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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
2015 OCT 19 PM 1:39 ✓
JENNIFER S. GRESHAM, CLERK
K GRESHAM

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,)

vs.)

Division 1

WALES ARNOLD, et ex., et al.,)

Defendants.)

**VERDE DITCH COMPANY'S
MOTION TO DELAY FILING OF
THE ORDER REGARDING
PROCEEDINGS PURSUANT TO
THE MEMORANDUM OF
UNDERSTANDING**

In the matter of the VERDE DITCH
COMPANY)
_____)

Albert Dupuy, Jr., Vernon Hilbers, John Teague, David Myers and Craig Cooley, as the Commissioners of the Verde Ditch Company, through undersigned counsel, L. Richard Mabery, *L. Richard Mabery, P.C.*, respectfully request that the Court vacate the deadline for filing, objecting or commenting on the Order Regarding Proceedings Pursuant to the Memorandum of Understanding

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set forth in the signed Minute Entry dated August 26, 2015 which provides:

It is ordered each party who is joined in these proceedings may now offer a form of order that sets forth the procedure for relief sought from the Court, pursuant to the Memorandum of Understanding, within 60 days of today's date. The original of that proposed order shall be filed with the Clerk of the Court and an electronic copy in Word format shall be provided to the Court's judicial assistant and electronically distributed to the other parties as previously authorized by the Court. Objections to the form of order may be filed by any party who is joined in these proceedings, at this point, within 45 days of service of the proposed form of order. (p. 5, Order dated August 26, 2015)

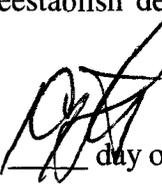
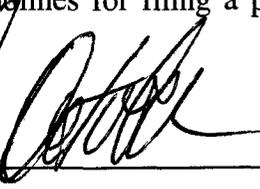
Given the Notice of Appeal filed by the United States of America on September 23, 2015 and until the appellate process is completed¹, the consideration of the adoption of an Order Regarding Proceedings Pursuant to the Memorandum of Understanding is likely to be as contentious and as an expensive process that consideration of the MOU entailed. While a stay has not been requested, the issue lingers whether the appeal divests this Court of the jurisdiction to consider a procedural Order. Clearly, this Court retains jurisdiction to proceed in all matters not involved in the appeal. *Egan-Ryan Mechanical Co. v. Cardon Meadows Dev. Corp.*, 169 Ariz. 161, 166, 818 P.2d 146, 151 (App. 1990). However, consideration of the Procedural Order might be argued to flow from the Court's authorization for the execution of the modified MOU and the terms of a procedure or process to be embodied in the Procedural Order to implement the Memorandum of Understanding. Unfortunately, the Notice of Appeal lacks sufficient clarity for interested parties to ascertain the scope of the issues on appeal. Until the issues are clarified, consideration of a procedural Order is premature and economically prohibitive for the Verde Ditch Company.

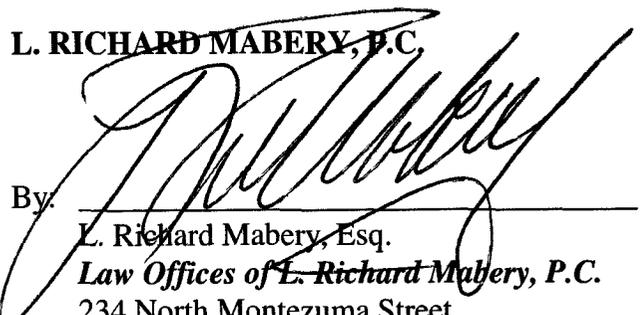
¹Or the scope of the appeal is determined.

The Verde Ditch Company has limited funds which will be largely depleted as a result of the appeal and with the continuing efforts for collection of records and historical uses by the Verde Ditch Company. For the purposes of judicial efficiency and economic necessity, the Verde Ditch Company requests that the Court vacate the deadlines previously established.

The Commissioners of the Verde Ditch Company believe that the focus remains providing for the maintenance, repair and improvement of the Verde Ditch; the continuation of the work commenced years ago regarding the compilation of the records regarding the historical uses of water from the Verde Ditch and the continuing enforcement and interpretation of the *Hance v. Arnold* Decree by this Court.

Upon the completion of the appellate process (or potentially once the United States clarifies the issues on appeal), the parties can proceed in completing the proposed Order with the confidence and guidance from an appellate decision without risking a determination that impedes the validity of the procedural Order and the Court can reestablish deadlines for filing a proposed Order, objections and comments thereto.

RESPECTFULLY SUBMITTED this  day of , 2015.

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By: _____
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ORIGINAL of the foregoing
filed this 19th day of October,
2015 with:

Clerk of the Court
Yavapai County Court
120 South Cortez Street
Prescott, Arizona 86303

COPY hand delivered this
19th day of October, 2015
to:

Hon. David L. Mackey
Division I
Yavapai County Court
120 South Cortez Street
Prescott, Arizona 86303

COPIES mailed
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