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Desert Irrigation, Ltd. v. State of Nevada, 944 P.2d 835 (Nev. 1997)

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The 1995 statute is one such exception. It allows transfer of ground water to adjacent lands for agricultural purposes. The court found that the 1989 agreement between the parties met the requirements of the statute because it served agricultural purposes, would not adversely affect any other users, was consistent with applicable laws and regulations, and served the public interest. The remaining issue was whether the statute applied retroactively to the 1989 agreement.

The court found that a previously unlawful agreement could become lawful if the legislature intended, through a change in the law, to validate the previous agreement. Although there is no specific language in the statute suggesting that the legislature intended to apply it retroactively, the court held that the statute does apply retroactively. The court based its reasoning on two factors: 1) legislative history reflected that the legislators knew such agreements had been made in the past, and 2) the legislature did not void prior agreements. The court reasoned that solely prospective application of the statute would probably result in disruptive economic and legal consequences.

Debbie Eiland

NEVADA

Desert Irrigation, Ltd. v. State of Nevada, 944 P.2d 835 (Nev. 1997) (holding that a detached parcel was not "land being developed" within the statute when the party did not include it in the original site for water use, but that it would be manifestly unfair to cancel the water right due to inaccurate advice given by the State Engineer).

In 1971, the State Engineer granted a permit to a developer that allowed a certain amount of water per acre-feet annually for use at a residential site known as the Allen Estates, located in the Pahrump Basin. In 1980, the developer formed a partnership with Desert Irrigation, Ltd. ("DI") and eventually quit claimed all his rights to DI. Over the next several years, DI requested and received fifteen time extensions for an application for proof of beneficial use. While waiting for its sixteenth time extension, DI discovered that the original amount permitted for use exceeded the amount needed for the Allen Estates. DI filed an application to change the point of diversion of the uncommitted water for use on a new residential site six miles from the Allen Estates. Following consultation with the State Engineer's office, DI withdrew the application. The Engineer's office incorrectly informed DI that the unused water rights would revert to an irrigation certificate, and would not be lost. After an investigation, the State Engineer concluded that the new site was not within the original permit. The State Engineer further found that DI was not putting the unused water to beneficial use, and canceled the excess water rights.

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