

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

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

No. 07A-TR001-DWR

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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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10 Great American Land LLC, Beaver Dam Water Company, Inc., Biasi Water  
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).<sup>1</sup> 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

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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).<sup>2</sup>

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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<sup>2</sup> 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 8<sup>th</sup> day of February 2007,

By CJV