division
Indian Resources Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(202) 305-0269
patrick.barry@usdoj.gov

Attorneys for the United States of America

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

GEORGE W. HANCE, *et al.*, Plaintiffs v. WALES ARNOLD, *et ux., et al.*, Defendants In the matter of the VERDE DITCH COMPANY	No. P1300CV4772 Division 1 **CERTIFICATE OF SERVICE**

I certify that on this 17th day of February, 2015, I served a copy of the United States Objection **"RESERVING JURISDICTION: THE UNITED STATES FILES OBJECTIONS TO THE MOU SUBMITTED BY THE VERDE DITCH COMMISSIONERS FOR APPROVAL"** by arranging for delivery to the following by United States Mail first class postage prepaid to:

L. Richard Mabery, Esquire
L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, Arizona 86301

Respectfully submitted this 17th day of February, 2015.

Patrick Barry
Attorney, Department of Justice
Environment & Natural Resources
Division
Indian Resources Section
P. O. Box 44378
Washington, D.C. 20026-4378
(202) 305-0254