
BEFORE THE STATE ENGINEER
STATE OF UTAH

IN THE MATTER OF NORTH DITCH)
IRRIGATION COMPANY, THOMAS F.)
HICKEN AND JOHN T. HICKEN)

DECISION OF THE STATE ENGINEER
REGARDING ARBITRATION OF DISPUTE
OVER WATER PURSUANT TO SECTION
73-2-16, UTAH CODE ANNOTATED

BACKGROUND

John T. & Diane L. Hicken and Thomas F. & Kim G. Hicken (Hicken) filed Change Application Number 55-1403 (a21054) with the State Engineer on April 24, 1997 to change the point of diversion of their water right on Spring Creek near Wallsburg. The underlying water right is for 2/240 interest in a flow of 3.0 cubic feet per second (cfs) diverted from Spring Creek at a point South 1300 feet and West 660 feet from the N1/4 corner, Section 18, T5S, R5E, SLB&M. The water has been used year-round for stockwatering of 36 head of livestock and from April 1 to October 31 for the irrigation of 0.95 acres in the NE1/4NW1/4 Section 18, T5S, R5E, SLB&M. By virtue of the change application they proposed to move their point of diversion upstream about 30 feet and convey the water via a pipeline to their property.

The source of water for North Ditch Irrigation Company (North Ditch) is also Spring Creek. The water rights of Hicken and North Ditch are currently diverted at the same point of diversion and conveyed in the same ditch, with Hicken having 2/240 interest of a flow of 3.0 cfs and North Ditch has 238/240 interest in the same flow. In addition to the 3.0 cfs to which North Ditch and Hicken own interest, North Ditch has a right to another 3.0 cfs. Because of the shared interest, the parties have historically used a turn system to distribute their water, with Hicken receiving 2 hours every ten days (240 hours) and North Ditch receiving 238 hours in 10 days.

The State Engineer approved the Change Application on March 17, 2000. North Ditch Irrigation Company filed an action in the District Court to review the State Engineer's approval. After the District Court made certain rulings in the case, the parties approached the State Engineer and agreed to binding arbitration. Under Section 73-2-16, Utah Code Annotated, an agreement to this effect was signed in December 2001.

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WATER RIGHTS
SALT LAKE

HEARING

On Thursday, March 21, 2002 the State Engineer held a hearing on this matter at the Division of Water Rights Office in Salt Lake City. Those present were as follows: Wayne Carlson, Carl Givens and Laverl Mecham representing North Ditch. Thomas F. Hicken, John Hicken and Bill Hicken representing themselves. Division of Water Rights staff in attendance were Jerry D. Olds, State Engineer, James Riley, Regional Engineer, and Lee Sim, Assistant State Engineer.

In presenting their position, Hicken stated that the problem appears to be the quantity of water they will be allowed to divert and how it will be regulated. Hicken stated they are willing to construct a collection box that will restrict their diversion to a maximum flow rate of 12 gallons per minute into their proposed pipeline. In addition, they are willing to meter their diversion. With the existing system, they indicated there have been problems in the past with the turn system. North Ditch does not provide for the exclusive use of the 3.0 cfs by Hicken, as set forth under their water right. Hicken submitted a document in which they set forth a proposed rotation schedule for this irrigation season since they believe it is too late to construct the pipeline before this irrigation season. This document also included six additional items they requested the State Engineer to consider in his decision.

Mr. Wayne Carlson representing North Ditch, indicated that they are concerned about the amount of water Hicken can divert and the impact on downstream water users. On November 15, 2001, North Ditch and Hicken held a meeting and apparently discussed possible elements of a settlement. A copy of the minutes of this meeting prepared by Mr. Carlson was submitted.

FINDINGS OF FACT

The State Engineer and his staff have thoroughly reviewed the information, listened to the testimony, conducted a field review of the area and evaluated the water rights of the parties. Based upon this review the State Engineer's findings are:

- 1) Hicken is the owner of Water Right Number 55-1403 which provides for the diversion of 3.0 cfs for 2 hours every 10 days from Spring Creek. The water is used for the irrigation of 0.95 acres and stockwatering of 36 livestock as set forth under their water right. The priority date of their water right is 1880.
- 2) North Ditch is the owner of Water Right Number 55-4456. Under this water right they can divert up to 6.0 cfs from Spring Creek at the same point of diversion as Hicken. North Ditch has 238/240 interest in 3.0 cfs which is intermittently diverted by Hicken. They also have 100%

interest in 3.0 cfs of additional flow. The water is currently used for irrigation of 108.58 acres and stockwatering of 325 livestock. The priority date of Water Right Number 55-4456 is 1886.

3) North Ditch and Hicken have historically, or at least the water rights indicate they were to have taken their water on a turn system, with Hicken using 3.0 cfs for 2 hours every 10 days (240 hours) and North Ditch using the water the remaining 238 hours. In going to constant flow, as proposed by Hicken, if the 4.81 acre-feet annual volume limitation is enforced and the water is diverted at a reasonable rate, it appears there will be no adverse impacts on the shareholders of North Ditch. The parties have agreed to a maximum diversion rate for Hicken of 12 gallons per minute.

DECISION

Based on the information presented, it is the State Engineer's decision that Hicken can develop the proposed project as set forth under Change Application 55-1403 (a21054), and to resolve the dispute between North Ditch and Hicken the parties will comply with the following requirements:

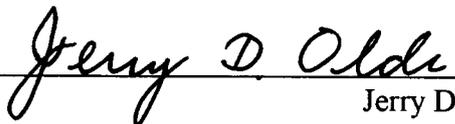
- 1) Hicken shall design the proposed collection box at the head of their pipeline to allow for a maximum diversion rate of 12 gallons per minute. The design of the diversion structure shall be submitted and approved by the State Engineer prior to actual construction.
- 2) The total annual diversion under Water Right 55-1403 shall not exceed 4.81 acre-feet.
- 3) In constructing the proposed pipeline, Hicken will not prevent North Ditch from delivering water to their stockholders. Hicken shall notify North Ditch prior to the actual construction and obtain their consent. North Ditch shall not unreasonably withhold their consent.
- 4) Hicken shall install and maintain a meter on their pipeline to measure the annual volume of water diverted and maintain a record as set forth in the State Engineer's Memorandum Decision. If it becomes necessary to have the River Commissioner regulate this diversion, Hicken shall pay all associated costs.
- 5) During the non-irrigation season (November 1 thru March 31) Hicken can divert water as heretofore for stockwatering purposes. Any water not consumed shall be immediately returned to Spring Creek.
- 6) Since the project cannot be constructed until after the current irrigation season, North Ditch shall submit to the State Engineer and Hicken, a turn schedule for this year which includes the Hicken taking 2 hours of water in every 10-day period. North Ditch may elect to use the proposed schedule submitted by Hicken at the March 21, 2002 hearing.

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CONDITION

As required by Utah Code Annotated Section 73-2-16, this Decision shall only be effective upon confirmation by decree of the Fourth Judicial District Court, State of Utah.

Dated this 19th day of April, 2002.



Jerry D. Olds, P.E.
State Engineer

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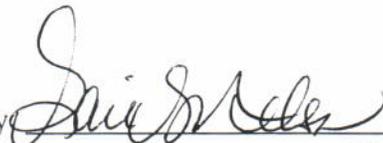
CERTIFICATE OF MAILING

The State Engineer's Office certifies that a copy of the foregoing Decision of the State Engineer Regarding Arbitration of Dispute Over Water was mailed first class, postage prepaid this 19th day of April, 2002 to:

John T. & Diane L. Hicken
PO Box 159
Wallsburg UT 84082

Thomas F. & Kim G. Hicken
PO Box 39
Wallsburg UT 84082

North Ditch Irrigation Company
c/o Robert Gappmayer
680 Main Canyon Road
Wallsburg UT 84082

By 
Gail Nelson
Administrative Secretary