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## Brantley Farms v. Carlsbad Irrigation Dist., 1998 WL 67209 (N.M. Ct. App. 1998)

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The question for the court was whether the State Engineer properly characterized the new site as one which fell outside the statutory definition of "land being developed." The court also had to decide whether it would be unfair to cancel the rights to the unused water when DI relied on false information from the State Engineer.

The court held that the new site was not "land being developed" under the statute, and therefore was not covered by the original permit. However, because DI relied on inaccurate advice when making its decision, it would be manifestly unfair to cancel the uncommitted water rights.

The court looked to the legislative intent to decide the true definition of "land being developed" within the statute. The court concluded that the legislature intended "land being developed" to mean the area where a permittee originally intended to put the water to beneficial use. Since the new site was not part of the original area intended for water use by DI, the original permit did not include this new site. The court further found that it was the State Engineer's "statutory duty to administer the complex system of water rights within the state [and] . . . that the lay members of the public are entitled to rely upon its advice as to the procedures to be followed under the state water law." The State Engineer's office incorrectly informed DI that the unused water right would revert to an irrigation permit if DI could not prove some beneficial use of the uncommitted water. Under Nevada statutory law, unused water reverts back to the public domain. However, the court concluded that it would be manifestly unfair to cancel DI's unused water rights before allowing DI to prove some beneficial use of the unused water.

*Joseph A. Dawson*

## NEW MEXICO

**Brantley Farms v. Carlsbad Irrigation Dist., 1998 WL 67209 (N.M. Ct. App. 1998)** (holding that: 1) the writs issued by the lower court failed to allege sufficient facts; 2) the District's duty to distribute water is discretionary, and therefore not subject to mandamus; and 3) that the United States was an indispensable party absent from the action).

Brantley Farms raised crops and livestock within the Carlsbad Irrigation District. The United States owned two reservoirs upstream from Brantley. Each year, the District's Board of Directors determined the amount of water each member of the District would receive for the upcoming growing season. In 1996, the Board allotted three acre feet of water to each member. During the spring and summer of 1996, an unusual amount of rainfall resulted in the capture of an additional 30,000 acre feet of water in the upstream reservoirs. Based on several

factors, including current drought conditions, the Board decided to reserve this excess water for the 1997 growing season rather than release it to members as an additional allotment in 1996.

In response to the Board's decision, Brantley Farms filed an action in state court. The Board filed this appeal after the trial court issued alternative and preemptory writs ordering the release of additional water.

On appeal, the court held that an insufficient basis existed for the issuance of the writs. The applicable statute states that the duty to distribute water arises only if "the volume of water in any . . . reservoir . . . shall not be sufficient to supply the continual wants of the entire district . . ." The writs failed to discuss whether there was an amount of water in any of the District's works that was "insufficient to supply the continual wants of the entire district." Accordingly, the court found that the writs failed to allege sufficient facts.

Next, the court addressed the underlying issue of mandamus, stating that when a duty is discretionary, rather than mandatory, mandamus cannot lie. The applicable statute states that "it shall be the duty of the Board . . . to distribute . . . water . . . as they may in their judgment think best for the interests of all parties concerned." The court quashed both writs, holding that this language effectively removed any possibility of a mandatory duty on the part of the Board.

Finally, the court held that the United States, as owner of both upstream reservoirs, was an indispensable party to the action. All persons whose interests are affected by a judgment or order are necessary and indispensable. The court found the United States, whose interest in both reservoirs was affected by the issuance of the writs, was absent from the action.

*Matthew Paulson*

## NEW YORK

**Guglielmo v. Unanue, 664 N.Y.S.2d 662 (N.Y. App. Div. 1997)** (holding that the plaintiff had no right to enforce covenant in third party deed requiring minimum water level in nearby lake through a deed containing no water rights).

Landowner brought an action against owners of a lakeshore tract of land and asserted numerous claims directed at defendant's failure to maintain a minimum water level in a nearby lake. Specifically, plaintiff claimed that defendants wrongfully, and in violation of the covenant running with the land owned by defendants, failed to maintain the dam that controlled the lake's water level thereby making it impossible for plaintiff to use.