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February 26, 2007

Arizona Corporation Commission
DOCKETED

MAR 21 2007

DOCKETED BY nr

Hon. Jeff Hatch-Miller
Chairman
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Re: Application by Wind River Resources to pump Arizona water supplies to Nevada; Impact on Arizona Water Companies; Beaver Dam Water Company, Docket No. W-03067A-06-0117

Dear Chairman Hatch-Miller:

We represent Great American Land LLC, the owner of approximately 1,840 acres of developable land in Mohave County in the unincorporated area near Beaver Dam, Arizona. The Great American Land LLC property is entirely within the water service area of Beaver Dam Water Company as delineated by Decision No. 67577 of this Commission extending the Certificate of Convenience & Necessity (CC&N) of Beaver Dam Water Company to include this land, Docket No. W-03067A-04-0444.

Great American Land LLC intends to develop this property as a master planned community under the trade name Beaver Dam Ranch. To that end, it has entered into a main extension agreement with Beaver Dam Water Company to provide water service to its property, and has received a Notice of Intent to Serve from Beaver Dam Water Company. Great American Land LLC has also filed an application for Analysis of Adequate Water Supply with the Arizona Department of Water Resources to obtain a determination that there is water physically available within Arizona to meet the projected demand of this new community.

Over the last several months, however, it has come to the attention of both Great American Land LLC and Beaver Dam Water Company that a certain Wind River Resources, LLC filed an application with the Arizona Department of Water Resources (ADWR) to obtain a permit to extract water from within Arizona, at a location known as Mormon Wells, and transport the water to the State of Nevada. Originally, the application suggested that Wind River

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Resources, LLC (Wind River) had entered into a contract with a Nevada district, the Virgin Valley Water District (VVWD), whereby VVWD would purchase any water approved to be transported from the State of Arizona and would become the "regional" water provider for not only Mesquite, Nevada, but also portions (although limited portions) of Arizona. For making this water available, Wind River stands to gain some \$4 - \$6 million dollars per year for obtaining the permit and providing the well site locations in Arizona necessary to extract this water.

As you know, VVWD is not authorized to act as a public service corporation in the State of Arizona, nor is it authorized to serve water to Arizona residents as some sort of regional water provider. VVWD is not currently subject to the laws of the State of Arizona and, as a non-entity in Arizona, is not subject to this Commission's jurisdiction for rate-making or other regulatory purposes. Both Great American Land LLC and Beaver Dam Water Company believe that the application for water transport was based on the faulty premise that VVWD could or would be allowed to serve water in Arizona and that such service could somehow justify the application to extract Arizona's groundwater and transport it to Nevada.

Furthermore, Great American Land LLC and Beaver Dam Water Company also are concerned that, once the water exported under this permit leaves the State of Arizona, it may be completely beyond the control of Arizona law. It could be used by VVWD, or any other entity in the State of Nevada for purposes wholly different from those outlined in the application, and may never be used to support the regional economy of northwestern Mohave County, Arizona. Meanwhile, the local aquifers in the Beaver Dam, Littlefield and Scenic areas could be substantially dewatered, having serious detrimental effects on the health and welfare of Arizona's citizens.

For these reasons, both Great American Land LLC and Beaver Dam Water Company, and others, including the Mohave County Attorney's Office, asked the Arizona Department of Water Resources to delay holding a final administrative hearing on this matter until additional facts could be studied and more hydrologic information assembled to determine the true needs of the proposed recipient, VVWD, and the true impact on the local (Arizona) area. Wind River responded to these requests by urging ADWR to move forward expeditiously with the hearing. ADWR did issue a Notice of Hearing scheduling the matter for March 2, 3 and 4, 2007 before the Arizona Office of Administrative Hearings.

Once the hearing was scheduled, Great American Land LLC and Beaver Dam Water Company (and Biasi Water Company, another Arizona public service corporation serving water in the Beaver Dam area, and Brigham Young University, which owns a ranch in southwestern Utah) filed motions to intervene in the administrative hearing. These motions were filed pursuant to Rule 24, Arizona Rules of Civil Procedure, which govern intervention as a matter of right into judicial proceedings that may, as a practical matter, affect the rights of interested non-parties. Great American Land LLC also filed a Pre-Hearing Brief outlining our opposition and

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offering to provide proof on several issues relevant to the proceedings, including an offer to provide expert testimony on the hydrogeology of the region and the uncertainties associated with such a large pumping plan. A copy of Great American Land LLC's Pre-Hearing Brief and a copy of our motion to intervene are attached. Wind River opposed all of the motions to intervene.

In early February, the Hon. Thomas Shedden, the administrative law judge assigned to the matter, denied all motions to intervene but allowed interested persons such as Great American Land LLC and Beaver Dam Water Company to participate by filing written comments (testimony) by February 15, 2007, or by submitting a request to testify orally at the March hearing. A copy of the order denying the motion to intervene (Case Management Order No. 6) and the accompanying Case Management Order No. 5 outlining the procedures for those who wish to comment as Interested Persons, are attached.

Great American Land LLC and Beaver Dam Water Company both filed written testimony, accompanied by substantial exhibits, and both requested the opportunity to testify orally at the hearing on the grounds that such oral testimony would be their only opportunity to rebut misstatements of fact or expert opinion offered by Wind River. Copies of this written testimony, which is voluminous, are on file with the Office of Administrative Hearings. In fact, all of the remaining documents in this case, at least insofar as the website is up to date (which is uncertain) are available at <http://www.azoah.com/Water.htm>.

Wind River has objected to our request to testify orally, and it remains unclear whether our request will be granted. Meanwhile, Wind River has filed papers in the administrative proceeding seeking to introduce additional exhibits that were not available to us at the time we filed our written testimony (including an affidavit from Michael Winter, General Manager of VVWD) and has further indicated its intention that it will challenge the constitutionality of the statute that governs interstate water exportation from Arizona if this permit is denied. ADWR has opposed these latter positions by Wind River, and we support that opposition. But we remained concerned that no one is truly representing the interests of a private landowner (like Great American Land LLC) or a local public service corporation (like Beaver Dam Water Company), both of which have their very livelihoods on the line with the outcome of these proceedings.

As a private landowner, we have limited resources with which to oppose this application. It is an extraordinary burden on these private parties, and other local residents in the area, to participate in complicated and expensive administrative proceedings in order to protect their interests. This is particularly true for a small utility such as Beaver Dam Water Company. Defending against an application to transport water out of the state should not fall exclusively on the customers of a water company situated in the local area.

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In this situation, it occurs to us that the Arizona Corporation Commission has a real interest in the outcome of this application. Foremost, the authorized export of water from a rural basin such as this will have a direct effect on the local water companies' ability to serve on demand as required by the terms of their CC&Ns and Arizona utility law. Also, the ability of an out-of-state provider to control water resources originating in Arizona while such provider is beyond the reach of Arizona law when it comes to the use of those resources seems to be an intolerable situation, clearly undermining the authority of the Arizona Corporation Commission to control utility service and utility rates in Arizona.

For this reason, we cannot express deeply enough our appreciation for the interest in this matter shown by the Arizona Corporation Commission. Inclusion of this application to export water into the Commission's Docket No. W-03067A-06-0117 (*See* letter from Commissioner Mayes dated October 13, 2006), and your willingness to travel to Beaver Dam to conduct a hearing on this matter on February 22, 2007, have meant a great deal to the local residents in this area, some of whom have families in the area going back four generations or more. As you undoubtedly heard at your hearing, there is deep concern over the effect of this permit application on the local area.

We understand that you share our concerns with respect to this application and the burden it is placing, not only upon Great American Land LLC, Beaver Dam Water Company, and the local residents, but also upon ADWR, which is required to play a dual role of attempting to analyze the application as a neutral fact finder, but also to be the guardian of Arizona's water resources. We would welcome your assistance in opposing this proposed export permit, either by intervening directly into this administrative proceeding, or at least by your support as *amicus curiae* on the matter.

We would also appreciate your consideration of this matter as a function of state government and a proper item for discourse at the state to state level. Here, one state is seeking to obtain water from another state from a shared groundwater basin. The purported reason for this request is that the water is better quality in Arizona, and can be used in Nevada without treatment. Yet water treatment is a fact of life for many water providers and it certainly has not prohibited growth in areas where water treatment is required. To the extent water treatment is an economic consideration at all in this matter, we submit that it is an inconsequential one.

Rather, we believe that the ability to import water across state lines, but from within the same groundwater basin, opens opportunities for Nevada interests to gain access to water under Arizona law that would be prohibited under Nevada law. Once the water is imported into Nevada, it is unclear what law, if any would govern its use. Perhaps Nevada law would permit the sale of the water to other areas within Nevada. For example, the Southern Nevada Water Authority has existing contracts with VVWD to purchase VVWD surface water rights and, according to its website, has other agreements with respect to new surface water rights acquired

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by VVWD and outstanding groundwater applications.¹ Even if VVWD were required to use Arizona's water in Mesquite, there appear to be opportunities for VVWD to sell some of its existing supplies that would then be replaced by Arizona's water. If this is the case, it is difficult to see that VVWD or Mesquite actually "need" Arizona's water.

In this situation, it seems that as a matter of interstate comity, the State of Nevada should be making this request, and justifying it on the basis of true need and balancing of relative hardships, rather than having private parties, who stand to make a significant economic windfall, acting on a matter of interstate concern. To the extent that the Arizona Corporation Commission has an interest in such matters of interstate concern, we request that you use your good offices to address this matter with the Arizona Governor, the Arizona Legislature and members of the Arizona Congressional delegation.

We appreciate the extraordinary nature of these requests, but the circumstances in which we find ourselves demand extraordinary action. If you or your legal staff would like to discuss the matter further, I am available at the address, telephone numbers and e-mail at the top of this letter. Regardless of your future action, we appreciate your assistance to date and can assure you that we will continue to resist this application.

Sincerely,

MAGUIRE & PEARCE PLLC



Michael J. Pearce

MJP
encl.

c: Hon. Kristen K. Mayes, Commissioner
Hon. William Mundell, Commissioner
Hon. Mike Gleason, Commissioner
Hon. Gary Pierce, Commissioner
Brian C. McNeil, Executive Director
Chris Kempley, Chief Legal Counsel

Mr. Jack Riley, Great American Land LLC
Mr. Bob Frisby, Beaver Dam Water Company

¹ http://www.snwa.com/html/wr_instate_surface.html

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7 Attorneys for: Great American Land LLC

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

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

Permit No. 33-96790

Applicant: Wind River Resources, LLC

Proposed Intervenor: Great American Land
LLC

No. 07A-TR001-DWR

Great American Land LLC's
Pre-Hearing Brief and Position

Interested person and proposed intervenor Great American Land LLC hereby submits its Pre-Hearing Brief and Statement of Position on the above captioned Application for Permit to Transport Water Out of State, in accordance with Case Management Order # 2. Great American Land LLC opposes the granting of the requested permit for the reasons set forth in the accompanying memorandum of points and authorities.

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In the image, Beaver Dam Wash can be seen flowing north to south, commencing in Utah and meeting the Virgin River in Arizona where the unincorporated communities of Beaver Dam and Littlefield are located. The Virgin River runs generally northeast to southwest across the upper corner of Arizona before flowing into Nevada. The unincorporated community of Scenic is on the Virgin River near the Arizona/Nevada state line on the Arizona side. The city of Mesquite, Nevada is immediately adjacent to the Nevada/Arizona state line on the Nevada side, just north of the Virgin River.

Mesquite, Nevada is served water by the Virgin Valley Water District (“VVWD”), a Nevada entity that currently obtains its water from groundwater wells located in Nevada.

1 VVWD also holds certain appropriative water rights in the Virgin River stream flow and to
2 the groundwater found in the Virgin River groundwater basin. As explained in the
3 application, Wind River has entered into a contract with VVWD that would allow Wind
4 River to sell water to VVWD if Wind River is successful in obtaining the permit sought
5 here to transport water from Arizona to Nevada. Wind River asserts that, if this transfer is
6 allowed, VVWD will become the “regional supplier of water to the entire Lower Virgin
7 River Basin in both Nevada and Arizona.”¹

8 As noted in the Pre-Hearing Brief filed by Beaver Dam Water Company in this
9 matter, however, it is clear that this area already has competent water providers. In fact,
10 Great American’s land is within the Certificate of Convenience and Necessity area of
11 Beaver Dam Water Company, and Great American intends to purchase water from that
12 company, not VVWD. The local area does not need a “regional provider” based in
13 Nevada, and the entire premise of the Wind River application is physically and
14 economically implausible.

15 As importantly, the application also envisions that VVWD will take good quality
16 water from Arizona, blend it with lesser quality water and then return the degraded water
17 to Arizona. Both the extraction of the good water from the Arizona portion of the basin,

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19 ¹ The Wind River Application and related documents may be accessed on-line through the Arizona Department of
20 Water Resources (“ADWR”) official web page, www.azwater.gov. Scrolling down on the main page, there is a
21 section dedicated to this application and within the section there are links to application documents, divided into four
“stacks.” The stacks are large .pdf files that may be downloaded. The reference here is to the second paragraph of the
cover letter submitted by Wind River on March 15, 2005 in support of the application. That document is found in
Stack 1, page 13 of 664. These references will hereafter be cited as “ADWR Application, Stack __, pp. ____.” The
page reference is to the page of the .pdf file, regardless of the page number that may appear on the individual
document.

1 and the return of lesser quality water, cannot be in the interests of the public welfare of the
2 citizens of this state as required by A.R.S. § 45-292(C)(3), and Great American has no
3 interest in pursuing arrangements with VVWD to purchase this water.

4 The application itself does not provide the information required by the Arizona
5 Statute, A.R.S. § 45-292, and does not provide information sufficient to allow the Director
6 of the Arizona Department of Water Resources to give full consideration to elements of the
7 proposed transaction required to be reviewed in determining whether to approve or reject
8 the application. Clearly, Wind River has not met the burden imposed under A.R.S. § 45-
9 292 to demonstrate the need for, and lack of resultant harm in, approval of its application.
10 As detailed below, these are fatal flaws that prevent the approval of this permit.

11 Great American has many other issues with the allegations set forth in the Wind
12 River application. They will be addressed here by way examining the content of the
13 application and related documents, providing documents of which the Hearing Officer may
14 take judicial notice, and by offer of proof as to what Great American would present as
15 evidence in the hearing on this matter if permitted to do so.

16 **I. The Hydrologic Analysis Submitted in Support of this Application is**
17 **Insufficient to Determine the Impact of the Proposed Transfer**

18 The statutes governing interstate transportation of water from the State of Arizona
19 require that the applicant submit “[s]tudies satisfactory to the director of the probable
20 hydrologic impact on the area from which the water is proposed to be transported.” A.R.S.
21 § 45-292(B)(6). In determining whether to approve or reject the application, the Director

1 is required to consider the potential harm to the public welfare of the citizens of this state
2 and the supply of water to this state, including the current and *future* water demands of the
3 proposed source area. A.R.S. § 45-292(C)(2) and (3) (emphasis added).

4 Here, the hydrologic studies submitted by Wind River are admittedly regional in
5 nature and not specific on the hydrologic impact on the area from which the water is
6 proposed to be transported.² In fact, Wind River admits that there are no wells in the local
7 area upon which to base such a study. In response to an ADWR inquiry, Wind River
8 states: “No well or series of wells currently exist in the Mormon wells area capable of
9 pumping the volume of water proposed for this project (30-inch diameter bore hole with
10 20-inch diameter casing). To predict or evaluate what if any potential impacts might occur
11 to the VVWD wells from pumping in the Mormon Wells area, we need to know the
12 hydrologic parameters from the proposed well site. Since no production well currently
13 exist in the Mormon Wells area to provide us with that information, we will use existing
14 hydrologic parameters from VVWD production wells that are completed in the Muddy
15 Creek formation.”³

16 Further, the Wind River application states that the “target depth for extraction of
17 groundwater from Mormon Wells is within the underlying Muddy Creek formation below
18

19 ² ADWR sent Wind River a letter dated April 16, 2006 requesting additional information, ADWR Application,
20 Stack 3, pp. 632-36. In Wind River’s response, it admits that the Dixon & Katzer study (2002), submitted in support
21 of the application “attempts to address the potential impacts that may occur as a result of pumping from the Muddy
Creek Formation, but not specifically in the area of the proposed well field site. No specific study has been conducted
that specifically identifies probable impacts on the area from which water is proposed to be transported.” (ADWR
Application, Stack 3, pp. 7-8).

³ ADWR Application, Stack 3, p. 8.

1 a confining layer identified in recent drill hole data collected at Mormon Wells. This
2 confining layer minimizes the discharge of groundwater from the more transmissive zones
3 of the Muddy Creek aquifer upward into the upper alluvial sediments of the overlying
4 Beaver Dam Wash aquifer.”⁴ Indeed, much of Wind River’s support for its conclusion that
5 the granting of this application will not adversely affect the local area seems to stem from
6 the existence of this “confining layer” in the aquifer system. Yet, in response to a second
7 request from ADWR to provide the well completion data, aquifer test data, and
8 geologic/lithologic logs concerning this “recent drill hole data collected at Mormon Wells”
9 Wind River responds that “[w]e have made every effort to obtain well completion data,
10 aquifer test data, and geologic/lithologic logs concerning the drill hole data collected at
11 Mormon Wells and have yet to find any data of any sort from this drill hole. We are
12 continuing to look, but right now no one seems to know if or where that data exists.”⁵

13 It is clear from this dearth of hydrologic information that Wind River has no ability
14 to accurately predict the effect of the proposed pumping of a *30-inch diameter well* on the
15 local Beaver Dam/Littlefield area, but this is precisely the type of information that is
16 necessary to support this application. Thus, Wind River has not met the burden imposed
17 by A.R.S. § 45-292(B)(6), and the application should be denied on that basis alone.

18 But further, Great American has also begun to investigate the specific hydrology of
19 the Muddy Creek Formation and the Beaver Dam Wash. Our conclusions are that (1) there

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⁴ ADWR Application, Stack 1, p. 23.

21 ⁵ ADWR Application, Stack 1, p. (first request by ADWR); ADWR Application, Stack 3, p. 636 (second request by
ADWR); ADWR Application, Stack 3, p. 8 (Wind River response).

1 is not enough information existent to accurately predict the impact of this large proposed
2 diversion; and (2) the data and information that do exist all point to far more significant
3 impacts from the extraction of water at Mormon Wells on the water quantity and quality in
4 the aquifers underlying the Beaver Dam/Littlefield areas. If permitted to intervene, Great
5 American proposes to put on specific hydrologic testimony to this effect.

6 ***Offer of Proof:*** If permitted, Great American will present expert testimony on the
7 hydrology of the local area.

8 **II. The Evidence at Hand Indicates that there are Abundant Water Resources**
9 **Available within Nevada to Serve the Needs of VVWD**

10 A.R.S. § 45-292(C)(5) requires the Director to consider the “availability of
11 alternative sources of water in the other state” in deciding whether to approve or reject an
12 application for transportation of water out of Arizona. To meet this criteria, Wind River
13 explains in its application and in its comments to ADWR that there are no alternative water
14 resources in the State of Nevada and that this imported water is urgently needed to meet
15 the burgeoning demand of the City of Mesquite.⁶ It appears, however, that there is a
16 substantial difference of opinion from those actually in a position of authority overseeing
17 Mesquite’s water supply.

18 First, the General Manager of the VVWD, the entity that is the Nevada municipal

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20 ⁶ For example, in a letter dated August 8, 2006, Wind River’s attorney wrote to ADWR urging expedition of the
21 hearing process on the grounds that “any delay in the hearing of this matter beyond December 11, 2006 will be a
significant hardship for our client as well as for the *consumers* of Mesquite, Nevada, who are in need of *certainty of
their future water supply.*” (ADWR Application, Stack 4, p.2) (emphasis added).

1 water provider for Mesquite, and the entity that is the intended recipient of the water to be
2 transported from Arizona, does not appear to be concerned about VVWD's ability to serve
3 the needs of future, much less existing, consumers within his district. To the contrary, Mr.
4 Mike Winters has been quoted at least twice in the local newspapers as seeing no urgent
5 need for additional water supplies. For example, in the December 11, 2006 edition of the
6 Review Journal, Mr. Winters indicated that he was not expecting or relying on an
7 importation of water from Arizona and stated further that "If they don't [give VVWD any
8 Arizona water] we're going to continue to drill wells and find the water we need."⁷

9 Again, in the January 19, 2007 edition of the Desert Valley Times Mr. Winters is
10 quoted as saying that VVWD has options other than importation from Arizona. "There is
11 more water,' he said. 'Nevada has an abundance of water, but all the cheap water is gone.
12 We have options. ... We've applied for rights-of-way into Lincoln County for wells. We
13 have one that is getting environmental work on it now. When we hit 12,000 acre-feet, we
14 have to go through a hearing process to get more water to Virgin Valley Water District. I
15 can't believe that the state engineer would decline our applications. There haven't been
16 any declined in any of the 14 years I've been involved here.'"⁸ These comments are
17 completely inconsistent with the dire situation portrayed by Wind River, and demonstrate
18 the complete lack of merit in this application.

19 _____
20 ⁷ A true copy of this entire newspaper article, reprinted from the internet, is attached to this memorandum as Exhibit
21 A. The article goes on to say that VVWD delivers about 5,500 acre feet of water per year to its 18,000 customers, and
has about 12,000 acre feet of water rights, enough to support 40,000 people.

⁸ A true copy of this entire newspaper article, reprinted from the internet, is attached to this memorandum as
Exhibit B.

1 Second, Wind River itself acknowledges that there are significant water resources
2 available to VVWD. For example, in its response to ADWR's Notice of Deficiency of the
3 Wind River application, Wind River states: "[w]ith the current 11,500 acre-feet of ground
4 water available annually, VVWD can meet the water demands of a population of 55,000
5 people by maintaining a [gallons per capita per day or "gpcd" rate] of about 187. They
6 currently are around 250 gpcd and through more conservation and reuse they hope to lower
7 it below 175."⁹

8 Third, Great American is prepared to present evidence at the administrative hearing
9 in this matter that neither water quantity nor water quality concerns in Nevada justify
10 approval of this application. Rather, it appears to Great American that there is ample
11 physical availability of water in the immediate vicinity of Mesquite, Nevada that is of
12 potable quality without any form of treatment. Further, Great American is convinced that,
13 even if native Nevada water requires treatment for ambient contaminants such as arsenic,
14 or has elevated levels of total dissolved solids, that such impediments exist in other
15 locations and other local water providers have successful found ways to treat the water to
16 acceptable standards. The sources are still "available" in Nevada and the presence of
17 arsenic or total dissolved solids should not justify a finding that Nevada is without suitable
18 alternatives.

19 Fourth, it appears that VVWD's real interest in the Arizona water may be in the
20 water's quality, not quantity. Even if water quality were an issue justifying an application

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⁹ ADWR Application, Stack 2 at p. 11 (¶ 18(b)).

1 for transporting water out of state—which it is not—the application fails to take into
2 account what will happen to the water quality in Arizona after the proposed transfer is
3 implemented. Great American believes that the proposed transfer will create water quality
4 problems in the local area just as much as it will improve water quality problems in
5 Nevada. As such, the transfer will clearly have a harmful impact on the public welfare of
6 the citizens of this state. *See* A.R.S. § 45-292(C)(2).

7 Finally, it appears to Great American that VVWD has had water resources at its
8 disposal that it has elected to sell and transfer to the Southern Nevada Water Authority for
9 possible use in the Las Vegas area. If granted party status in this matter, Great American
10 intends to develop evidence of this transfer with the intent of showing that VVWD could
11 have secured this water for its own future use, rather than selling it, and that such water
12 would have then been “available” as an alternative resource to this proposed transportation
13 permit. Further, it is likely that if VVWD obtains a windfall of water from Arizona, it will
14 have even more incentive to sell additional supplies to Southern Nevada Water Authority,
15 essentially effecting an indirect transfer of water from Beaver Dam Wash to Las Vegas.
16 These facts will bear directly on the elements to be considered by the Director in
17 approving or rejecting this application.

18 ***Offer of Proof:*** If permitted to do so, Great American will conduct the necessary
19 discovery to fully investigate and offer evidence on the water supplies available to VVWD,
20 the sale of water to Southern Nevada Water Authority, and the potential impact of this
21 transfer on water quality in Arizona.

1 **III. The Application Understates Current and Committed Demand in Beaver Dam**
2 **and Littlefield, Fails to Account for Future Growth in These Areas, and**
3 **Dramatically Understates the Impact to the Local Area**

4 A.R.S. § 45-292(C)(3) requires the Director to consider the “current and future
5 water demands in this state in general and the proposed source area in particular.” While
6 the Wind River application does discuss future demands in Arizona, all that demand
7 analysis focuses on the area immediately adjacent to the Arizona-Nevada border, in the
8 unincorporated area near Scenic, Arizona. The application states that:

9 With the creation of the County Water Improvement District
10 within Mohave County, Arizona, VVWD will be responsible
11 for delivering water to *almost the entire lower Virgin River*
12 *Valley*. The specific locations are as follows:

13 * * *

14 In Mohave County, Arizona the place of beneficial use will
15 be the following:

16 All of:

17 Township 40 North, Range 16 West
18 Township 39 North, Range 16 West¹⁰

19 As ADWR correctly noted in the first Notice of Deficiency, “[c]ontrary to other
20 statements in the application, this general legal description does not include Littlefield and
21 the Beaver Dam Wash area.”¹¹ In response, Wind River acknowledges such and says that
as for the private lands in Beaver Dam and Littlefield, “their demands are currently met by
three private water companies and as new development occurs in this area we will

¹⁰ ADWR Application, Stack 1, pp. 20-21.

1 entertain any proposal to either wholesale or retail water to these developments, but only if
2 asked by the private water companies.”¹²

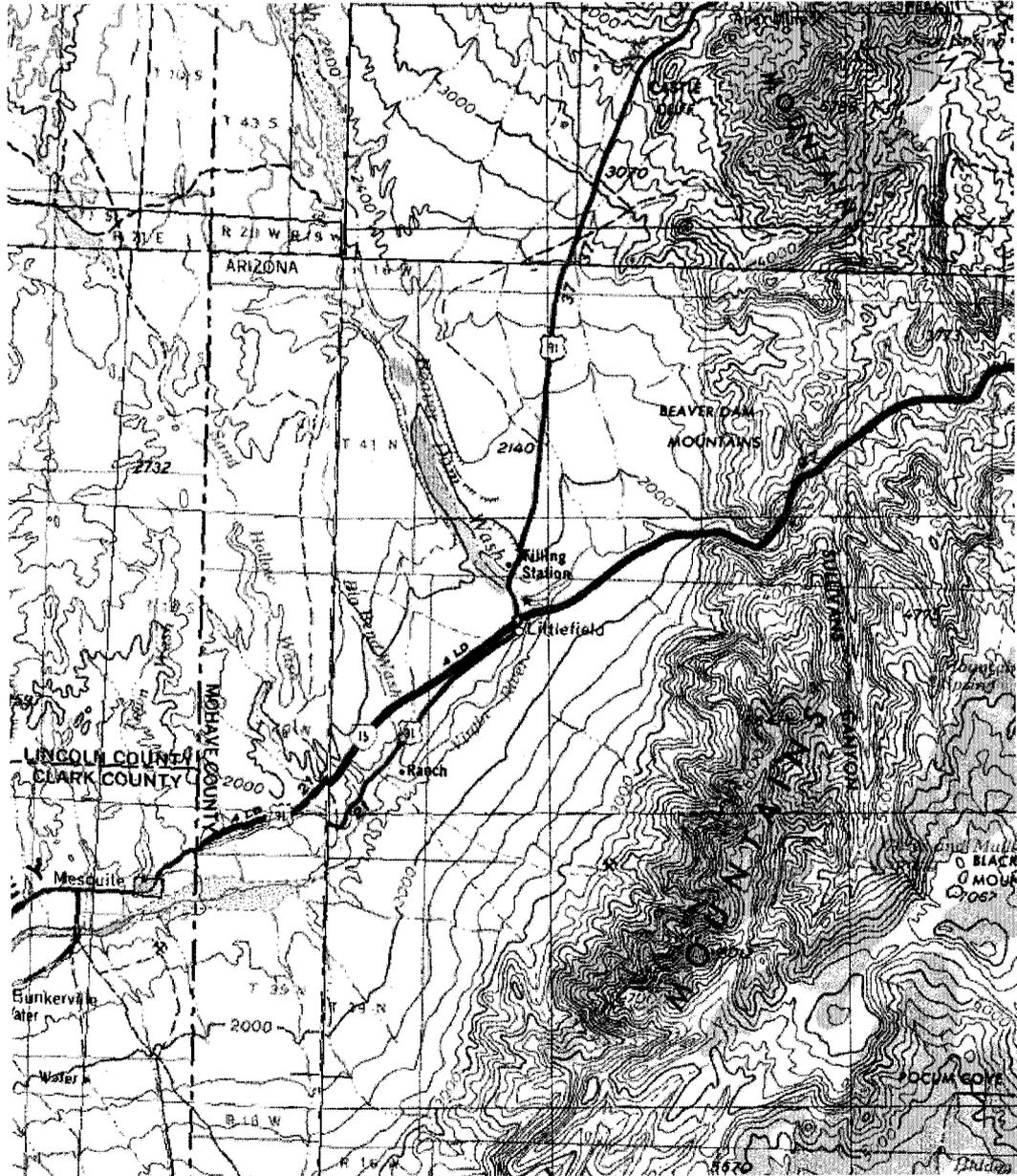
3 What this overlooks, of course, is that the proposed source area for the transported
4 water is only a few, perhaps six, miles from the communities of Beaver Dam and
5 Littlefield. These communities could easily serve themselves with local water. Yet Wind
6 River proposes that, by transporting the water to Mesquite, Nevada, VVWD will somehow
7 be able to bring this water back into Arizona, not only to the lands immediately adjacent to
8 the Arizona border, but also uphill across rugged terrain back to the very basin of origin.
9 Wind River offers no proposal as to how such a pipeline might be constructed, or who
10 would be required to pay for it, but apparently still manages to believe that such an
11 arrangement will be beneficial to Arizona.

12 The topographic map on the following page, taken from TopoZone™ at
13 www.topozone.com, demonstrates the geographic difficulty of this idea. Even if the water
14 were available in Mesquite, it would require approximately 8 miles of additional pipeline
15 to bring the water to Beaver Dam—two miles more than the distance from Beaver Dam to
16 the proposed point of withdrawal. Any such pipeline would have to cross difficult terrain
17 at best, whereas well constructed in the local vicinity could serve local lands without any
18 difficulty. Under these conditions, Great American has no intention of “asking” Wind
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21 ¹¹ ADWR Application, Stack 1, p. 8.

¹² ADWR Application, Stack 2, pp.

1 River to supply water to Beaver Dam Water Company, and it is doubtful that anyone
2 would seriously consider such a proposal.



20 Furthermore, the application completely sidesteps the projected demand in the
21 Beaver Dam and Littlefield areas, while continuing to focus on projected demands that

1 might be served by VVWD near the Nevada border. For example, in response to ADWR's
2 first Notice of Deficiency, Wind River asserts: "In responses 3b and 3c above, it explains
3 there is no formal documentation to confirm or verify the actual water demands of the area
4 anticipated to be developed. However, it does provide an estimate of the potential
5 demands at build out in the Scenic area based on the assumptions stated. ... The private
6 lands in and around Beaver Dam and Littlefield are currently served by three private water
7 companies and *most are already developed.*"¹³

8 But the map submitted by Wind River in support of its assertions (entitled Virgin
9 River Communities Area Plan Detail Land Use Diagram)¹⁴ clearly shows the nearly 2000
10 acres of land owned by Great American in the Beaver Dam area, and clearly shows that
11 land as planned for a mix of commercial, low and a large area of high density residential.
12 This land is currently vacant and most certainly not "already developed."

13 Great American is developing this land as a master planned community¹⁵ and has
14 filed an application with ADWR for an Analysis of Adequate Water Supply pursuant to
15 A.A.C. R12-15-712. That application, which calculates the potential build out of the
16 master planned community at densities less than allowed under the Virgin River
17 Communities Area Plan Detail Land Use Diagram, estimates total demand for the

18 _____
¹³ ADWR Application, Stack 2, p. 7 (quoted text taken from ¶¶ 5(a) and (b), emphasis added)

19 ¹⁴ ADWR Application, Stack 2, pp. 7, 92 (Wind River identifies the map in ¶ 5(b) on p.7; the map is located at Stack
20 2, p. 92).

21 ¹⁵ The advertisements for the master planned community may be found at www.beaverdamranch.com. These
promotional materials are readily available and should be easily locatable by anyone attempting to address the future
demographics of the Beaver Dam/Littlefield area.

1 development at 5,300 acre feet per year. This projected demand is not considered in the
2 Wind River application. See A.R.S. § 45-292(C)(3) (“the director shall consider...future
3 water demands in...the proposed source area in particular”).

4 ***Offer of Proof:*** Great American is prepared to present evidence of its intent to
5 develop this land, the associated water demands and the economic infeasibility of
6 obtaining water from VVWD to meet this demand. Great American believes that other
7 landowners in the proposed source area are prepared to do likewise.

8 **IV. The Application Ignores Concerns About Threatened and Endangered Species
and Pending In-Stream Flow Rights in Beaver Dam Wash**

9
10 A.R.S. § 45-292(B)(6) requires a potential export applicant to submit studies
11 satisfactory to the Director of the probable hydrologic impact on the area from which the
12 water is proposed to be transported. A.R.S. § 45-292(C)(7) requires that the Director
13 consider whether the proposed action is prohibited or affected by other laws. Here, Wind
14 River has neither completed the required studies, nor provided any evidence that this
15 proposed transfer will not adversely affect threatened and endangered species in the
16 Beaver Dam Wash, or other water rights claims in Beaver Dam Wash.

17 For example, the application itself goes to considerable lengths to express concern
18 about the impact of future water development on threatened and endangered species in the
19 Virgin River, and declares that “[a]dditional diversions in the vicinity of Mesquite from the
20 Virgin River for municipal use is prohibited due to the potential impact on critical
21

1 habitat.¹⁶ But the application completely ignores any possible effect of this large
2 proposed transfer on the habitat in Beaver Dam Wash. Indeed, ADWR asked, in its Notice
3 of Deficiency, that Wind River provide information that addresses the impact on other
4 water rights in the Beaver Dam Wash area, including the applications for in-stream flow
5 rights that have been filed by the United States Bureau of Land Management in Beaver
6 Dam Wash.¹⁷ Wind River did not respond to this request.¹⁸ ADWR repeated its request
7 for information on the hydrologic impact on the area from which the water is proposed to
8 be transported in its Request for Additional Information.¹⁹ Wind River's response again
9 fails to even mention the habitat conditions in Beaver Dam Wash, much less the impact of
10 the proposed transfer on the pending applications for in-stream flow filed by the Bureau of
11 Land Management.²⁰

12 Clearly, Wind River is trying to avoid commenting on the effect of the proposed
13 transfer on the pending in-stream flow applications and on the impact to Beaver Dam
14 Wash in the area immediately downstream from the proposed point of withdrawal. Such
15 failure to address the issue means that the application is insufficient under A.R.S. § 45-
16 292(B)(6), and fails to provide the Director with the necessary information to consider
17 whether the proposed action is prohibited (perhaps under the Endangered Species Act, 16

18 _____
¹⁶ ADWR Application, Stack 1, p. 17.

19 ¹⁷ ADWR Application, Stack 1, p. 10, ¶ 23(f).

20 ¹⁸ ADWR Application, Stack 2, p. 12 (Wind River combines its response to paragraphs 23, a,b,c,e and f into a single
response. It does not address the downstream application for in-stream flow filed by the United States Bureau of Land
Management.).

21 ¹⁹ ADWR Application, Stack 3, p. 636.

1 U.S.C. §§ 1531 *et seq.*) or affected by other laws, including the laws allowing
2 appropriation of in-stream flow, A.R.S. § 45-151; *See Phelps Dodge Corporation v.*
3 *Arizona Department of Water Resources*, 211 Ariz. 146, 118 P. 3d 1110 (App. 2005).

4
5 **V. VVWD Cannot and Will Not Serve Water in Arizona as Suggested by the**
6 **Wind River Application**

7 Much of the Wind River application is founded on the notion that VVWD will
8 purchase the water to be exported from the Mormon Wells area, take it via pipeline into
9 the Mesquite, Nevada municipal distribution system, where it may be blended with lower
10 quality water to achieve an acceptable quality for safe drinking water standards purposes,
11 then return some to Arizona. The application originally stated that Wind River would
12 create a special taxing district in Arizona to receive this returned water, but this statement
13 was later corrected in the response to the ADWR Notice of Deficiency to indicate that a
14 Mr. David Rall had filed the petition to create this entity, known as the Vista Verde
15 Domestic Water Improvement District (“Vista Verde”).²¹

16 The interrelationship between VVWD and Vista Verde is explained in Wind
17 River’s Response to Request for Additional Information filed with ADWR on May 25,
18 2006, wherein Wind River states:

19 VVWD’s service area already encompasses part of the
20 Scenic, Arizona area, which would allow them to operate and
21 maintain the area within their service area even if it is within
Arizona. Until such time that a legal solution authorizing

²⁰ ADWR Application, Stack 3, pp.7-8 (responding to the requests for additional information under paragraph 23).

²¹ ADWR Application, Stack 2, p. 6, ¶¶ 4(a) and (b).

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VVWD to operate completely with the Arizona portion of the Lower Virgin River basin can be implemented, Vista Verde will operate its water delivery system with engineering and technical support from VVWD. VVWD will operate and maintain the infrastructure within its service area both in Nevada and Arizona. Vista Verde would operate and maintain the infrastructure from this point to their end use customers. An IGA between VVWD and Vista Verde has been suggested as a solution for allowing VVWD to operate and maintain Vista Verde. VVWD's attorney is evaluating this option. It has also been suggested to seek Mohave County or Arizona Legislative authority to create a VVWD Arizona entity. A number of options are currently being discussed and VVWD has indicated its desire to operate and maintain Vista Verde if and when a solution can be determined.²²

There are many difficulties with the proposed implementation scheme. First and foremost, despite VVWD's best intentions, it is not authorized to provide water in Arizona. It is a Nevada entity and not authorized by the Arizona Corporation Commission to provide service as a public service corporation, as required by Ariz. Const. Art. 15, §§ 2, 3. And this is more than a mere technicality. The role of the Arizona Corporation Commission is to guard Arizona consumers against the danger of unregulated monopolies that provide essential services—to insure that rates, terms of service and the service itself comply with standards acceptable in Arizona. A Nevada entity, such as VVWD has no regulatory oversight within Arizona, and accordingly cannot have a "service area" in Arizona.

²² ADWR Application Stack 3, p. 2.

1 Second, the proposed Vista Verde relationship has failed. Although the Mohave
2 County Board of Supervisors did approve the creation of this district, it has since
3 reconsidered the need for such a district, and on January 22, 2007, resolved to revoke the
4 authority of the elected Board of Directors of Vista Verde “in order to protect the residents
5 of the District from the dormancy of the existing Board and to review the necessity for the
6 future existence of the district in light of the needs of the residents.” Mohave County
7 Board of Supervisors Resolution 2007-102, B:6634 P:582, Official Records of Mohave
8 County. A true copy of this resolution is attached to this memorandum as Exhibit C.

9 Meanwhile, the Certificate of Convenience and Necessity (CC&N) of the Arizona public
10 service corporation Beaver Dam Water Company has been expanded to include parts of
11 the area envisioned to be served by Vista Verde, and Great American is prepared to put on
12 evidence to show that such service has actually commenced and is intended to expand.

13 Third, although it may be acceptable to Wind River to continue to explore legal
14 possibilities for the service of water in Arizona by VVWD, such future contingencies
15 cannot support the instant application to transport water. A.R.S. § 45-292(C)(7) provides
16 that the Director shall consider whether the proposed action “is prohibited or affected by
17 other law, including sections 45-165 and 45-172 and chapter 2 of this title.” Here, the very
18 nature of the proposed transfer is dependent upon a legal relationship that admittedly does
19 not exist and, in view of all circumstances, may never exist.

20 The fact of the matter is that the areas of Scenic, Beaver Dam and Littlefield already
21 have municipal water service providers, regulated under Arizona law by the Arizona

1 Corporation Commission, the Arizona Department of Environmental Quality and ADWR,
2 that are capable of providing the service that VVWD and/or Vista Verde would allegedly
3 provide. As Arizona entities, these regulated utilities are required to comply with all
4 Arizona laws, including laws relating to Adequate Water Supply (A.R.S. § 45-108) and
5 laws relating to the conservation (and transportation) of groundwater under Title 45, Ch. 2.
6 *See* A.R.S. § 45-292(C)(1) (the Director shall consider whether the “proposed action
7 would be consistent with conservation of water, including any applicable management
8 goals and plans”).

9 ***Offer of Proof:*** If permitted to do so, Great American will present evidence of the
10 scope and extent of existing CC&Ns in the Scenic and Beaver Dam areas, of actual water
11 service in the local area and plans for expansion of local water purveyor’s production
12 capacity.

13 **V. The Applicant Under A.R.S. § 45-292 bears the Burden of Demonstrating that**
14 **Transportation of Water Away from the Basin of Origin Will Not Adversely**
15 **Affect Arizona’s Water Management, Will Not be Affected by Other Laws,**
16 **and Will Not Cause Harm to the Public Welfare of the Citizens of this State**

17 This application proposes an extraordinary money making venture wherein Wind
18 River will sell water to VVWD for millions of dollars per year every year for the next 50
19 years. The cost to Wind River is merely the of constructing wells on two small parcels of
20 land near Mormon Wells, Arizona. Meanwhile, the application threatens the development
21 potential of the Great American land in the local area by threatening to dewater the entire
Beaver Dam area.

1 The application focuses on a need for water in Nevada that is dubious at best, and
2 attempts to mitigate impact to Arizona by suggesting that Arizona's lands are "already
3 developed" or that a Nevada entity will somehow, through legal and economic means not
4 yet established, become a purveyor of water in Arizona. It completely overlooks the
5 hydrologic and economic impacts to the proposed source area (most notably Beaver Dam
6 and Littlefield) and suggests that Wind River will somehow guarantee that these
7 communities will have sufficient water meet the water demands of the developable lands
8 in Arizona.²³ Wind River has not demonstrated any ability to make good on such a
9 guarantee and the entire scheme is predicated on a series of assumptions, guesses and
10 executory promises that may never be enforced.

11 In Arizona, rural communities are rightly aware that rapidly expanding urban areas
12 need additional water supplies, and that they are looking for those supplies in the most cost
13 effective way possible. It was for this reason that Arizona has adopted a series of laws that
14 prohibit the transportation of groundwater away from the basin of origin, except under
15 limited circumstances approved by the Arizona Legislature. *See, e.g.* A.R.S. §§45-
16 544(A)(2). Because the basin of origin in Arizona necessarily stops at the state line,
17 transportation of water to Nevada would necessarily violate this proscription, except as
18 allowed under the exportation statutes, A.R.S. §§ 45-291 *et seq.*

19
20
21 ²³ ADWR Application, Stack 3, p. 5, ¶ 5(b) (Wind River will "develop and **guarantee** the availability of sufficient
potable water....") (emphasis in original).

1 As noted in *Sporhase v. Nebraska*, 458 U.S. 941 (1982), the states have a “legal
2 expectation” that they may restrict water within their borders, fostered by equitable
3 apportionment decrees and the negotiation and enforcement of interstate compacts. These
4 decrees and compacts recognize the relevance of state boundaries in the allocation of
5 scarce resources, and states are, at least in a limited fashion, justified in attempting to
6 control the waters found within state boundaries. *Id.* at 956. If an entity extracts water
7 from within Arizona and transports it to Nevada, the ability to control the use, conservation
8 and return flow of that water in accordance with Arizona law is lost. Arizona has a
9 legitimate legal expectation that any such proposal be required to demonstrate a true lack
10 of long-term harm in the basin of origin, and a true need in the receiving entity.

11 Here, the application fails to meet the burdens that A.R.S. § 45-292 imposes upon
12 an applicant, and therefore should be rejected as a matter of law. Further, evidence to be
13 adduced at hearing will demonstrate the many difficulties associated with this application
14 and prove additional reasons for rejecting this proposal.

15 DATED this 30th day of January, 2007.

16 MAGUIRE & PEARCE, PLLC

17
18 By: /s/ Michael J. Pearce
19 Michael J. Pearce
20 2999 North 44th Street, Suite 630
21 Phoenix, AZ 85018
mpearce@mpwaterlaw.com

1 Copy of the foregoing (and the Exhibits, filed as a separate .pdf file) were
electronically Filed this 30th Day of January, 2007 at:

2 TR001@azoah.com

3 In accordance with Case Management Order No. 2
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EXHIBIT A

Arizonans draw line on water pipeline

Isolated area wants state to stop water sale to Mesquite

By HENRY BREAN
REVIEW-JOURNAL

BEAVER DAM, Ariz. -- Along the short stretch of Interstate 15 that dips into Arizona on its way from Nevada to Utah, it's easy to feel cut off from the rest of the Grand Canyon State.

But residents of the isolated northwest corner of Arizona are calling on state officials in faraway Phoenix to protect them from an unprecedented plan that would pump groundwater across the border to feed growth in nearby Mesquite.

Almost 400 anxious Arizonans crowded into the multipurpose room at Beaver Dam Elementary School last week to hear more about the proposal by Arizona company Wind River Resources.

Opponents of the plan promised to pack the house again early next year, when the Arizona Department of Water Resources is expected to hold a public hearing in the Beaver Dam area before deciding whether to allow the interstate water transfer to go through.

The fight dates to March 2005, when Wind River Resources filed a rare application to export groundwater from Arizona for use in another state.

Arizona never has granted such an application.

Wind River wants to sell water to the Virgin Valley Water District, which services the Mesquite area. The company also wants to piggyback on the district's water system, using it to deliver water back across the border to supply development on another part of the so-called "Arizona Strip."

The water in Wind River's pipeline would be pumped from wells on property northwest of Beaver Dam and piped the roughly 10 miles to Mesquite.

But residents in Beaver Dam and Littlefield, Ariz., on the south side of I-15, worry that the project could lower the water table and leave their wells sucking air.

"They can't take this water into Nevada without having a negative impact on Arizona. There's just no way," said Bob Frisby, whose Beaver Dam Water Company serves about 1,000 customers on the Arizona Strip. "It will dry us up."

To Beaver Dam resident Nikki Stoddard, the Wind River application is a "test case."

"If Arizona allows this, it's going to open the door" to others who might want to buy land on the

Arizona Strip and try to sell their groundwater to Nevada."

Jack Riley, who owns several thousand acres along I-15 in Arizona, warned that any groundwater piped to Mesquite could wind up in Las Vegas, where it would be worth tens of millions of dollars more than it is right now. He said the exportation proposal is "absolutely ridiculous, repugnant, outrageous. There's so many adjectives you could use."

But Wind River Resources spokesman John Michael said the water the company plans to tap is in a different aquifer than the one that feeds the wells in Beaver Dam and Littlefield.

In fact, Michael said, the groundwater Wind River is after actually flows west into Nevada anyway.

"And it's important to note that not a drop of this water has ever been used before," he said.

Michael accused Frisby and Riley of whipping up opposition to the Wind River project to protect their own interests. He said Frisby wants a water monopoly on the Arizona Strip and Riley wants to increase the value of his land along I-15 by scuttling growth elsewhere in the area.

"What the town ought to be is very wary of those two I think," Michael said. "The people in town don't understand they're being manipulated yet."

The water fight belies the ties between Beaver Dam residents and their counterparts in Nevada and Utah.

The community literally splits time with its out-of-state neighbors. The clocks there are set on Nevada time for half the year and on Utah time for the other half, thanks to its location just inside the Mountain Time Zone and its refusal, like the rest Arizona, to observe daylight-saving time.

To get to Beaver Dam from almost any other part of Arizona, you must drive through Nevada or Utah. If you need to buy groceries, go to the hospital, check out a library book or haul trash to the dump, count on a trip to Mesquite or St. George.

Before and after last week's informational meeting, dozens of people lined up to sign petitions against the water deal, and most of those in attendance wore stickers advertising a Web site called NoNevadaWaterGrab.com.

A banner along I-15 directs passing motorists to the same Internet address.

Stoddard is part of the group that established the Web site. She is also the one who went around Beaver Dam last week, putting up hand-lettered signs on yellow poster board that implored everyone in town to attend the meeting.

"The general consensus is, nobody wants this," she said.

The feeling is different down the road in Mesquite.

Mike Winters has been general manager of the Virgin Valley Water District since it was formed in 1993. He said the offer from Wind River could provide for growth in and around Mesquite for a long time.

Under the proposal, the amount of water piped annually from Arizona to Mesquite would increase incrementally over the next 40 years from about 1,000 acre-feet to as much as 14,000 acre-feet.

Winters said the per acre-foot price of the water would start at about \$200 and increase over the life of the deal to about \$400. One acre-foot of water is roughly the amount used each year by two Las Vegas Valley homes.

For now, Winters said, his agency is operating on the assumption that Arizona officials "are not going to give us any" of the Wind River water.

"If they do, it's a plus for us. If they don't, we're going to continue to drill wells and find the water we need," he said.

The district delivers about 5,500 acre-feet of water a year to its 18,000 customers. Its service area covers more than 310 square miles in Nevada and Arizona.

Winters said the district owns the rights to some 12,000 acre-feet of water, enough to support up to 40,000 people.

Some predict Mesquite's population could top 40,000 in as little as four years, though Winters doesn't put much stock in such estimates. "I've almost quit looking at those projections because they're changing them so often," he said.

The Arizona Strip is also growing, particularly Beaver Dam, Littlefield and Scenic. According to some estimates, the area is home to 4,000 to 5,000 people, many of them retirees or ranchers.

Michael said Wind River Resources is developing its pipeline in cooperation with a property owner in Scenic, where some 5,000 acres are available for development.

Wind River's application does not specify how much of the water pumped to Mesquite could wind up in Scenic, just across the Virgin River and the state line.

Like a lot of things in Nevada and Arizona these days, that question most likely will be answered by growth.

Find this article at:

http://www.reviewjournal.com/lvrj_home/2006/Dec-11-Mon-2006/news/11300969.html

EXHIBIT B

This is a printer friendly version of an article from thespectrum.com
To print this article open the file menu and choose Print.

[Back](#)

Article published Jan 19, 2007

Growth outstripping water

Bob Challinor, Desert Valley Times

If valley growth continues at its present six- to eight-percent rate, Virgin Valley Water District will exceed its permitted 12,000 acre-feet of water by 2013.

Mike Winters, VVWD general manager, told water board members this past Tuesday that the district produced 6,366 acre-feet of water during 2006, an eight and a half percent growth increase over 2005.

"Last year we produced 6,366 acre-feet of water and we sold 5,791 acre-feet," Winters said. "That's a loss of seven percent. We're right on target: we predicted we'd sell 6,355 acre-feet. That's eight and a half percent growth. That's pretty close to how we've been growing the last couple of years – six to eight percent.

"By 2012, probably 2013, if growth continues at its present rate, we'll be at 12,206 acre-feet of water. We'll exceed our 12,000 acre-feet permitted to us."

Winters said there was no reason to panic.

"There is more water," he said. "Nevada has an abundance of water, but all the cheap water is gone. We have options.

"The easiest for us is if Arizona approves the export permit to bring water over from Arizona. There are pros and cons to it, though. According to Arizona, if we bring in water from Arizona we get about 800-900 acre-feet, but we have to meet their needs first.

"We've applied for rights-of-way into Lincoln County for wells.

"We have one that is getting environmental work on it now. When we hit 12,000 acre-feet, we have to go through a hearing process to get more water to Virgin Valley Water District. I can't believe that the state engineer would decline our applications. There haven't been any declined in any of the 14 years I've been involved here."

Winters said "we have some surface water, but it's too expensive to treat.

"We'll look for other sources for water. We'll keep drilling."

He told board members that he had met with the general manager of the Lincoln County Water District and expected to come before the VVWD board in the future with possible interlocal agreements.

"We could possibly help Lincoln County out on an interim basis," Winters said. "We could service the Lincoln County Land Act until they get going."

EXHIBIT C



PAGE: 1 of 1 FEE # 2007805050

B: 6634 P: 582

OFFICIAL RECORDS
OF MOHAVE COUNTY
JOAN MCCALL
COUNTY RECORDER



01/22/2007 03:58 PM Fee: \$0.00
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PAID BY: MOHAVE CTY BD OF SUPERVISORS

RESOLUTION 2007-102

**REVOCATION OF THE AUTHORITY OF
THE VISTA VERDE DOMESTIC WATER IMPROVEMENT DISTRICT'S
ELECTED BOARD OF DIRECTORS**

WHEREAS, the Vista Verde Domestic Water Improvement District ("District") was formed by the Mohave County Board of Supervisors pursuant to Title 48, Chapter 6, of the Arizona Revised Statutes ("A.R.S.") for the purpose of providing domestic water services within the District, and;

WHEREAS, the District has taken virtually no action to provide water services for the residents of the District, and, therefore, has substantially failed to promote the public convenience, necessity and welfare, and;

WHEREAS, the existing District Board is proposing to deplete the resources of the District by transporting substantial amounts of water to locations outside the District and the State, and;

WHEREAS, in view of the foregoing, the Mohave County Board of Supervisors believes it to be in the best interest of the public to protect the residents of the District by revoking the authority of the existing Board of Directors and assuming the governance of the District, as provided by A.R.S. § 48-1016;

THEREFORE, BE IT RESOLVED that the authority of the elected Board of Directors be revoked by the Mohave County Board of Supervisors in order to protect the residents of the District from the dormancy of the existing Board and to review the necessity for the future existence of the district in light of the needs of the residents.

PASSED AND ADOPTED this 22nd day of January, 2007.

MOHAVE COUNTY BOARD OF SUPERVISORS

Pete Byers
Pete Byers, Chairman of the Board

ATTEST:

Barbara Bracken
Barbara Bracken, Clerk of the Board



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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

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

No. 07A-TR001-DWR

Permit No. 33-96790

CASE MANAGEMENT ORDER 5

**(1) Summary of Pre-Hearing
Conference**

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

**(2) Clarifying Status of Interested
Persons' Involvement**

(3) Providing Tentative Schedule

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A Pre-hearing Conference was held on February 5, 2007, a summary of which, and related orders follow:

Status of the Administrative Record

ADWR's attorney, Ms. Ronald, noted that the administrative record includes all information received by ADWR from the time that the Wind River's Application was filed until the Notice of Hearing was issued. ADWR will submit that record as an exhibit.

The Scope of Interested Persons' Involvement in the Hearing Process

Discussion was held with respect to whether or not Interested Persons would be allowed to submit exhibits and whether or not Interested Persons will be subject to cross-examination by the parties. The Administrative Law Judge ("ALJ") indicated that Interested Persons will be allowed to submit exhibits with their written or oral testimony, provided these exhibits (and associated testimony) meet the basic foundational requirements. The parties will be allowed adequate time to present rebuttal evidence.

The ALJ also indicated that Interested Persons would not be subject to cross-examination by the parties. This determination is based on the fact that these Interested Persons are not being called as witnesses by any party.

Scheduling and Other Issues

Scheduling concerns and practical issues related to the venue were discussed. The hearing will be conducted beginning at 9:00 a.m. each day. The ALJ indicated that,

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 **tentatively**, from 9:00 a.m. to 5:00 p.m. the parties will present their witnesses; the
2 hearing will reconvene at 6:00 p.m. to take the testimony of Interested Persons.

3 The Office of Administrative Hearings ("OAH") is working with personnel at
4 Beaver Dam High School to coordinate a system whereby the exhibits filed will be
5 accessible by computer to be projected on a screen. But to help ensure that this
6 procedure does not delay the proceedings, it will be necessary for the electronically filed
7 exhibits to be formatted in a searchable manner. A separate order will be issued
8 addressing this issue more fully.

9 **IT IS ORDERED** that Interested Persons will be allowed to submit exhibits with
10 their written or oral testimony, provided these exhibits (and associated testimony) meet
11 the basic foundational requirements; and

12 **IT IS FURTHER ORDERED** that the parties will be provided time to present
13 evidence in rebuttal to the Interested Persons' testimony.

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16 Done this day: February 7, 2007.

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19 /s/ Thomas Shedden
20 Thomas Shedden
21 Administrative Law Judge

22
23 Copy posted to <http://www.azoah.com/Water.htm>
24 this 7th day of February 2007,

25 By CJV
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1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

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

No. 07A-TR001-DWR

4
5 Permit No. 33-96790

CASE MANAGEMENT ORDER No. 6

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

Denying Motions to Intervene

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9 **Great American Land LLC, Beaver Dam Water Company, Inc., Biasi Water**
10 **Company and Brigham Young University (collectively the "Movants")** each filed a Motion
11 to Intervene. Applicant, Wind River Resources LLC, filed Responses in which it stated
12 its objection to these Motions. ADWR did not file any written Response to the Motions,
13 but at the February 5, 2007 Pre-Hearing Conference ADWR's representative stated that
14 ADWR had no position on the merits of the pending Motions.

15 The Movants request that the Administrative Law Judge ("ALJ") use his
16 discretion under A.A.C. R2-19-102(C) to apply in this matter the Arizona Rules of Civil
17 Procedure related to intervention. A.A.C. R2-19-102(C) provides: "If a procedure is not
18 provided by statute or these rules, an administrative law judge may issue an order using
19 the Arizona Rules of Civil Procedure and related local rules for guidance." Application of
20 the rule is permissive and, even if the Rules of Civil Procedure are applied, the ALJ has
21 discretion to consider these as guidance, rather than controlling.

22 Each Movant asserts that it meets the requirements to intervene as of right. See
23 Ariz. R. Civ. P. 24(a).¹ Biasi Water Company also makes an alternative request that it
24 be allowed permissive intervention. See Ariz. R. Civ. P. 24(b). Movants bear the burden
25 of proof. See A.A.C. R2-19-119(B)(3).

26 The hearing in this matter was set pursuant to A.R.S. § 45-292(E). That statute
27 requires that an "administrative hearing shall be held on the application" and allows any

28
29

Office of Administrative Hearings 1400 West Washington, Suite 101 Phoenix, Arizona 85007 (602) 542-9826
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30
31 ¹ "It is well established in Arizona that:

[T]he interest which an intervenor must have is a direct and immediate interest in the case, so that the judgment to be rendered would have a direct and legal effect upon his rights, and not merely a possible and contingent equitable effect. [Citations omitted.]"

Weaver v. Synthes, Ltd., 162 Ariz. 442, 447, 784 P.2d 268, 273 (App. 1989).

Interested Person to “appear and give oral or written testimony on all issues involved.”
1 A.R.S. § 45-292(E). Movants assert that their interests will (or may) be at risk if the
2 Application is granted, and that as Interested Persons they may not be able to submit
3 exhibits or cross-examine witnesses. Case Management Order No. 5 issued February
4 7, 2007, provides that Interested Persons may file exhibits with their testimony, which
5 negates that concern. As to cross-examination, ADWR has stated its opposition to the
6 Application and its intent to engage in extensive cross-examination. In determining
7 whether or not to grant the Application, ADWR’s Director is obligated to consider the
8 factors set forth in A.R.S. § 45-292, which factors will include consideration of the
9 interests that Movants assert are at risk (if the Movants present credible testimony in
10 support of their assertions).²

11 Beaver Dam Water Company also asserts that as an Interested Person, and not
12 an intervenor, it will not have appeal rights. Beaver Dam Water Company presents only
13 its assertion with no analysis, but accepting that assertion as correct, it reflects a
14 legislative-policy choice and does not provide a persuasive basis for the ALJ to apply
15 the Rules of Civil Procedure.

16 The Movants have not met their burden to show that the ALJ should apply
17 Arizona Rule of Civil Procedure 24 to this matter because Movants are allowed by
18 statute to give oral or written testimony on all issues related to the Application, and
19 because ADWR’s stated opposition to the Application assures that Wind Rivers’
20 witnesses will be subject to cross-examination.

21 **IT IS ORDERED** denying Great American Land LLC, Beaver Dam Water
22 Company, Inc., Biasi Water Company and Brigham Young University’s Motions to
23 Intervene.
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² Brigham Young asserts that its Utah-based water rights are at risk and that adverse effects to land in Utah may occur, but Brigham Young presents no authority to show that the ALJ or ADWR’s Director should consider Utah-based water rights or land in Utah. To the extent that these are within the scope of A.R.S. § 45-292, Brigham Young can present testimony for the ALJ’s consideration.

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Done this day: February 8, 2007.

/s/ Thomas Shedden
Thomas Shedden
Administrative Law Judge

Copy posted to <http://www.azoah.com/Water.htm>
this 8th day of February 2007,

By CJV

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7 Attorneys for: Proposed Intervenor
8 Great American Land, LLC

9 IN THE OFFICE OF ADMINISTRATIVE HEARINGS

10
11 In the Matter of Application for a Permit
12 To Transport Water Out of State
13 Permit No. 33-96790
14 Applicant: Wind River Resources, LLC
15 Proposed Intervenor: Great American Land,
16 LLC

No. 07A-TR001-DWR
Motion to Intervene by Great
American Land, LLC

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18
19 Great American Land, LLC hereby moves, pursuant to A.A.C. R2-19-102(C) and
20 Ariz. R. Civ. Proc. 24(a), to intervene as a party, as that term is defined in A.R.S. § 41-
21 1001(12), in the above captioned proceeding. This motion is supported by the
22 accompanying memorandum of points and authorities.

23 . . .
24 . . .

1 **Memorandum of Points and Authorities**

2 This contested case involves an application by Wind River Resources, LLC
3 (“Wind River”) to extract water from the Virgin River groundwater basin in northwestern
4 Arizona and transport the water into Nevada. Proposed intervenor Great American Land,
5 LLC (“Great American”) owns approximately 2000 acres of land in the Beaver
6 Dam/Littlefield area of Arizona, a few miles downstream on Beaver Dam Wash from
7 Wind River’s planned point of withdrawal. Great American intends to develop this land
8 under the trade name Beaver Dam Ranch,¹ and has a pending application before the
9 Arizona Department of Water Resources (“ADWR”) for an Analysis of Adequate Water
10 Supply to demonstrate the physical availability of water in the Virgin River groundwater
11 basin to support the development, ADWR Application No. 43-500093.² This is the same
12 aquifer from which Wind River proposes to withdraw water for export to Nevada.

13 Wind River contends in this application that the extraction and transportation of
14 water will have no impact on local residents in the Beaver Dam and Littlefield area.
15 Great American contests this fact and is prepared to offer evidence to the contrary.
16 Further, Great American believes that there are other facts which bear directly on this
17 case that need to be brought before the hearing officer as evidence to become part of the
18 administrative record.

19 Rule 24(a), Ariz. R. Civ. Proc., provides: “Upon timely application anyone shall
20 be permitted to intervene in an action: ... (2) when the applicant claims an interest
21 relating to the property or transaction which is the subject of the action and the applicant
22 is so situated that the disposition of the action may as a practical matter impair or impede

¹ Information on the development may be obtained at <http://beaverdamranch.net>.

² The list of pending applications before ADWR can be accessed on the Department’s web site:
http://www.azwater.gov/dwr/Content/OAAWS_pend_apps/files/LTF_1-22-07_web.xls.

1 the applicant's ability to protect that interest, unless the applicant's interest is adequately
2 represented by exiting parties." This rule, taken directly from the federal rules of civil
3 procedure, is to be liberally construed in favor of permitting intervention. *See Sierra*
4 *Club v. USEPA*, 995 F. 2d 1478, 1481 (9th Cir. 1993).

5 Great American moves to intervene in this matter as of right because it has an
6 interest in the water located in the Virgin River groundwater basin, and that basin is the
7 property or transaction which is the subject matter of this action. Great American, due to
8 its land holdings (which entitle it to withdraw and use groundwater in Arizona, A.R.S. §
9 45-453), development plans and pending application for an Analysis of Adequate Water
10 Supply, is directly interested in any application that would deplete the available water
11 supply and thereby make less water available to Great American in Arizona.

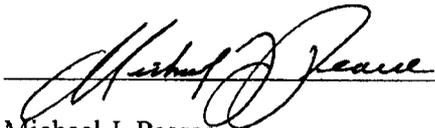
12 Furthermore, Great American is so situated that the disposition of this action may,
13 as a practical matter, impair or impede Great American's ability to protect its interest in
14 the value of its land, and the development potential represented by the pending
15 application for Analysis of Adequate Water Supply, because it is unclear whether this
16 matter will be determined to reduce the physically available supply.

17 Great American is not adequately represented by any other party to this action,
18 because the only potential opponent to the requested permit thus far is ADWR, and
19 ADWR certainly cannot be expected to advocate the position of an applicant (Great
20 American) for an Analysis of Adequate Water Supply while that application is still
21 pending. Under Case Management Order No. 3 (filed January 24, 2007), Great American
22 may not be allowed to present or cross examine witnesses at the hearing as an "interested
23 person" and participation as a party is essential to Great American's ability to protect its
24 interests.

1 Finally, Great American's application is timely, because the Notice of Hearing in
2 this matter was just issued on January 12, 2007 and the first Case Management Order on
3 January 19, 2007. Great American understands that the matter is set for hearing on
4 March 2, 3 and 4, 2007, and is aware of the deadlines set in Case Management Order No.
5 2 and the Pre-Hearing Conference set for February 5, 2007 in Case Management Order
6 No. 3. Great American will comply with any and all deadlines set by the Office of
7 Administrative Hearings.

8 Thus, Great American must be allowed to intervene in these proceedings as a
9 matter of right to protect itself and its interest in the Virgin River groundwater basin.

10 Respectfully submitted this 25th day of January, 2007

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12 

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18 Copy of the foregoing Electronically Filed this 25th Day of January, 2007 at:

19 TR001@azoah.com

20 In accordance with Case Management Order No. 2