

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of the Application for a Permit
4 To Transport Water Out of State

No. 07A-TR001-DWR

5 Permit No. 33-96790

CASE MANAGEMENT ORDER No. 13

6 Applicant: Wind River Resources, L.L.C.

- 7 **(1) Denying Motion in Limine;**
8 **(2) Allowing Wind River Leave to Amend;**
9 **(3) Denying Request for Subpoena;**
10 **(4) Denying Request for Copy of DVD;**
11 **(5) Declining to Rule on Constitutionality**
12 **of Statutes;**
13 **(6) Allowing Six Interested Persons to**
14 **Present Oral Testimony;**
15 **(7) Granting Great American Land's**
16 **Request for Media Access;**
17 **(8) Providing Information on the Conduct**
18 **of an Administrative Hearing; and**
19 **(9) Declining to Consider Further**
20 **Submissions Prior to the Hearing**

21 Denying ADWR's Motion in Limine

22 and

23 Allowing Wind River Leave to Amend Witness List

24 Pending is ADWR's Motion in Limine. As of February 23, 2007 any Response
25 from Wind River had not been posted, and under the applicable rules, a response is not
26 due until March 1, 2007. Nevertheless, the Administrative Law Judge ("ALJ") believes it
27 appropriate to issue an order without a response.

28 ADWR objects to Mr. Michael Winters' affidavit attached to Wind Rivers' Brief in
29 Response to ADWR's Pre-hearing Brief. ADWR argues that Mr. Winters' testimony
30 presents new information. ADWR asserts that it if Wind River wants to present Mr.
Winters' testimony it must be as a witness subject to cross-examination. The inability of
ADWR to cross-examine the witness is a valid concern, but is more appropriately
considered when the ALJ considers what weight to give that testimony. Given the
preference for cross-examination of witnesses Wind River may add Mr. Winters as a
witness, if it desires to do so.

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2 ADWR also seeks to exclude a January 2007 Desert Times article and a March
3 2004 article published in the Arizona Water Resource journal. As with the affidavit, any
4 objection to these articles will be considered when the ALJ weighs the evidence
5 presented. However, at the hearing, Wind River must provide a copy of these articles
6 and Mr. Winters' affidavit on cd-rom if it intends to refer to these exhibits at the hearing.

7 Subpoena Request

8 Wind River filed a Request for a Subpoena to require ADWR to produce
9 documents related to the Verde Vista Water Improvement District. Having reviewed that
10 Request the ALJ does not find it appropriate to issue the requested subpoena.

11 Request for Copy of DVD

12 Wind River requested a copy of a DVD that Interested Person Great American
13 Land had filed as an exhibit. Because that DVD is not in one of the acceptable formats
14 for exhibits, the DVD has not been accepted as part of the record in this matter. See
15 Case Management Order 12. Consequently, Wind River's request is denied as moot.

16 Constitutional Issues

17 ADWR filed a Motion to Strike portions of Wind River's Opening Brief asserting
18 that constitutional arguments are not within this tribunal's scope of authority. Applicant
19 Wind River filed a Response stating that because it is challenging these statutes as
20 applied, and not facially, and the ALJ is required to rule on the applicability of these
21 statutes. The ALJ declined to strike portions of the record, but allowed ADWR to
22 respond to Wind River's substantive arguments, which response was posted February
23 20, 2007.

24 This matter is a contested case, and as such, the Director of ADWR has not yet
25 made any determination with respect to Wind River's Application, nor has the Director
26 yet applied A.R.S. §§ 45-291 through 45-294 to that Application. Consequently, there is
27 currently no factual record on which a decision related to the constitutionality of the
28 application of these statutes can be made. If the evidence presented at hearing
29 provides a factual basis on which a recommendation to the Director of ADWR related to
30 the application of these statutes can be made, the ALJ will address those facts in the
Administrative Law Judge Decision.

1 5) Bureau of Land Management

2 6) Great American Land LLC

3 Great American Land and Jack Riley's Request for Media Access

4 Great American Land and Jack Riley have requested media access, and agreed
5 to comply with the requirements set out in Case Management Order No. 9. This request
6 is granted. A representative from Great American and associated media personnel
7 should arrive at the Beaver Dam High School no later than 8:30 a.m. on March 2nd at
8 which time set-up instructions will be available.

9 Information on the Conduct of an Administrative Hearing

10 An administrative hearing is like a trial, but less formal. Evidence will be
11 presented by each party, either as sworn testimony or as documents. Members of the
12 public may attend the hearing, but are not allowed to present evidence or otherwise
13 participate. Proper decorum is always required at an administrative hearing, and given
14 the public interest in this matter and large crowd anticipated, it is crucial that each
15 person in attendance act to minimize all distractions. This includes a requirement that all
16 cell-phones, pagers, beepers and other electronic devices be turned off while in the
17 hearing room, and that members of the public not converse in the hearing room.

18 The hearing must be recorded, either by a court reporter or electronically. This
19 hearing will be recorded using digital equipment. To help ensure a high quality
20 recording, it will be important that noise in the hearing room be kept to a minimum,
21 further underscoring the need for the public to act to minimize distractions.

22 After the testimony and other evidence have been presented, the parties may be
23 accorded an opportunity to present legal argument. The ALJ will review all the evidence
24 and legal argument, after which a written decision will be submitted to the Arizona
25 Department of Water Resources, which brought this action.

26 Declining to Consider Additional Submissions Prior to Hearing

27 As a practical matter, given the logistics of travel to Beaver Dam, no further
28 submissions from parties or Interested Persons will be considered prior to the hearing.
29 Any outstanding submissions or requests not explicitly discussed are denied.
30

1 ORDER

2 **IT IS ORDERED** that ADWR's Motion in Limine is denied;

3 **IT IS FURTHER ORDERED** that Wind River may amend its witness list to include Mr.
4 Winters, and that at the start of the hearing Wind River may file a cd-rom with the
5 exhibits at issue;

6 **IT IS FURTHER ORDERED** denying issuance of subpoena for records related to Verde
7 Vista Water Improvement District;

8 **IT IS FURTHER ORDERED** denying Wind Rivers' request for a copy of Great American
9 Land's DVD as moot;

10 **IT IS FURTHER ORDERED** that the ALJ will not consider the constitutionality of A.R.S.
11 §§ 45-291 through 45-294 at the this time;

12 **IT IS FURTHER ORDERED** that Interested Persons Representative Nancy McLain,
13 Beaver Dam Water Company, Biasi Water Company, Brigham Young University,
14 Bureau of Land Management, and Great American Land LLC will each be allowed 30
15 minutes to present oral testimony;

16 **IT IS FURTHER ORDERED** that Great American Land LLC's media-access request is
17 granted; and

18 **IT IS FURTHER ORDERED** that no additional submissions will be considered prior to
19 the hearing.

20
21 Done this day: February 26, 2007.

22
23
24 /s/ Thomas Shedden
25 Thomas Shedden
26 Administrative Law Judge

27 Copy posted to <http://www.azoah.com/Water.htm>
28 this 26th day of February 2007,

29 By CJV
30