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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

Permit No. 33-96790

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

Docket No. 07A-TR001-DWR

**ADWR'S MOTION FOR LEAVE TO
FILE MOTION IN LIMINE OUT OF
TIME**

(Assigned to the Honorable Thomas
Shedden)

On this date, pursuant to A.A.C. R12-19-106 and Case Management Order #8, the Arizona Department of Water Resources ("ADWR") filed a motion in limine to clarify that certain documents attached to the Applicant's briefs, which were not pre-submitted on a CD, will not be considered by the Administrative Law Judge ("ALJ") as evidence in this case ("Motion in Limine"). Pursuant to Case Management Order #1, as amended, February 15, 2007 was the deadline for filing motions in this proceeding. ADWR seeks leave to file its Motion in Limine out of time for the reasons set forth below.

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to A.A.C. R12-19-106, a party may request a ruling from the Administrative Law Judge ("ALJ") by filing a motion. The motion herein seeks leave from the ALJ to file ADWR's Motion in Limine out of time.

On January 30, 2007 and February 15, 2007, the Applicant filed two briefs in this matter, attached to which were documents that the Applicant labeled as "exhibits."

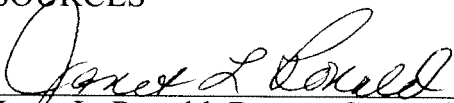
1 Despite this label, some of these attachments are not included in either of Wind River's
2 List of Exhibits, and they were not pre-submitted on a CD as required by Case
3 Management Order No. 8. One of the attachments to Wind River's February 15, 2007
4 brief is an affidavit from Mr. Michael Winters, General Manager of Virgin Valley Water
5 District ("VVWD"), which is the entity that entered into a contract with Wind River for
6 the delivery of water.¹ ADWR maintains that Mr. Winters' affidavit, together with other
7 attachments, may not be considered by the ALJ, because it was not pre-submitted on a
8 CD. See ADWR's Motion in Limine.

9 ADWR did not become aware that Mr. Winters' affidavit would not be listed as an
10 exhibit until Wind River filed its Supplemental List of Exhibits on February 15, 2007,
11 which is the same date as the motion deadline. On Friday, February 16, 2007, ADWR
12 filed its Index of Exhibits that was hyperlinked to thousands of pages of imaged
13 documents as required by Case Management Order #8. ADWR's first opportunity to file
14 its Motion in Limine is today.

15 In order to minimize any prejudice caused by the late filing of ADWR's Motion in
16 Limine, a copy of the motion herein and ADWR's Motion in Limine are being faxed to
17 the Applicant. In addition, ADWR requests that the Applicant be granted until February
18 26, 2007 within which to respond to ADWR's motions.

19 RESPECTFULLY SUBMITTED this 20th day of February, 2007.

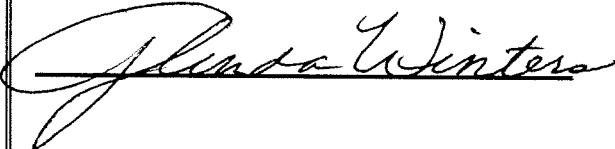
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21 ARIZONA DEPARTMENT OF WATER
22 RESOURCES

23 By 
24 Janet L. Ronald, Deputy Counsel
25 Scott M. Deeny, Deputy Counsel

26 _____
¹In this category, ADWR also identified Attachment 13 to Wind River's Pre-Hearing brief, and Attachment 2 to
Wind River's Brief in Response.

1 Electronically Filed and Served via
2 TR001@azoah.com this 20th day of February, 2007
with the Office of Administrative Hearings

3 Copy faxed this 20th day of February, 2007 to:
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