

1 HEARING OFFICER: Okay. We're back on the
2 record. We took our lunch break. It's a minute or two
3 before 1:00 and we're ready to go. Of course, before
4 our break, there was some issues that I'm certainly
5 hopeful the lawyers could hash out, but let me hear from
6 either one or both of you.

7 MS. RONALD: I believe this deals with the
8 timing for filing our post-hearing briefs, and we did
9 get together to talk about that. One of the first
10 issues we identified was the availability of the
11 transcript, and I checked with the court reporter who
12 was here this morning and the normal turnaround time is
13 ten working days. And then we have to build in some
14 time, I think we've already recognized, for everyone to
15 read through the transcript and determine whether or not
16 there are any corrections or modifications that we think
17 need to be made.

18 And, of course, the parties need to confer,
19 along with Your Honor, about any changes that need to be
20 made to the official transcript so that we can all agree
21 on what really is the transcript of this proceeding
22 hopefully.

23 We were thinking that would probably -- that
24 could take as long as a month to go through that. By
25 the time we get the transcript -- go through it, examine

1 it, and try to confer about any changes that we think
2 are necessary. So what we were thinking was to have a
3 telephonic conference with you the first part of April,
4 and at that time we will know what the status of the
5 transcript is.

6 We were somewhat reluctant to pin ourselves
7 down to a schedule from that point forward. But I do
8 think that within 30 days after we agree upon a
9 transcript and maybe we can talk about that kind of a
10 time line. Now, I'll turn this over to Mr. Lewis as to
11 whether or not he -- what his time frame would be for --
12 from the date that we all agree on a transcript to how
13 long you would believe you would need for a rebuttal.

14 MR. LEWIS: Right. I think that we would
15 probably need 30 days for our written rebuttal report
16 from that point in time, and then it's my understanding
17 that ADWR would like an equal amount of time to -- well,
18 if they think they need to address anything we would
19 address it in rebuttal. I guess they could either tell
20 us within a shorter period of time or they would have 30
21 days within which to do it. That's up to you, whatever
22 you would see would be best there.

23 And then if they do file something, then we
24 would need an opportunity to look at that, but I'm
25 talking maybe 10 days, 15 days, but I think it's a

1 little premature to set the time schedule at this point
2 until we get the transcript issue all taken care of.

3 HEARING OFFICER: Sure. And then just
4 considering -- presuming all the substantive work is in
5 -- and let me tell you my thought on this, again,
6 because this may help you to understand.

7 When I said allotted time, if you'd had just
8 come back to me and said, Because of these issues we,
9 think 120, 150 days is going to be required from start
10 to finish and even beyond that, I wouldn't have been
11 surprised and, in fact, kind of anticipated that.

12 I recognize and understand that Wind River has
13 an application pending so there is that aspect of things
14 as well. So -- but I think then, kind of given what
15 I've heard, 30 days just to get started, 30 days,
16 30 days, and we're up to 90 and then beyond that,
17 realistically there may -- and I guess my point would be
18 -- let me back it up.

19 You file your substantive portion of things,
20 whenever that is. It would seem to me that we should
21 set a deadline to have the Department at least identify
22 that either we believe there are new materials or not,
23 you know. And not that they necessarily have to respond
24 to them that quickly, and even allow, if need be, a
25 conference or something where you get together and

1 decide is it truly new or not.

2 So realistically, we probably should just set a
3 status conference in about 30 days and anticipate that
4 given the nature of the proceedings and these
5 uncertainties, by the time all is said and done, it may
6 well be 120 or 180 days before the final submissions are
7 all in my hands.

8 Does that seem reasonable then?

9 MS. RONALD: Yes, Your Honor.

10 MR. LEWIS: Yes, Your Honor.

11 HEARING OFFICER: Okay. I -- you know, I do
12 have my calendar with me. I don't know, do we want to
13 try and schedule something now or do you prefer...

14 MR. LEWIS: I have a calendar also; that would
15 be fine. We could schedule now.

16 HEARING OFFICER: And the one thing I want to
17 point out with respect to that, I've been away for a few
18 days, at least as well as you have, and my calendar is
19 based on my docket. When I left, there's, of course,
20 potential for change there, but that things may have
21 filled up on my schedule and I'm not aware of.

22 On the other hand, again, we recognize the
23 importance of this at our office and can normally adapt
24 to these kind of things. So early April was the initial
25 thought. Any particular days that either one of you

1 would like to go with?

2 MR. LEWIS: I'm just looking at my calendar,
3 thirty days from today would be Wednesday, April 4th...

4 MS. RONALD: I have one meeting. It's over the
5 lunch hour on that day. It's an internal staff meeting.
6 So either morning or afternoon I would be available for
7 a conference.

8 HEARING OFFICER: Okay. I'm not seeing
9 anything so we'll say Wednesday, April 4 at nine
10 o'clock. And like with all our proceedings in this
11 matter, although there won't be a court reporter there,
12 I will keep our recording going and that information
13 will be posted to the website on our portal for anyone
14 who wants to listen.

15 Obviously, that status conference will be in
16 Phoenix at the Office of Administrative Hearings, 1400
17 West Washington, Suite 101. But, again -- and, you
18 know, I don't want to take longer than Wind River is
19 comfortable with on this. At the same token, you know,
20 I'm happier to have more time and allow you each
21 sufficient time to do what you think is necessary, and
22 it's not surprising to me kind of the time frames you
23 initially approached there.

24 So, all right. Nine o'clock on April 4th. And
25 I'll issue an order sometime this week, I guess, given

1 that today is Sunday, confirming that, and if there's
2 any schedule changes that need to be made, we'll deal
3 with them then.

4 The other issues we were addressing prior to
5 lunch were, I guess, two fold in the sense that there
6 may have been two witnesses implicated in this.
7 Mr. Corkhill's knowledge of the adequate water supplies
8 and how they may apply or those rules and statutes and
9 whether or not the Department's next witness,
10 Ms. Frabitz-Whitney, would be called.

11 Any resolution among yourselves with respect to
12 that?

13 MR. LEWIS: No, Your Honor. We -- based on
14 what his testimony was, we won't try to address that
15 with Mr. Corkhill. I don't think it's a subject that
16 he's versed in and that will be taken up, I think, with
17 Ms. Frabitz-Whitney when she's examined by Maxine
18 Becker.

19 HEARING OFFICER: Okay. And obviously you're
20 comfortable with that since it was your objection.

21 MS. RONALD: Yes, Your Honor.

22 HEARING OFFICER: Okay. Until perhaps we get
23 to that witness. I think that is the body language I
24 may be reading there. We will deal with that when we
25 get there.

1 All right. Then I will turn it back over to
2 you, and we do have a new court reporter and so I'm
3 going to just ask you, Mr. Corkhill, to go ahead and
4 state and spell your name and that way we'll be sure
5 we've got an accurate record going.

6 THE WITNESS: Edwin Franklin Corkhill.

7 HEARING OFFICER: Go ahead and spell it.

8 THE WITNESS: Oh, I'm sorry. E-d-w-i-n,
9 F-r-a-n-k-l-i-n, C-o-r-k-h-i-l-l.

10 HEARING OFFICER: Go ahead, sir.

11 MR. LEWIS: Your Honor, I have just very few
12 questions for Mr. Corkhill and then we can move on.

13

14 CROSS-EXAMINATION (Continued)

15 BY MR. LEWIS:

16 Q. Mr. Corkhill, I think you understand that if
17 this application is granted, Wind River does not intend
18 to pump 14,000 acre feet immediately for purposes of
19 transporting to VVWD. In other words, it's going to be,
20 if the permit is granted, it's going to be a gradual
21 accumulation of water when VVWD needs it. Is that the
22 way you understood this?

23 A. I've seen that, yes.

24 Q. So when we talk about pumping 14,000 acre feet,
25 that would be the maximum amount pumped per annum for

1 the 50-year period. It doesn't start from year one,
2 okay?

3 A. Uh-huh.

4 Q. Now --

5 HEARING OFFICER: Let me just make sure you
6 give a yes or a no.

7 THE WITNESS: Yes, sir.

8 BY MR. LEWIS:

9 Q. One other question. Were you here during
10 Mr. John Jansen's testimony, all of his testimony?

11 A. I believe so.

12 Q. Okay. And you heard him testify that it was
13 his opinion, based on the available geologic data, that
14 there would be -- the problem with hydrologic impact
15 would be negligible, but he suggested and he thinks it
16 would be necessary to have a condition of the permit, if
17 it were granted, that there should be a monitoring
18 program on the Wind River wells installed and there
19 should be monitoring in the wells in the upper alluvial
20 aquifer adjacent to the pumping wells, and studies would
21 need to be performed -- pumping tests for the completion
22 of the well -- in order to determine what the specific
23 impact was.

24 Let's assume that the application is going to
25 be granted. Would you agree that that would be a

1 reasonable conditions to put on the permit?

2 A. I wouldn't agree to condition the permit.

3 Q. Oh, what you're saying is you would not agree
4 to a permit being --

5 A. Conditioned.

6 Q. -- issued at all with conditions on it?

7 A. Relative to doing testing after the permit was
8 issued.

9 Q. Well, let me ask a question about that. Right
10 now nobody knows what the situation is there, right?

11 A. That's correct.

12 Q. We don't --

13 A. As far as I know; I certainly don't.

14 Q. And wouldn't it be to ADWR's benefit, wouldn't
15 it be to the local residents' benefit, to have
16 significant well testing in that area to determine the
17 confined nature of the Muddy Creek aquifer and exactly
18 whether or not it's going to impact the flow? Is there
19 something wrong with that?

20 A. Obviously, there's nothing wrong in having that
21 information.

22 Q. Would you state that again.

23 A. There's nothing wrong in having that
24 information.

25 Q. And if it was part of the permit, it would come

1 at the expense of Wind River, the 1.5 -- the \$2 million
2 expense, and that would be information that would be
3 available to ADWR and certainly that would be
4 information that would be helpful, correct?

5 A. That would be good information to have.

6 Q. Thank you.

7 That's all the questions I have, Your Honor.

8 HEARING OFFICER: Okay. Let me turn it back to
9 Ms. Ronald for any follow-up.

10 MR. RONALD: Thank you.

11

12 REDIRECT EXAMINATION

13 BY MS. RONALD:

14 Q. Just following up on the last line of
15 questions, Mr. Corkhill. Do you believe that a permit
16 should be issued in this matter without having the
17 necessary hydrologic perimeters from the Mormon Well
18 site?

19 A. No, I don't.

20 Q. So your earlier answers in response to
21 Mr. Lewis' questions, do they -- are they limited to
22 whether or not additional information would be helpful
23 rather than the timing of when you got that information?

24 A. Hmm.

25 Q. Let me rephrase.

1 A. Yes.

2 Q. Do you believe that additional information must
3 be obtained from the Mormon Well site before this permit
4 is issued?

5 A. I do.

6 Q. I want to clarify an earlier part of your
7 testimony. I want to make sure that the record is clear
8 on this. I believe in the drawings, the conceptual
9 drawings that you prepared regarding confined,
10 semiconfined, and unconfined aquifer systems that you
11 had testified during your direct testimony, that you
12 believe that it was more likely that the aquifer system
13 at the Mormon Well site was either semiconfined or
14 unconfined; is that correct?

15 A. That's correct.

16 Q. And to the extent that you might have said
17 otherwise during your cross-examination by Mr. Lewis,
18 that was an error?

19 A. It would be.

20 Q. I'd like to turn to ADWR 1B, page 51.

21 Do you remember which report is at ADWR 1B,
22 which report we're in?

23 A. 1B? I'm sorry.

24 Q. Do you remember which report this is?

25 A. The -- yes.

1 Q. If you could scroll down a little bit, please.
2 Thank you. Left column, first full paragraph, last
3 sentence which begins with the words "estimated values."

4 Could you read that, please?

5 A. First paragraph? Oh, yes. "Estimated values
6 of resistivity less than about 20-OHM meters indicate
7 that the Muddy Creek formation is predominantly fine
8 grained and is saturated with poor quality water, which
9 contains more than about 2,000 milligrams per liter of
10 dissolved solids."

11 Q. When was this preport (ph) -- report published?

12 A. 1997.

13 Q. And when was the Zohdy report published?

14 A. 1994.

15 Q. Thank you. There was a lot of questioning
16 about the Virgin Valley Water District, Well No. 1 and
17 Well No. 30 -- I'm sorry. Well No. 31 and Well No. 33
18 during your cross-examination by Mr. Lewis, and could
19 you please state again how far those wells are from the
20 Mormon Well site?

21 A. Well 31 is 13 to 14 miles away. Well No. 33,
22 anywhere from six to eight, I'm guessing.

23 Q. Do the well walls for either one of those wells
24 provide information about the Mormon Well site?

25 A. No.

1 Q. There was testimony, I believe, from
2 Mr. Johnson regarding the cost of constructing a
3 production well and whether power would also need to be
4 provided to that well in order to do an aquifer test.

5 Do you remember that testimony?

6 A. Yes.

7 Q. And I believe he made a statement of maybe one
8 and a half million dollars in order to provide power so
9 that an aquifer test could be conducted.

10 Do you remember that?

11 A. I remember that.

12 Q. And what is your opinion? Is there -- would it
13 cost that much -- how do you typically bring power on
14 site in order to conduct an aquifer test?

15 A. A portable generator could be brought on site.

16 MR. LEWIS: Your Honor, I thought it was
17 redirect. I asked nothing about that on --

18 HEARING OFFICER: Well, again, similar -- and I
19 think -- pardon me for cutting you off there -- similar
20 to the issue I think that Mr. Deeny raised about the
21 potential that some of your cross-examination with the
22 prior witness may have gone beyond the bounds.

23 We're in an administrative proceeding, and I'll
24 give each party, not necessarily as many opportunities
25 as they want, but all the relevant information as far as

1 I'm concerned. So you'll have a chance to recross, if
2 you will, if you desire it.

3 MS. RONALD: I have nothing further, Your
4 Honor.

5 HEARING OFFICER: Okay. With that, let me turn
6 to you, Mr. Lewis.

7 MR. LEWIS: No, Your Honor, we don't have
8 anything either.

9 HEARING OFFICER: Okay. Thank you so much,
10 sir. Appreciate your time. And what we'll do is give
11 Mr. Corkhill a little time to gather up all his
12 materials and then I'll turn back to you, Ms. Ronald.
13 And while we do that, I'm going to go ahead and turn the
14 recording off and we'll just stay right close, I hope.

15 (Whereupon, a short recess was taken.)

16 HEARING OFFICER: Okay. Got the recording,
17 we're back on the record.

18 Ms. Ronald, next witness.

19 MS. RONALD: Your Honor, we will not be calling
20 Ms. Frabitz-Whitney, so we are done with our witnesses.

21 HEARING OFFICER: Okay. Great. Then let me
22 turn to you, Mr. Lewis. And just so we're clear on
23 this, again, Ms. Fabritz-Whitney was listed as a
24 witness. She's present. Certainly if you have
25 questions for her, I'm not going to object to you

1 calling her, and obviously you're free to begin any
2 rebuttal evidence you'd like to present at this time.

3 MS. BECKER: Judge, we would like to call
4 Ms. Fabritz-Whitney as a witness.

5 HEARING OFFICER: Okay. Why dont you come on
6 up. Raise your right hand.

7 Do you solemnly swear or affirm that the
8 testimony you are about to give is the truth, the whole
9 truth, and nothing but the truth?

10 THE WITNESS: I do.

11 HEARING OFFICER: Okay. Would you state and
12 spell your name for our record, please.

13 THE WITNESS: My name is Sandra
14 Fabritz-Whitney. F-a-b-r-i-t-z, hyphen, W-h-i-t-n-e-y.
15

16 DIRECT EXAMINATION

17 BY MS. BECKER:

18 Q. Ms. Whitney, I'm going to have some questions
19 for you that are going to refer to the Arizona
20 groundwater statutes, and I can provide you -- or your
21 counsel can provide you with a copy of the statute book
22 if that would be acceptable.

23 Ms. Whitney, could you please explain your
24 position with the Department of Water Resources?

25 A. My current position I'm the assistant director

1 under Herb Guenther, the director. I oversee the water
2 management division and the water management division is
3 the division that consist of basically the water rights
4 permitting for surface water and groundwater. We
5 oversee the active management areas of the state, we
6 oversee the assured and adequate water supply program,
7 which is a statewide program, and the recharge,
8 artificial recharge program, which is also a statewide
9 program.

10 Q. And part of your position, I would assume that
11 you're very familiar with the book of statutes that is
12 in front of you currently.

13 A. I know what's in there.

14 Q. But you work with them on a regular basis; is
15 that correct?

16 A. I do.

17 Q. And you said that one of your responsibilities
18 is to oversee the assured and adequate water supply
19 programs?

20 A. Correct.

21 Q. Ms. Whitney, based upon -- and you have
22 reviewed the application filed by Wind River Resources?

23 A. Yes, I have (inaudible) hydrology staff, but
24 I've read most of it.

25 Q. You've read the -- the written materials that

1 have been submitted by Wind River?

2 A. Correct. Yes, I have.

3 Q. And have you also read the requests for
4 additional information and the first Notice of
5 Deficiency provided by the Department?

6 A. Yes, I did.

7 Q. Okay. Based upon what you've read, would Wind
8 River Resources be eligible to apply for an adequate
9 water report under the adequate water statutes?

10 A. No, they would not. They're not operating in
11 Arizona. Their subdivision is not located in Arizona.

12 Q. Wind River Resources is proposing to pump
13 groundwater out of Arizona, correct?

14 A. Correct.

15 Q. And do you have an understanding that Wind
16 River Resources has any plan on subdividing land?

17 A. Actually, I do not. I just know it's for
18 municipal use, according to their application.

19 Q. Okay. So it would -- is it your understanding
20 that the adequate water -- either the statutes or the
21 rules and regulations that apply to adequate water
22 reports would have any application to Wind River
23 Resources at all?

24 A. No, because they don't have a subdivision
25 within the State of Arizona.

1 Q. So the hydrologic requirements that are -- that
2 would pertain to a subdivider outside of an active
3 management area would not apply to Wind River Resources;
4 is that correct?

5 A. I can't speak for hydrology because I do not
6 oversee the hydrology division.

7 Q. Well, I guess my question is this: Would any
8 of the hydrologic reports that are required of an
9 applicant for an adequate water supply report be
10 something that would be applicable to Wind River
11 Resources?

12 A. It's not my understand that they applied for
13 inadequacy, so no, it would not.

14 Q. Okay. Thank you.

15 I'd like for you, if you could, to turn to ARS
16 45-453, please.

17 HEARING OFFICER: I'm sorry. Could you give me
18 that number?

19 MS. BECKER: Sure. It's ARS 45-453.

20 BY MS. BECKER:

21 Q. Are you there?

22 A. Yes, I am.

23 Q. Are you familiar with this statute?

24 A. Yes, I am.

25 Q. This statute pertains to groundwater rights and

1 uses in areas outside of active management areas,
2 correct?

3 A. That is correct.

4 Q. And is it your understanding, pursuant to
5 ARS 45-453, that in areas outside of active management
6 areas a person may withdraw and use groundwater for
7 reasonable and beneficial use?

8 A. It does say that in the statute, yes.

9 Q. Are you aware of any restrictions on a
10 municipal provider such as Wind River Resources that
11 would require them to apply for a hydrologic impact
12 study outside of an active management area?

13 A. Only if they were applying -- my understanding
14 would be only if they were subdividing land within
15 Arizona.

16 Q. But other than that, there would be no
17 requirement that they provide hydrologic impact study to
18 the state or Arizona for any groundwater use outside of
19 an active management area?

20 A. Except for the Statute 292. The export statute
21 does require hydrologic study sufficient to the director
22 of the Department of Water Resources.

23 Q. Okay. Thank you.

24 Why don't we, for a second, turn then to that
25 statute, 45-292.

1 A. Okay.

2 Q. Have you read the statute?

3 A. Yes, I have.

4 Q. Anywhere in the statute does the statute
5 require that a site-specific hydrologic impact study be
6 provided to the director of the Department of Water
7 Resources?

8 A. It says, "Study satisfactory to the director."

9 Q. And my question is: Does anywhere in this
10 statute does it say that the applicant must provide a
11 site-specific study as a part -- hydrologic impact
12 study?

13 A. It's my understanding and, again, because I
14 don't work in the hydrology division or oversee it, that
15 it is our interpretation that is what is required under
16 this statute.

17 Q. Okay. Thank you.

18 You said that you have reviewed the application
19 and the information that was provided by the Department
20 to the applicant, correct?

21 A. Correct.

22 Q. If we could, I believe the first communication
23 from the Department of Water Resources to the applicant
24 was the first Notice of Deficiency. That was sent on
25 July 8th, 2005, and is ADWR Exhibit No. 3.

1 If we could just pop that up there. And,
2 again, I may be repetitive, but you have reviewed this,
3 correct?

4 A. Correct. Yes. It's been a while, but yes, I
5 have looked at it.

6 Q. Do you know if anywhere in this first Notice of
7 Deficiency, the Arizona Department of Water Resources
8 informed Wind River Resources that it was required to
9 provide a site-specific study?

10 A. I need to see the whole thing.

11 Q. If you'd like because it's an important
12 question to my client, I can provide you a paper copy
13 or --

14 A. That would be fine.

15 Q. If that would be easier for you to (inaudible).

16 A. It's easier to read than just the little
17 sections that are on here.

18 HEARING OFFICER: And, again, I show this as
19 being about 11 pages and it's fairly densely typed there
20 so obviously feel free to take as much as time as you
21 need to formulate an answer.

22 THE WITNESS: All right. Thank you.

23 Number 23. It's not numbered so I don't know
24 what page it is. Sorry. If you can scroll down just a
25 little bit. Oh, wait. I'm sorry. Scroll up a little

1 bit. In 23A, Ms. Becker, is where it starts to discuss
2 what is needed for hydrology.

3 BY MS. BECKER:

4 Q. Okay. If you could just, for me, read to me
5 what it is that you believe -- where it is that you
6 believe the Department requested site-specific studies
7 be provided.

8 A. In "A" it says, "Although paragraph 13 of the
9 application includes a description of the hydrology of
10 the lower Virgin River Valley Basin, based on reports
11 submitted with the application and other studies and
12 documentation" -- in quotations -- "these reports are
13 regional in nature and do not specifically address the
14 probable hydrologic impact on the area from which the
15 water is proposed to be transported. Data collection
16 from one well is not sufficient for this purpose.
17 Please provide additional data from this area piezometer
18 wells located upstream and downstream from the
19 production well drilled in the Muddy Creek formation and
20 the alluvial aquifer may provide useful information."

21 Q. Okay. And it's your testimony that this --
22 that information was DWR's direction to the applicant
23 that it needed to provide a site-specific study?

24 A. I believe it goes on further also. There's
25 some additional information. I did not provide this

1 information. This would have come from our hydrology
2 division, but it does say, "These reports are regional
3 in nature and do not specifically address the probable
4 hydrologic impact."

5 Q. Would you agree with me, Ms. Frabitz-Whitney
6 that -- well, I'll tell you that this is the first
7 Notice of Deficiency that was provided. If this was --
8 if there was a requirement that the applicant provide a
9 site-specific study in response to 23A, would you agree
10 with me that the -- and if a site-specific study was not
11 provided in the response to this first Notice of
12 Deficiency, would you agree with me that this
13 application would not be considered administratively
14 complete if that was a required piece of information
15 that was not provided?

16 A. I can't answer that because I don't deal with
17 the hydrology. So I apologize, but I can't answer for
18 that piece of it. I can only answer to the pieces of it
19 that I oversee.

20 Q. Okay. Are you familiar with how the Department
21 determines administratively complete?

22 A. I am aware of it. The details of it, I leave
23 that to our attorneys.

24 Q. Okay. Well, what's your understanding of how
25 the Department deems an application -- under your

1 purview -- with what would constitute administratively
2 complete?

3 A. Generally, what administratively complete or
4 actually complete would mean is that we have all the
5 information at least necessary, the application is
6 complete it has everything attached that it was asked to
7 have attached to it.

8 Q. Okay. And it's your testimony that that
9 question asks the applicant to provide a site-specific
10 study?

11 A. That it is the -- I don't remember what the
12 application asked for to be perfectly honest.

13 Q. Okay. We can look at that. It's ADWR, I
14 believe 1, the very third page from the end.

15 A. Do you want me to scroll down through it? I
16 don't understand.

17 Q. The third page from the end, if we can get
18 there. It's Item 14. Okay. The third box there
19 states, "Hydrologic studies. These studies must be of
20 sufficient magnitude and quality to allow the Department
21 to determine the hydrologic impact on the area from
22 which water will be transported."

23 Would you agree with me that that statement by
24 itself would not inform the applicant that a
25 site-specific study --

1 A. It does not say site-specific study, but,
2 again, this is the piece of the application that I'm not
3 overseeing, so I can't interpret it.

4 Q. Okay. But it is your understanding that the
5 Department's position is that a site-specific study is
6 -- that's the Department's interpretation of 292?

7 A. That is my understanding based on this
8 application, yes.

9 Q. And then it's further, your testimony that it's
10 your understanding that or it's your belief that
11 Question 23A and the Notice of Deficiency also is
12 requesting a site-specific study and that would be a
13 requirement in order to go forward in the process,
14 correct?

15 A. In order for the Department to complete its
16 review, substantive review of the application, yes.

17 Q. But if it's a required element of the
18 application, as the Department has asserted, wouldn't it
19 have been required to be attached to this prior to the
20 Department deeming it administratively complete?

21 A. I really don't know the answer to that question
22 and I apologize.

23 Q. No need to apologize. Thank you. I just have
24 a few more questions for you.

25 You are familiar with 45-292. Are you aware of

1 anywhere in that statute that the Department was
2 required to provide an e-mail address for the public in
3 order to provide comments to the Department regarding
4 this application?

5 A. No. It does not say that.

6 Q. So that was an independent action that ADWR
7 took in processing this application, correct?

8 A. That is an independent action that the
9 Department took as a result of the feedback that we were
10 getting from the community and their desire to
11 understand what was going on.

12 Q. I have had the opportunity to review many of
13 those comments. I guess I'd like to know, first of all,
14 at what point did the Department begin to use these
15 comments in its consideration -- in consideration of
16 Wind Rivers' application?

17 MS. RONALD: Objection, Your Honor. Lack of
18 foundation. She's assuming that these comments were
19 used by the Department.

20 HEARING OFFICER: Why don't you go ahead.

21 BY MS. BECKER:

22 Q. Were these comments used in the Department of
23 Water Resources' consideration of this application?

24 A. Not to my knowledge, were not used at all.

25 Q. I guess my next question is then, why did the

1 Department open up a separate e-mail address on its
2 front page of its website to allow the public to provide
3 comments if it did not consider these comments?

4 A. The Department felt that the community had a
5 right to be heard -- simply that they wanted the
6 opportunity to express their opinion on their
7 application. Our the staff, the group that we had
8 review the application was a group of experts reviewing,
9 based on their individual expertise. And the comments
10 were not used by those individuals in reviewing their
11 portions of the statute or their portions of the
12 application.

13 Q. The Department of Water Resources also held a
14 public meeting in Beaver Dam, Arizona on November 28th,
15 2006. Was that required by statute?

16 A. That was not required by statute.

17 Q. That was an independent action that the
18 Department of Water Resources took?

19 A. Yes, it was.

20 Q. And you attended that meeting, correct?

21 A. Yes, I did.

22 Q. Again, the Department received public comment
23 on the application at that time by the public?

24 A. The public was allowed to express their opinion
25 at that meeting; however, we took no notes and recorded

1 nothing at that meeting.

2 Q. Were any of the decision-makers present at that
3 meeting that made -- I believe then the testimony from
4 Ms. Logan was that there were a group of, I believe,
5 four people who made a decision on this application:
6 Ms. Logan, Mr. Deeny, Ms. Ronald, and Mr. Kurtz. Were
7 any of these people at that November 28th, 2006,
8 meeting?

9 A. They were at that meeting.

10 Q. Who among the decision-makers were at that
11 meeting?

12 MS. RONALD: I have to object, Your Honor.
13 Decision-makers is a completely misleading term. The
14 decision-maker on this application is not the staff that
15 evaluated it.

16 MS. BECKER: I can rephrase.

17 HEARING OFFICER: And, again, by statute, as I
18 understand it, it is the director who is required to
19 make a decision.

20 MS. BECKER: I understand. I can rephrase.

21 Q. Ms. Logan stated yesterday that there were a
22 group of four people that made a decision to recommend
23 to the administrative law judge that this application be
24 denied, correct?

25 A. They made that recommendation prior to the

1 public hearing -- public meeting that we held on, I
2 think it was, November 28th.

3 Q. Okay. Thank you. That's all I have. Thank
4 you very much.

5 HEARING OFFICER: Okay. Ms. Ronald, any
6 questions you'd like to ask?

7 MS. RONALD: No questions, Your Honor.

8 HEARING OFFICER: Okay. Thank you. Let me
9 turn back to Wind River -- well, actually you had
10 finished your presentation, so let me turn back to Wind
11 River, I guess.

12 Anything else you would like to present?

13 MR. LEWIS: No, Your Honor.

14 HEARING OFFICER: The Department, anything
15 else?

16 MS. RONALD: Nothing, Your Honor.

17 HEARING OFFICER: Okay. At the risk of -- let
18 me see. Dr. Jansen is still here, correct.

19 I'd like to ask you about two or three minutes
20 worth of questions, please.

21 Okay. Just go ahead and state your name for
22 our court reporter.

23 THE WITNESS: John R. Jansen.

24 HEARING OFFICER: Well, and just so we're clear
25 on this, obviously as I'm asking questions, you're free

1 to object or register an objection. Now, both parties,
2 I want to make sure that there's no dispute about that
3 or uncertainty.

4 MR. LEWIS: We have no objection, Your Honor.

5 MS. RONALD: We have no objection, Your Honor.

6 HEARING OFFICER: And you were sworn in the
7 other day. You're still under oath today.

8 Do you understand that?

9 THE WITNESS: Yes, sir.

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EXAMINATION

12 BY HEARING OFFICER:

13 Q. Okay. You testified that you had reviewed the
14 Gila Four subflow decision, correct?

15 A. A copy provide to me by Byron Lewis, yes.

16 Q. And are you familiar with the term "saturated
17 floodplain Holocene alluvium"?

18 A. Yes, I am.

19 Q. In your opinion, would the wells Wind River
20 proposes to drill penetrate the saturated floodplain
21 Holocene alluvium?

22 A. If they were to case through it, they would
23 drill through it and be cased and sealed off from it.

24 HEARING OFFICER: Okay. That's all the
25 questions I have. Either one of you are free to ask any

1 follow-up if you'd like to.

2 MR. LEWIS: I have no follow-up, Your Honor.

3 HEARING OFFICER: All right, then. And you
4 didn't specifically answer so I take that as a no. I'm
5 sorry.

6 MS. RONALD: That's okay.

7 HEARING OFFICER: I'm assuming that given our
8 plan to meet on April 4th, and that may be by phone, in
9 fact, I'll let you know I'm content if you want to
10 appear at that time.

11 Anything else we want to present or deal with
12 today or have -- Mr. Smith, I'm sorry. I have made my
13 decision that --

14 MR. SMITH: I'd just like to let you know,
15 Mr. Welch -- we expected to have Dr. Welch testify
16 yesterday and the reason he wasn't here is he had to be
17 hospitalized.

18 HEARING OFFICER: Well, I'm certainly sorry to
19 hear that. I do appreciate you bringing that to our
20 attention.

21 MR. SMITH: I do apologize. One other
22 question. Will we get to listen in on the phone call?
23 Is that a public proceeding?

24 HEARING OFFICER: All our proceedings are
25 public or open to the public, if you will. The concern

1 I have is the technology limitations given the potential
2 number of people that may want to appear or attend such
3 proceeding, you know, just the nature of the phone call
4 and, again, all our proceedings are being recorded
5 digitally and will be posted to the website.

6 So I think I'm going to have to limit it to the
7 parties allowed to participate by telephone and just
8 that. Because of the potential concern, we have so many
9 interested persons. Anyone is welcome to come to the
10 Office of Administrative Hearings when I conduct that.

11 Obviously, our rooms are nowhere near as large
12 as this room, so there are those considerations, but it
13 will be open to the public in that respect.

14 MR. SMITH: Okay. Thank you.

15 HEARING OFFICER: Then anything else from
16 either of the parties today?

17 MR. LEWIS: Nothing from Wind River, Your
18 Honor.

19 MS. RONALD: Nothing further, Your Honor.

20 HEARING OFFICER: Okay. With that then just a
21 few closing comments so we can all pack up and go.
22 Thank you all for your participation -- the parties,
23 everyone, the interested persons, the public whose
24 attended -- and, again, I want to make clear that I have
25 received your comments and will review them again in

1 making my decision.

2 The folks here at the Littlefield School
3 District, and this school in particular, we greatly
4 appreciate your hospitality and the efforts you put in
5 on our behalf, and we'll close today's portion of the
6 proceedings and meet again in April. Thank you.

7 MS. RONALD: Thank you.

8 (Whereupon, the proceedings concluded at
9 12:46 p.m.)

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