

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2015 APR 14 PM 2:30 ✓

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BY: _____

1 Janet L. Miller (Bar No. 011963)
2 Nicole D. Klobas (Bar No. 021350)
3 Arizona Department of Water Resources
4 3550 N. Central Avenue
5 Phoenix, Arizona 85012
6 Telephone: (602) 771-8472
7 Fax: (602) 771-8686
8 jlmliller@azwater.gov
9 ndklobas@azwater.gov
10 *Attorneys for Arizona Department of Water*
11 *Resources*

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

12 GEORGE W. HANCE, et al.,

13 Plaintiffs,

14 v.

15 WALES ARNOLD, et ux., et al.,

16 Defendants.

17 *In the matter of the VERDE DITCH*
COMPANY

No. P1300 CV 4772

Division 1

**ARIZONA DEPARTMENT OF
WATER RESOURCES' POSITION
STATEMENT**

18 The Arizona Department of Water Resources ("Department") is filing this
19 statement to inform the Court of its position regarding certain issues identified in the
20 Court's Minute Entry dated March 5, 2015. The Department's position is not included in
21 the Report to the Court ("Report"), which the Department learned was filed yesterday on
22 April 7, 2015 because the Department was not given the opportunity to participate in a
23 meeting that preceded the filing of the Report. The Department has an interest in this
24 matter.

1 On March 5, 2015, a hearing was held to discuss a Memorandum of Understanding
2 (“MOU”) among the Salt River Project Agricultural Improvement and Power District and
3 the Salt River Valley Water Users’ Association (collectively “SRP”) and the Verde Ditch
4 Company. The MOU describes a process that has been used to identify lands that have
5 been historically irrigated with water from the Verde Ditch, together with procedures to
6 transfer claimed water rights from lands that have not been historically irrigated to lands
7 that have been.

8 The Department continues to be concerned about the lack of clarity in the MOU
9 regarding the relationship between the Court’s jurisdiction and the Department’s statutory
10 authority. During the March 5, 2015 hearing, the Department made its position clear.
11 The Department believes that it has concurrent jurisdiction with the Court to sever and
12 transfer water rights. If the Court were to exercise its jurisdiction to sever and transfer
13 water rights, the Department would not exercise its statutory authority under A.R.S. § 45-
14 172.

15 Pursuant to A.R.S. § 45-172, in order for the Department to approve an application
16 to sever and transfer water rights from one parcel of land to another, the Department must
17 determine that: (1) vested or existing rights to the use of water will not be affected,
18 infringed upon or interfered with; (2) the quantity of water diverted or used after the
19 transfer of the rights will not exceed the vested rights existing at the time of the severance
20 and transfer; (3) the water right sought to be transferred has been lawfully perfected; (4)
21 the water right sought to be transferred has not been forfeited or abandoned; and (5) where
22 necessary, the written consent and approval of the appropriate irrigation district,
23 agricultural improvement district or water users’ association has been obtained. Once the
24 Department makes a decision on a severance and transfer application, it would be subject
25 to both administrative and judicial review.
26

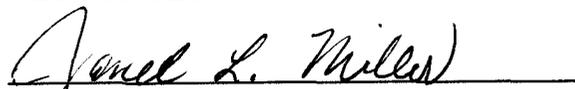
1 The Department's fee to process a sever and transfer application is based on an
2 hourly rate that is initially billed against a \$1,000 filing fee up to a maximum total fee of
3 \$2,500. Over a year may be required to process each severance and transfer application.

4 Moreover, contrary to certain provisions in the MOU, each application must be
5 processed separately, not in groups. As indicated at the March 5, 2015 hearing, the
6 Department cannot adopt such a process and satisfy its statutory duties under A.R.S. § 45-
7 172. Nonetheless, the Report indicates that the meeting participants discussed the
8 possibility of "bulk filings or a summary procedure to streamline and expedite severance
9 and transfer applications through DWR." Report at p. 5. This is not an option for the
10 Department.

11 The Department requests that the Court and the parties take the Department's
12 concerns into consideration. If the Court were to exercise its jurisdiction to sever and
13 transfer water rights, the Department would not do so.

14 DATED this 8th day of April, 2014.

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18 ARIZONA DEPARTMENT OF WATER
RESOURCES

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20 Janet L. Miller, Deputy Counsel
21 Nicole D. Klobas, Deputy Counsel
22 3550 N. Central Avenue
Phoenix, Arizona 85012

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24 ///
25 ///
26 ///

1 **ORIGINAL** of the foregoing
2 sent by first-class mail this 8th day of April 2015
3 for filing to:

4 Clerk of the Superior Court
5 Yavapai County, Division 1
6 120 South Cortez Street
7 Prescott, Arizona 86303

8 **COPIES** of the foregoing sent by first-class
9 mail and emailed this 8th day of April 2015 to:

10 Honorable David L. Mackey (jjaramil@courts.az.gov)'
11 Judge of the Superior Court and Master of the Verde Ditch
12 Yavapai County Courthouse
13 120 S. Cortez Street RM 207
14 Prescott, Arizona 86303

15 L. Richard Mabery (maberypc@cableone.net)
16 Law Office of Richard Mabery, P.C.
17 234 N. Montezuma St.
18 Prescott, AZ 86301
19 Attorney for Verde Ditch Company

20 John B. Weldon Jr. (jbw@slwplc.com)
21 Mark A. McGinnis (mam@slwplc.com)
22 Salmon, Lewis & Weldon P.L.C.
23 2850 E. Camelback Road, Suite 200
24 Phoenix, AZ 85016
25 Attorneys for SRP

26 Douglas E. Brown (DouglasBrown@outlook.com)
David A. Brown (David@b-b-law.com)
J. Albert Brown (JABrown@b-b-law.com)
P.O. Box 489
Eagar, AZ 85925
Attorneys for the Monroe Lane Neighborhood Coalition

1 Patrick Barry (Patrick.barry@usdoj.gov)
2 U.S. Department of Justice
3 Environmental and Natural Resources Division
4 P.O. Box 7611
5 Ben Franklin Station
6 Indian Resources Section
7 Washington, D.C. 2004-7611
8 Attorney for the United States

9 Robyn Interpreter (rinterpreter@milawaz.com)
10 Susan Montgomery (smontgomery@milawaz.com)
11 Montgomery and Interpreter, P.L.C.
12 4835 E. Cactus Rd., Suite 210
13 Scottsdale, AZ 85257

14 Carrie J. Brennan (Carrie.Brennan@azag.gov)
15 Assistant Attorney General
16 Arizona Attorney General's Office
17 1275 West Washington Street
18 Phoenix, AZ 85007

19 **COPY** of the foregoing sent by first-class
20 mail this 8th day of April 2015 to:

21 Don Ferguson
22 1695 W. Bronco Drive
23 Camp Verde, AZ 86322

24 
25 _____

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