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2 **ARIZONA DEPARTMENT OF WATER RESOURCES**

3 **BEFORE THE DIRECTOR**

4
5 In the Matter of the Application for a
6 Permit to Transport Water Out of State

No. 07A-TR001-DWR

7 Application No. 33-96790

**DECISION AND ORDER OF THE
DIRECTOR**

8 Applicant: Wind River Resources, L.L.C.
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11 **I. Introduction**

12 On March 15, 2005, Wind River Resources, L.L.C. (“Applicant”) filed an application to
13 transport water out of state pursuant to A.R.S. § 45-292 (“Application”). As required by A.R.S.
14 § 45-292(E), an administrative hearing was held on the Application prior to the Director making
15 any decision to grant or deny the Application. The administrative hearing was held on March 2,
16 3 and 4, 2007 in Beaver Dam, Arizona before Administrative Law Judge Thomas Shedden
17 (“ALJ”). The hearing record was held open until October 10, 2007 to allow the filing of briefs
18 and rebuttal evidence.

19 On October 30, 2007, the ALJ issued his recommended decision (“Recommended
20 Decision”), a copy of which is attached. The Recommended Decision contains extensive
21 findings of fact, conclusions of law and a recommendation that the Director deny the
22 Application. This matter now comes before the Director for a decision. As provided in A.R.S. §
23 41-1092.08(B), the Director may accept, reject or modify the Recommended Decision.
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1 **II. Director's Decision**

2 After reviewing the Recommended Decision and the administrative record in this matter,
3 the Director has decided to accept the Recommended Decision with certain modifications to the
4 ALJ's findings of fact and conclusions of law. Those modifications are as follows:

5 1 Finding of Fact No. 30 (page 6 of the Recommended Decision) is modified to
6 read as follows: "30. For some applications, ADWR is required to provide public notice.
7 ADWR did not give public notice of the Application because export applications are not subject
8 to such notice. ADWR did give notice of the administrative hearing on the application as
9 required by A.R.S. § 45-292(E)."

10 2. The last sentence in Finding of Fact No. 115 (page 21 of the Recommended
11 Decision) is modified to read as follows: "In the leaky confined response there will be some
12 leakage, but to determine whether the leakage is coming from the top or the bottom requires
13 testing with observation wells in the other aquifers."

14 3. The last sentence in Finding of Fact No. 139 (page 26 of the Recommended
15 Decision) is modified to read as follows: "According to Mr. Corkhill, this well log does not
16 provide sufficient information to allow an inference of a confined aquifer."

17 4. Conclusion of Law No. 4 (page 36 of the Recommended Decision) is modified by
18 adding the following sentence at the end: "In any event, the fact that the Applicant was not
19 provided an opportunity to cross-examine the interested persons and their expert witnesses does
20 not affect the decision in this matter because there is sufficient other evidence as set forth in the
21 findings of fact to support the conclusions of law and order herein."

22 5. Conclusion of Law No. 17 (page 39 of the Recommended Decision) is deleted.
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1 Copy of the foregoing Decision
and Order of the Director hand-delivered
2 this 28th day of November, 2007, to:

3 Janet Ronald, Deputy Counsel
Scott Deeny, Deputy Counsel
4 Arizona Department of Water Resources
3550 N. Central Avenue
5 Legal Division – 4th Floor
Phoenix, AZ 85012
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7 BY: K. A. Donoghue
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