

**MCGEE V. STATE EX REL. REYNOLDS, 1963-NMSC-055, 72 N.M. 48, 380 P.2d 195  
(S. Ct. 1963)**

**Taft McGEE and Marguerite McGee, his wife, and Carl Russell  
Appellees,  
vs.  
STATE of New Mexico ex rel. S. E. REYNOLDS, State Engineer,  
Appellant**

No. 6820

SUPREME COURT OF NEW MEXICO

1963-NMSC-055, 72 N.M. 48, 380 P.2d 195

March 22, 1963

Proceeding wherein the District Court, Eddy County, George T. Harris, D.J., rendered a judgment reversing a decision of the State Engineer denying an application for extension of the time within which to make application of surface waters from river to beneficial use under license. The State Engineer appealed. The Supreme Court, Compton, C.J., held that District Court, in reviewing decision of State Engineer, was not permitted by statute to hear new or additional evidence and, accordingly, its decision reversing decision of State Engineer denying an application for extension of time within which to make an application of surface waters of river to their beneficial use under license was required to be reversed.

**COUNSEL**

Earl E. Hartley, Atty. Gen., Santa Fe, Charles D. Harris, J. Lee Cathey, Special Asst. Attys. Gen., Reswell, for appellant.

Brown & Brainard, Reswell, William M. Siegenthaler, Artesia, for appellees.

**JUDGES**

Compton, Chief Justice. CARMODY and CHAVEZ, JJ., concur.

**AUTHOR: COMPTON**

**OPINION**

{\*49} {1} The State Engineer appeals from a judgment of the district court of Eddy County reversing his decision denying appellees' application for an extension of time

within which to make application of surface waters from the Pecos River to beneficial use under license number 746.

{2} The scope of review is brought into question. The record merely discloses that the State Engineer denied the application February 18, 1958 without any hearing whatsoever. The applicants then appealed the decision of the engineer to the district court where additional evidence was submitted by various witnesses from which the court reached a contrary conclusion. Judgment was entered accordingly and this appeal followed.

{3} We fully treated the extent and scope of review by district courts in our recent case, Kelley v. Carlsbad Irrigation District and Pecos Valley Artesian Conservancy District, N.M., 379 P.2d 763, in which we said that the district court in reviewing the decision of the State Engineer is not permitted under the statute, Section 75-6-1, N.M.S.A. 1953 Comp., to hear new or additional evidence. On authority of this case, the judgment must be reversed in order that the trial court may correctly review the order of the State Engineer.

{4} The cause will be remanded to the district court to vacate the judgment and proceed in a manner not inconsistent herewith.

{5} IT IS SO ORDERED.