

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2015 JUL -6 AM 8:08 ✓

DONNA McQUALITY, CLERK

N. Gentile

BY: _____

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Verde Ditch Shareholder
1185 S. Canal Circle, Camp Verde, AZ 86322

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

GEORGE W. HANCE, et. Al.,)
)
 Plaintiffs,)
)
 Vs.)
)
 WALES ARNOLD. Et ux., et al.,)
)
 Defendants,)
)
)
 In the matter of the VERDE DITCH)
 COMPANY)
)
 -----)

No. P1300CV4772
Division 1
(REVISED, 1st Revision)
FORMAL OBJECTIONS TO THE
VERDE DITCH COMPANY AND
SALT RIVER PROJECT
MEMORANDUM OF UNDERSTANDING

Objections Numbered 7-10

Objection number 10. is revised, all remaining objections remain the same.

Objection 7.

I would like to file a formal objection to any and all parcel owner non-voluntary Water Rights Severances of the "Green Lands" as designated on the SRP generated land parcel map provided in this MOU. This objection is in accordance with A.R.S. 45-188 section D.3.

Objection 8.

I would like to file a formal objection to any and all parcel owner non-voluntary Water Rights Severances of the “Purple Lands” as designated on the SRP generated land parcel map provided in this MOU. This objection is in accordance with A.R.S. 45-188 section D.3.

Objection 9.

I would like to file a formal objection to any and all parcel owner non-voluntary Water Rights Severances of the “Orange Lands” as designated on the SRP generated land parcel map provided in this MOU with the exception of land parcels which The VDC and SRP both agree should have their water rights deemed Non-Historic Water Rights. This objection is in accordance with A.R.S. 45-188 section D.3.

Objection 10.

Section 22 of this MOU agreement is Severability. It states, 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 the 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.

I believe, SRP has a primary and essential purpose of removing the irrigation water rights from a certain number of acres of lands and preventing those parcel acres from receiving water from the Verde Ditch that is equal to the “Orange Lands” total acres (153.8 acres) as drawn on the SRP generated parcel map.

I believe the primary and essential purposes of this MOU agreement is transferring Historic Water Rights from land parcels that SRP believes has not been using the Historically assigned Water Rights for a certain period of time (Purple Lands) to the disputed "Orange Lands" parcels. Then the "Purple Lands" with the Historic Water Rights will be labeled and recorded at the Arizona Department of Water Resources as non-Historic Water Rights, and the "Orange Lands" with disputed Historic Water Rights will be labeled and recorded at the Arizona Department of Water Resources as Historic Water Rights.

It is very unlikely that any of the Purple land parcel owners are going to voluntarily relinquish their Historic Water Rights. Many of the parcels SRP have deemed Purple are not even close to fitting the description of Purple Lands. That description being "Verde Ditch HWU Lands are not currently receiving or using water from the Verde Ditch. (Page 6 of the MOU dated 06-15-15 (5.3.03)) There has been very little if any investigation by SRP into the water use of these Purple Lands. Apparently SRP is basing all of their information on the Purple Lands from a 2007 aerial map photograph. ~~In addition, A.R.S. 45-188 (C) states these water rights inside the active irrigation district are not subject to abandonment or forfeiture if the irrigation district has maintained the water delivery system.~~

I would surmise as most people in the Verde Ditch irrigation district would, that virtually no one will be willing to voluntarily transfer their irrigation water rights away from their parcel of land with or without financial compensation. In my own neighborhood, the three parcels of land that are deemed "Purple Lands" on the SRP generated map have been irrigated regularly each year with neighbors witnessing the irrigation practices. These parcels will not be voluntarily transferred away according to the owners of the land parcels listed below, as I have talked to them personally. Although this is

only a snapshot of a small number of land parcels, this raises the possibility of questionable practices involved in determining the "Purple Lands".

Peter Mollick - 1185 S. Canal Circle, Camp Verde, AZ 86322 (Myself)
Wayne See - 1138 S. canal Circle, Camp Verde, AZ 86322
Vern Hilbers - 706 W. Salt Mine Rd, Camp Verde, AZ 86322 (Commissioner Vern Hilbers)

If these Historic Water Rights Severances are completely voluntary between all Parties and parcel owners involved, then this MOU agreement is not feasible to be implemented. This would cause the MOU section 22. Severability clause to initiate by the reason of being invalid.

If these Historic Water Rights severances are involuntary and mandated without the approval of the owner of the Historic Water Rights as MOU section 8. seems to describe by using the wording "The Parties will seek to encourage voluntary transactions between the owners of Purple or Green Lands and the owners of Orange Lands to accomplish this purpose". This wording would seem to suggest, encourage first and then Mandate or force at a later date. This would deem these Historic Water Rights Severances illegal and unenforceable according to A.R.S 45-172 (A) and A.R.S. 45-172 (A)(6) and ~~A.R.S 45-188 (C)~~. This would cause the MOU section 22. Severability clause to initiate by the reason of being illegal and unenforceable.

Section 9.2 of the MOU states "there may be no additional Historic Water Rights available for voluntary Severance and Transfer. The Parties must then work cooperatively to attempt to locate additional sources of water rights, as evidenced by Historic Water Use". The only logical place to look for these additional available water rights to accomplish a Severance and Transfer is from the Green

or Purple Lands. The statement above seems to suggest if Historic Water Non-use is evidenced, then the Severance would be mandatory and by force. This section does not say all Severances and Transfers will be voluntary between the Parties and Parcel Owners.

Section 12.2 of the MOU states SRP will not contest the water rights for the Green Lands or the Orange Lands. This same statement that SRP will not contest the water rights for the Green Lands or the Orange Lands is repeated in section 6.1. I cannot find anywhere in the MOU where SRP states they will not contest the water rights for the "Purple Lands". By leaving this statement out of the MOU, I am assuming SRP will contest the water rights for the "Purple Lands". I believe most of the "Purple Lands" designations are incorrect. The three "Purple Land" designations in my neighborhood were incorrect. They all have been irrigated regularly every year. ~~These "Purple Lands" have solid Historic Water Rights even if the water has not been regularly used beneficially on the parcel of land.~~ A.R.S. ~~45-288 (C.)~~ To contest those water rights will apparently be allowed in this MOU even though it goes against A.R.S. 45-172 (A) ~~A.R.S. 45-288 (C.)~~ This will cause the Severability Clause in the MOU section 22. to initiate for the reason of illegality.

RESPECTFULLY SUBMITTED this 6 day of July 2015.

PETER J. MOLLICK

By: 

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Original Hand Delivered this 6th day of July, 2015, to:

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AND COPY sent by email and U.S. mail this 6th day of July, 2015, to:

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