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6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
7 **IN AND FOR THE COUNTY OF YAVAPAI**

8 GEORGE W. HANCE, et al,
9 Plaintiffs,

10 vs.

11 WALES ARNOLD, et ux, et al,
12 Defendants

13 In the matter of the VERDE DITCH
14 COMPANY

Case No. P1300-CV4772

**MOTION TO STRIKE NOTICE OF
APPEARANCE FILED BY THE STATE
OF ARIZONA and MOTION TO
CLARIFY STATUS OF ARIZONA
DEPARTMENT OF WATER
RESOURCES IN THIS PROCEEDING**

15 On March 3, 2015, the Arizona Department of Water Resources (ADWR) filed a Notice of
16 Appearance before this Court. On March 30, 2015, the State of Arizona also filed a Notice of
17 Appearance before this Court. As far as can be determined, neither the State of Arizona, nor
18 ADWR, are parties to this case under the Hance v. Arnold Decree and neither entity represents a
19 party in this proceeding.

20 The Yavapai-Apache Nation hereby moves to strike the Notice of Appearance filed by the
21 State of Arizona on March 30, 2015, and to clarify the status of ADWR's role in this proceeding.¹

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25 ¹ Undersigned counsel, on behalf of the Yavapai-Apache Nation, make this special appearance for
26 the purpose of filing this motion with the Court, and do not waive the sovereign immunity of the
Nation with regard to the Nation's special appearance.

1 **I. ADWR'S STATUS IN THIS PROCEEDING**

2 When ADWR filed its Notice of Appearance in this proceeding on March 3, 2015, the
3 Nation questioned the appropriateness of ADWR's filing. However, at the March 5, 2015 hearing,
4 the Nation did not object to ADWR'S appearance because ADWR made clear during the hearing
5 that it might provide helpful information to the Court involving ADWR's severance and transfer
6 process. While ADWR's role in these proceedings is still not entirely clear, in light of the
7 information received during the hearing, it seems to be one of *amicus curiae*.

8 Accordingly, the Nation requests that the Court clarify the status and role of ADWR in these
9 proceedings, so as to avoid any confusion regarding how the parties are to conduct themselves in
10 relation to ADWR (e.g. is ADWR a required participant during all discussions related the form and
11 content of the MOU, or is ADWR simply acting like a "friend of the court" that may be consulted
12 by the parties with regard to the form of the MOU at the parties' discretion).

13 **II. THE STATE OF ARIZONA'S NOTICE OF APPEARANCE SHOULD BE STRICKEN**

14 Unlike ADWR's appearance, the Nation cannot deduce what role the State is seeking to
15 play in these proceedings through its recently filed Notice of Appearance. Indeed, the Notice is
16 merely perfunctory in nature and wholly silent as to the State's rationale for seeking to participate
17 in these proceedings.

18 In order to appear before this Court as a non-party (presuming the State is indeed a non-
19 party), the State must establish grounds to intervene in these proceedings pursuant to the
20 requirements of Rule 24 of the Arizona Rules of Civil Procedure or, at the minimum, file a motion
21 for leave to participate as *amicus curiae*. Simply filing a Notice of Appearance (without more) is
22 improper and the Nation can find no rule of law that would permit the State of Arizona to simply
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1 appear in any proceeding to which it ascribes some interest in any Superior Court in Arizona.² This
2 approach (if sanctioned by the Court) would seem to open the door for **any individual or entity** to
3 simply join this case without disclosing any information about their position or interest. The Court
4 should strike the State of Arizona's Notice of Appearance.

5 Nevertheless, should the Court determine to treat the State's Notice of Appearance as a
6 motion to intervene, under the current information available to the Nation, such a motion should be
7 denied. Ariz. R. Civ. P. 24(a) and (b) provide the requirements for seeking intervention as of right,
8 or alternatively, permissive intervention. These are the proper procedures for those not representing
9 an existing party to join a proceeding as an interested party.

10 Ariz. R. Civ. P. 24(a) states:

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12 Upon timely application anyone shall be permitted to intervene in an action: (1) when a
13 statute confers an unconditional right to intervene; or (2) when the applicant claims an
14 interest relating to the property or transaction which is the subject of the action and the
15 applicant is so situated that the disposition of the action may as a practical matter impair or
16 impede the applicant's ability to protect that interest, unless the applicant's interest is
17 adequately represented by existing parties.

18 Ariz. R. Civ. P. 24(b) states:

19 Upon timely action anyone may be permitted to intervene in an action:

20 (1) When a statute confers a conditional right to intervene.

21 (2) When an applicant's claim or defense and the main action have a question of law or fact
22 in common.

23 Contrary to the requirements of Rule 24, the State has not made any showing in its Notice of
24 Appearance that it has an interest in these proceedings, nor has it argued that it has any conditional
25 or unconditional statutory right to intervene. The State does not appear to claim an interest relating
26 to the property or transaction which is the subject of this action; that is, shares in the Verde Ditch,

² While A.R.S. § 12-1841 allows the State to intervene in cases "in which a state statute, ordinance, franchise or rule is alleged to be unconstitutional..." the State has not alleged that it is invoking this statute to participate in these proceedings and the State would not have grounds to intervene under this statute in any event.

1 and it has not demonstrated in any form that the disposition of the action would impair or impede
2 the State's ability to protect such (unknown) interest. Finally the State has not met its burden to
3 show that it is not adequately represented by existing parties.

4 To properly intervene, Ariz. R. Civ. P. 24(c) requires the following:

5 A person desiring to intervene shall serve a motion to intervene upon the parties as provided
6 in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a
7 pleading setting forth the claim or defense for which intervention is sought.

8 While the decision whether to allow permissive intervention under Rule 24(b) rests within
9 the Court's discretion, no information in proper form has yet been provided by the State for the
10 Court to make such a determination. *See Winner Enterprises, Ltd. v. 24 Superior Court*, 159 Ariz. at
11 109, 765 P.2d at 119. *State Farm Mut. Auto. Ins. Co. v. Paynter*, 25 118 Ariz. 470, 471, 577 P.2d
12 1089, 1090 (App. 1978). *See also* 7C Wright, Miller & Kane, *Federal Practice and Procedure* §
13 1916, at 422 (1986). Instead, the State seeks to short-circuit the requirements of the Arizona Rules
14 of Civil Procedure altogether by merely filed a Notice of Appearance. This is improper.

15 **III. CONCLUSION**

16 For the foregoing reasons, the Yavapai-Apache Nation moves this Court to strike the State's
17 Notice of Appearance as improper and to clarify the role of Arizona Department of Water
18 Resources in this proceeding

19 RESPECTFULLY SUBMITTED this 6th day of April, 2015.

20 **MONTGOMERY & INTERPRETER, PLC**

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1 ORIGINAL of the foregoing filed this
2 6th day of April, 2015, with:

3 Clerk of the Court
4 Yavapai County Superior Court
5 2840 Commonwealth Dr.
6 Camp Verde, Arizona 86322

7 COPY of the foregoing mailed this
8 6th day of April, 2015, to:

9 The Honorable David L. Mackey
10 Judge of the Yavapai County Superior Court, Div. I
11 120 South Cortez Street
12 Prescott, Arizona 86303

13 COPIES sent via U.S. Mail and e-mail this
14 6th day of April, 2015, to:

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