

**THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA**

IN THE MATTER OF APPLICATION )  
71501 FILED TO CHANGE THE MANNER )  
OF USE OF WATERS OF AN )  
UNDERGROUND SOURCE, HERETOFORE )  
APPROPRIATED UNDER PERMIT 35776, )  
WITHIN THE BIG SMOKY VALLEY - )  
TONOPAH FLAT HYDROGRAPHIC BASIN )  
(137A), NYE COUNTY, NEVADA. )

**RULING**  
**#5531**

**GENERAL**

**I.**

Application 71501 was filed on July 28, 2004, by High Desert Winds, LLC to change the manner of use of 1.783 cubic feet per second of water from an underground source in the Big Smoky Valley - Tonopah Flat Hydrographic Basin (137A), heretofore appropriated under Permit 35776, Certificate 12878. Application 71501 proposes to change the existing manner of use from mining, milling and domestic to irrigation purposes. The existing place of use and point of diversion remain unchanged. The proposed place of use is described as being located within Sections 1 and 12, T.5N., R.41E., Sections 5, 6, and 7, T.5N., R.42E., Section 36, T.6N., R.41E., and Sections 31 and 32, T.6N., R.42E., M.D.B.&M. The point of diversion is described as being located within the NE¼ NE¼ of Section 2, T.5N., R.41E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

Perennial yield of a groundwater basin may be defined as the maximum amount of ground water of a usable chemical quality that can be salvaged each year for an indefinite period of time without depleting the groundwater reservoir.

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<sup>1</sup> File No. 71501, official records in the Office of the State Engineer.

Perennial yield cannot exceed the natural replenishment and is ultimately limited to the maximum amount of natural discharge that can be salvaged for beneficial use. If the perennial yield is continually exceeded groundwater levels will decline<sup>2</sup> until the ground water reservoir is depleted. Withdrawals of ground water in excess of the perennial yield contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased economic pumping lifts, land subsidence and possible reversal of groundwater gradients, which could result in significant changes in the recharge-discharge relationship.

The United States Geological Survey estimates the perennial yield of the Big Smoky Valley-Tonopah Flat Hydrographic Basin is approximately 6,000 acre-feet.<sup>3</sup> The committed groundwater resource in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Big Smoky Valley-Tonopah Flat Hydrographic Basin currently exceeds 21,000 acre-feet annually, of which approximately 8,300 acre-feet annually are for mining and milling.<sup>4</sup> The State Engineer finds that existing groundwater rights in the Big Smoky Valley-Tonopah Flat Hydrographic Basin exceed the perennial yield of the groundwater basin.

## II.

A water right application is filed to request an appropriation of water to be used for a specific purpose within a well defined place of use, which is represented under Permit 35776, Certificate 12878, as a temporary use for mining and milling within an area that encompasses approximately

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<sup>2</sup> Office of the State Engineer, Water for Nevada, State of Nevada Water Planning Report No. 3, Oct. 1971, p. 13.

<sup>3</sup> Nowlin, Jon, Groundwater Quality in Nevada - A Proposed Monitoring Program, Open File Report 78-768, U.S. Geological Survey, p. 201.

<sup>4</sup> Nevada Division of Water Resources Water Rights Database, Special Abstract for Hydrographic Basin 137A, February 16, 2005, official records in the Office of the State Engineer.

5,120 acres of land. Application 71501 was filed to change that manner of use, within the same place of use, from a temporary mining and milling use to a permanent irrigation use. In determining whether the proposed change of the manner of use should be allowed, a review of the circumstances of the issuance of Permit 35776, Certificate 12878, must be conducted. State Engineer's Order No. 725 established the Big Smoky Valley - Tonopah Flat Hydrographic Basin as a designated basin with applications for irrigation being denied since December 19, 1985, for conflicting with existing water rights. A total of 46 irrigation applications, ranging from Application Nos. 31523 through 33001, were denied prior to Permit 35776, Certificate 12878, which is the permit that forms the basis for change Application 71501. The State Engineer finds that Permit 35776, Certificate 12878, was issued for temporary mining and milling purposes as evidenced by the fact that had Permit 35776, Certificate 12878, been originally filed for irrigation purposes it would have been denied.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>6</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or

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<sup>5</sup> NRS chapters 533 and 534.

<sup>6</sup> NRS § 533.370(4).

D. the proposed use or change threatens to prove detrimental to the public interest.

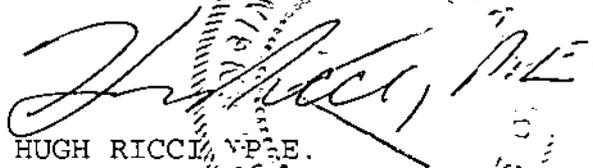
**III.**

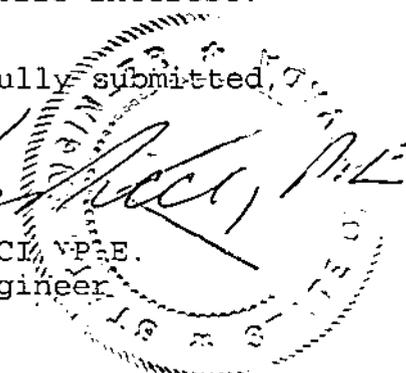
The State Engineer concludes that to grant the change in manner of use requested by Application 71501, where the quantity of water under existing appropriations exceeds the perennial yield and where the change in manner of use would be from a temporary mining and milling use to a permanent irrigation use, would conflict with existing rights and would threaten to prove detrimental to the public interest.

**RULING**

Application 71501 is hereby denied on the grounds that its approval would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,

  
HUGH RICCI, P.E.  
State Engineer



HR/WHR/jm

Dated this 19th day of  
September, 2005.