

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

FILED
DATE: May 15, 2015
4:06 O'Clock P.M.
Donna McQuality, Clerk
BY: *Becky Hamilton*
Deputy

DIVISION 1
HONORABLE DAVID L. MACKEY
CASE NO. P1300CV4772

Donna McQuality, CLERK
BY: Becky Hamilton, Deputy Clerk
DATE: May 15, 2015

TITLE:

GEORGE HANCE, et al,
Plaintiff,

-vs-

WALES ARNOLD, et ux., et al.,
Defendants,

In the matter of the VERDE DITCH
COMPANY,

COUNSEL:

Richard Mabery
L. RICHARD MABERY, P.C. (e)
(For Plaintiff)

HEARING

Status Conference

NATURE OF PROCEEDINGS

COURT REPORTER

Lisa Chaney

START TIME: 1:37 p.m.

APPEARANCES: Richard Mabery, Counsel for the Verde Ditch Company
Robyn Interpreter, Counsel for Yavapai Apache Nation
Vincent Randall, Former Chairman of the Yavapai Apache Nation
Mark McGinnis, Counsel for SRP
Lucas Shaw, SRP

TELEPHONIC APPEARANCES: Yosef Nogose, U.S. Dept. of Justice, on behalf of the Yavapai Apache Nation
Susan Montgomery, Counsel for Yavapai Apache Nation
Carrie Brennan, Arizona Assistant Attorney General, for Arizona State Parks
Janet Miller, Arizona Department of Water Resources
Douglas Brown, Counsel for Monroe Lane Neighborhood Coalition
Patrick Sigl, Counsel for SRP

This is the time set for status conference. The Court notes counsel for the Yavapai Apache Nation filed a Notice of Limited Appearance related to the Verde Ditch Commissioners proposed Memorandum of Understanding (MOU) that was filed. Also, Mr. McGinnis has distributed draft revisions to the MOU that he has made in order to further the discussion.

Court and counsel discuss the progress made and the involvement of the Yavapai Apache Nation.

Mr. Nogose requests thirty days to review the changes with client and brief what concerns client has once the MOU reaches its final form and is approved by the Verde Ditch Company and Salt River Project.

Mr. Marbery reports the commission is requesting that a shareholder committee be formed to begin working with the information that has been compiled.

Court and counsel discuss the current status of negotiations.

Court and counsel discuss HWU agreements.

Court and counsel discuss the request for a shareholder committee.

The Court authorizes the commissioners to work with SRP on the mailing of information to all shareholders, without objection.

Court and counsel discuss the issue of shareholder confidentiality.

IT IS ORDERED authorizing the commissioners to schedule meetings with a representative or representatives from the Nation, the U.S. Government, SRP, and at least two shareholders each whose property has been characterized as green, as orange and as purple.

Because the commissioners will not have their attorney present at these meetings, the Court is not authorizing any of the attorneys involved in these proceedings to be present during those discussions. The Court is authorizing the meetings more for informational purposes than actually moving forward with resolution since there is no MOU.

After a brief recess the Court will review the MOU with counsel. The Court notes that statements made during the review are subject to additional briefing and input and are not final decisions by this Court.

~* ~* ~* ~* Recess at 2:51 p.m. ~* ~* ~* ~*

At 3:03 p.m., Court resumes with all previously identified parties present. Mr. Sigl is now present telephonically. Don Ferguson has not appeared.

The Court proceeds with the Red Line 5.13.15 document. The Court will go through the document in its entirety without prejudice and will allow counsel to make a record regarding any concerns raised before concluding today.

The Court is comfortable with the changes made by SRP on page 1.

The Court is comfortable with the changes made on page 2. Given the discussions today the Court directs that the commissioners need not attempt to negotiate an agreement that includes the Nation as a party to that agreement. At some point the Nation may wish to join and the parties may wish to modify an agreement to provide for that in the future.

Court and counsel discuss page 3, specifically the 3.5 addition. The Court believes there is adequate grounds set forth in 3.4 that would allow for the withdrawal if those circumstances occur.

The Court is comfortable with the definition that has been added on page 4.

With regard to page 6, the Court believes it has already been concluded that the Nation will be a participant in these proceedings, to object to provisions in the MOU, to provide input to the Court, to object to severance and transfers or determinations of green, orange or purple lands within this agreement. The Court believes it is most appropriate at this point to include the lands of the Nation as part of this entire process and if necessary provide an opt-out provision for the Nation and

everyone else. The only option the Court is comfortable with right now for opting-out is for the party to petition the Court and show good cause as to why they should not be included in this process. If there are obstacles from the position of the commissioners as well as SRP that simply cannot be overcome, the Court would approve the language keeping the Nation's lands out of the process.

The Court is comfortable with the changes on page 7, 5.5 and above. If the parties to this agreement ultimately determine it is best to proceed without the Nation's lands involved, the Court would be fine with the language that has been added to 6.2. If we are able to negotiate to the point of having the Nation's lands included, the provision would be unnecessary as the Nation would be covered by all the other protections in the agreement. The Court is fine with the changes at the bottom of page 7.

The Court is fine with page 8 other than what has already been discussed with regard to switching the orange and purple in the paragraph heading for section 8. The Court is comfortable with all of the other provisions in section 8 and the changes that have been made.

Court and counsel discuss section 9 at the bottom of page 9.

The Court is comfortable with the process of purple land possibly being severed and transferred to orange lands, as outlined in the entire agreement. The Court determines to leave section 9 in at this point, with the proposed changes, and the Court will give it further consideration. Assuming that section 9 remains in, the Court is fine with the changes on page 10.

The Court is fine with the changes that apply to section 9, 9.6 and 9.7 on page 11. The Court is comfortable with the changes in section 10. The Court is comfortable with the changes in section 12, including the changes on pages 11 and 12.

Court and counsel discuss section 12.

Court and counsel discuss an end date for determination of land color.

IT IS ORDERED the Verde Ditch Commissioners and SRP shall lodge with the Court the version of the MOU and form of Order they wish the Court to approve as well as provide copies to all joined parties by Monday, June 15, 2015.

IT IS FURTHER ORDERED joined parties who wish to object to the proposed MOU and form of Order shall do so no later than Friday, July 17, 2015. Joined parties who wish to reply to the objections shall do so no later than Friday, July 31, 2015.

IT IS FURTHER ORDERED setting a Hearing to consider the form of MOU as well as Objections and Replies for August 14, 2015, at 10:00 a.m., Courtroom 226, Yavapai County Superior Court, Camp Verde.

END TIME: 4:24 p.m.

Thereafter off the record:

Due to a scheduling conflict, **IT IS ORDERED** changing the date of Hearing from August 14, 2015, at 10:00 a.m., to August 21, 2015, at 10:00 a.m., Courtroom 226, Yavapai County Superior Court, Camp Verde. ✓

cc: John B. Weldon, Jr. / Mark A. McGinnis / Patrick Sigl, Salmon, Lewis & Weldon, P.L.C.,
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