

**DURAND V. CARLSBAD IRRIGATION DIST., 1963-NMSC-050, 71 N.M. 479, 379
P.2d 773 (S. Ct. 1963)**

**In the Matter of the Appeals of George R. DURAND and Joe D.
Durand, Application Nos. RA-4016 and RA-4017,
Appellees,
vs.
CARLSBAD IRRIGATION DISTRICT and S. E. Reynolds, State
Engineer of New Mexico, Appellants**

No. 7133

SUPREME COURT OF NEW MEXICO

1963-NMSC-050, 71 N.M. 479, 379 P.2d 773

March 15, 1963

Proceeding on application to change point of diversion. The state engineer denied the application and appeal was taken. The District Court, Chaves County, George L. Reese, Jr., D.J., reversed order of state engineer and appeal was taken. The Supreme Court, Moise, J., held that in absence of trial court's giving any consideration to questions of whether state engineer's action was within scope of his authority, fraudulent, arbitrary, capricious, supported by substantial evidence, or based upon error of law, court failed to give state engineer's order correct review.

COUNSEL

Stagner, Sage, Walker & Estill, Carlsbad, for Carlsbad Irr. Dist.

Earl E. Hartley, Atty. Gen., Santa Fe, Charles D. Harris, Sp. Asst. Atty. Gen., Roswell, for State Engineer.

William M. Siegenthaler, Artesia, Brown & Brainerd, Roswell, for appellees.

JUDGES

Moise, Justice. Carmody and Chavez, JJ., concur.

AUTHOR: MOISE

OPINION

{*480} {1} This case involves an order of the state engineer denying an application to change point of diversion. An appeal was taken to the district court where new evidence

was introduced and the court entered its own findings and conclusions reversing the state engineer. From this action the appeal to this court has been perfected.

{2} Several points are argued by appellants. However, it would serve no useful purpose to discuss any of them inasmuch as it is clear that the procedure followed is identical with that considered by us in *Kelley v. Carlsbad Irrigation District*, N.M., 379 P.2d 763. It does not appear that the trial court gave any consideration to the question of whether the state engineer's action was within the scope of his authority, fraudulent, arbitrary, capricious, supported by substantial evidence, or based upon an error of law.

{3} Just as in *Kelley v. Carlsbad Irrigation District*, *supra*, the district court has failed to give the state engineer's order the correct review and, just as there, it is necessary to reverse and remand the case to the district court so that it can do so.

{4} Accordingly, the judgment appealed from is reversed and the cause remanded with directions to vacate the judgment and proceed to consider the appeal from the state engineer in the manner required by *Kelley v. Carlsbad Irrigation District*, *supra*.

{5} It is so ordered.