

W/O

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

<p>GEORGE W. HANCE, et al., Plaintiff, -vs- WALES ARNOLD, et us., et al., Defendants. In the matter of the THE VERDE DITCH COMPANY</p>	<p>Case No. P1300CV4772 UNDER ADVISEMENT RULING</p>	<p>FILED DATE: <u>APR - 2 2015</u> ✓ <u>4:48</u> O'Clock <u>P.</u>M. DONNA McQUALITY, CLERK BY: <u>B. Chamberlain</u> Deputy</p>
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<p>HONORABLE DAVID L. MACKEY DIVISION 1</p>	<p>BY: Jennifer Jaramillo Judicial Assistant DATE: April 2, 2015</p>
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The Court stated at the March 5, 2015 hearing that the Court would consider the balance of the objections and give the parties some guidance regarding those objections prior to the Telephonic Status Conference scheduled for April 8, 2015 at 1:30 p.m. The Court has now considered the objections and provides further guidance to the parties.

The Court does not find that further time for objections is warranted as the parties who wish to object have entered their appearances and objections. All parties are being given additional time to address the objections and to resolve them with the Court. However, the Court does not find that reopening the objection time is appropriate. Furthermore, the parties are being given an opportunity for input into the timing of the rest of the process.

Based upon the Proof of Mailing By The Verde Ditch Company that was filed on March 17, 2015, the Court finds that alternative service has been completed as ordered by the Court since copies of the relevant documents were mailed to the Shareholders at the addresses on file as of December 24, 2014. The Court finds that it is the Shareholder's responsibility to keep the Verde Ditch office informed of their current address; therefore, there was compliance with the Court's order even as to the four Shareholders whose mail was returned as undeliverable. Furthermore, notice was published as ordered by the Court.

At the hearing, the Court addressed the following objections:

1. All Shareholders should be served with paperwork regarding all severances and transfers. The Court indicated that such a process might be appropriate, but has not issued a final ruling on that objection.

2. The language of the proposed MOU allows Salt River Project (SRP) to require that Shareholders give up rights to water from sources other than the Verde Ditch. The Court suggested that some consideration be given to this issue as there may be Shareholders who receive water from other sources. The parties were going to explore this issue and the intent of the language but the objection has not been resolved.
3. The proposed MOU language unlawfully expands the jurisdiction of this Court beyond interpretation and enforcement of the original Decree. While this issue is far from resolved, the Court suggested that other language be investigated in addition to the term “modify” to recognize the jurisdiction of this Court.
4. It is not necessary to require that there be both an order from this Court and a process before the Arizona Department of Water Resources (ADWR) given the cost and length of process with ADWR. Although not resolved, the Court suggested the language be modified to provide that the ADWR process could be voluntary rather than mandatory.

The Court has now considered the balance of the objections.

The Court does not find merit to the objection that the Verde Ditch Commissioners should not be working with SRP to resolve disputes that have arisen regarding water usage. The Verde Ditch Commissioners are appointed by the Court, and the Court has authorized the Commissioners to negotiate with SRP.

The Court does not find merit to the objections that the Court is without jurisdiction to approve an MOU and modify the original Decree. Issues surrounding the appropriate process for any modification as well as the merits of modifying the original Decree are yet to be resolved.

The Court does not find merit to the objection that the Court in the *General Stream Adjudication* has exclusive jurisdiction over the Verde Ditch as this Court has continuously exercised jurisdiction over the Verde Ditch since the original Decree.

The Court does not find merit to the objection that the proposed MOU does not treat the original Decree as a decree of the Court. While the Court is open to additional language, the Court can find nothing in the proposed MOU that treats the original Decree as anything other than a Decree of the Court.

The Court finds that the Yavapai-Apache Nation’s objection that is has been left out of the process has merit. The Court notes that the proposed MOU suggested that the Nation be left out of the process and that none of the Nation’s water rights would be impacted. The Court accepts the Nation’s position that action regarding other Shareholders will impact the rights of the Nation and that the Nation should now be involved in the process.

The Court finds that the Nation's objection regarding the sharing of information warrants further consideration. The Court believes that the Verde Ditch Commissioners and SRP have always intended that the process be transparent and have viewed the proposed MOU as the start of that process. The Court is open to other options for the exchange of information at this stage of the proceedings. Should the parties be unable to negotiate an appropriate process, the Court will consider appropriate motions.

The Court agrees with the Nation that an MOU is not required for the interpretation and enforcement of the original Decree. However, the Court finds that the proposed MOU, or a modified version of it, is an appropriate method for resolving water use issues on the Verde Ditch as well as reaching agreements before those issues come before the Court in the *General Stream Adjudication*.

The Court denies as premature the requests set forth in the February 17, 2015 letter of Chairman Thomas Beauty. While the Court has considered the objections set forth in that letter, the formal requests need to be presented through legal counsel after the parties have had an opportunity to discuss whether agreements can be reached regarding the requested relief.

The Court will hear from the parties at the Status Conference regarding which issues they reasonably anticipate can be resolved through further discussion and which issues will require a further hearing.

cc: L. Richard Mabery, PC (e)
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