

9-1-2009

The Nevada Supreme Court Determines Free Alienation of a Water Right Irrespective of the Land on Which a Party Uses That Water Right: Adaven Management, Inc. v. Mountain Falls Acquisition Corporation

Craig Adams

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

Custom Citation

Craig Adams, Case Note, The Nevada Supreme Court Determines Free Alienation of a Water Right Irrespective of the Land on Which a Party Uses That Water Right: Adaven Management, Inc. v. Mountain Falls Acquisition Corporation, 13 U. Denv. Water L. Rev. 179 (2009).

This Case Notes is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

**The Nevada Supreme Court Determines Free Alienation of a Water Right
Irrespective of the Land on Which a Party Uses That Water Right: Adaven
Management, Inc. v. Mountain Falls Acquisition Corporation**

**THE NEVADA SUPREME COURT DETERMINES FREE
ALIENATION OF A WATER RIGHT IRRESPECTIVE OF
THE LAND ON WHICH A PARTY USES THAT WATER
RIGHT: ADAVEN MANAGEMENT, INC., V. MOUNTAIN
FALLS ACQUISITION CORPORATION**

| | |
|---|------------|
| I. INTRODUCTION | 179 |
| II. BACKGROUND | 180 |
| A. The Parties..... | 180 |
| B. The Facts | 180 |
| C. Procedural History | 182 |
| III. ADAVEN MANAGEMENT, INC., V. MOUNTAIN FALLS ACQUISITION CORPORATION | 182 |
| A. The Nevada Supreme Court’s Holding | 182 |
| B. Discussion | 182 |
| 1. Section 533.040 of the Nevada Revised Statutes (“NRS”) does not Require Severance of a Water Right from the Land Prior to a Change in Ownership | 182 |
| 2. The Anti-Speculation Doctrine Does Not Prevent a Purchaser of a Water Right from Acquiring the Right Separately from the Appurtenant Land | 183 |
| 3. Due Diligence Requirements of a Prospective Purchaser Acquiring Irrigated Nevada Lands and Its Appurtenant Water | 184 |
| IV. ANALYSIS | 187 |
| V. CONCLUSION | 188 |

I. INTRODUCTION

Nevada law regards a water right as real property.¹ As such, any deed of land that fails to reserve the appurtenant water right (i.e., waters used to benefit the land) conveys with it, the water right as well.²

1. See *e.g.*, *Dermody v. City of Reno*, 931 P.2d 1354, 1358 (Nev. 1997).

2. See *Margrave v. Dermody Properties Inc.*, 878 P.2d 291, 293 (Nev. 1994) (“If water rights are not expressly reserved, they accompany the land in the conveyance.”); see also NEV. REV. STAT. § 111.167 (1995) (providing a legal presumption that water rights pass with any land deed that does not contain an express reservation of water rights). This presumption, however, is not the rule for all western states. For example, under Colorado law, if a party involved in a conveyance of land does not mention a water right in its deed, the presumption arises that the party *did not* intend for its water right to pass as an appurtenance of the land. See *e.g.*, *Nielson v. Newmyer*, 228 P.2d 456,

Until recently, however, it remained unclear whether a party could sell to a new party a water right without regard to the land to which the water right is appurtenant. In 2008, the Nevada Supreme Court provided clarification and ruled as a matter of first impression that Nevada water rights are separate and transferable property interests.³ As a result, owners can convey water rights independently from the land to which they are appurtenant without requiring prior severance of the water right for use elsewhere.⁴ Because of this decision, purchasers of irrigated lands in Nevada must be aware that the current landowner may not own the rights to waters used to irrigate the land, and in such cases, the water rights do not transfer with its sale. Therefore, it is incumbent of any prospective purchaser of land who wishes also to purchase the appurtenant water right to conduct a diligent search prior to transferring the deed.

II. BACKGROUND

A. THE PARTIES

E.A. Collins Development Corporation is a Nevada land development company and the seller of the raw land and appurtenant water rights central to this dispute. Respondents, Commercial Federal Bank and Mountain Falls Acquisition Corporation are commercial lenders who secured for Collins a loan using permitted water rights, but not the appurtenant land, as collateral. Appellant, Adaven Management, Inc., also a Nevada land development company, was the purchaser of the raw land to which the water rights were appurtenant. Adaven alleged injury after it realized that its land purchase failed to include the water rights.

B. THE FACTS

In 1998, E.A. Collins Development Corporation ("Collins") purchased, under State Engineer Permit 22375, rights to approximately 1,185 acre-ft of water and the 520 acres of agricultural land to which those rights were appurtenant.⁵ In 1999, Collins secured a loan from Commercial Federal Bank ("CFB") pledging by deed of trust several parcels of its land and water rights as security.⁶ The security deed included the water rights under Permit 22735, but not the land to which those rights were appurtenant.⁷ CFB recorded the deed of trust with the

458-59 (Colo. 1951) ("Where, in conveyance of land a part only of the appurtenant water right is described and specified as being conveyed therewith, such specific designation destroys any presumption of intention to convey the remainder." (citation omitted)).

3. See *Adaven Mgmt. Inc. v. Mountain Falls Acquisition Corp.*, 191 P.3d 1189 (Nev. 2008).

4. See *id.*

5. *Id.* at 1191.

6. *Id.*

7. *Id.*

Nye County recorder later that same year.⁸

One and a half years later, Collins filed for bankruptcy.⁹ CFB foreclosed on the secured property and then purchased it during the foreclosure sale.¹⁰ In 2001, CFB recorded its deed with the county for its property, which included the Permit 22735 water rights, but not the land to which the water rights were appurtenant.¹¹ Later, CFB sold its rights in Permit 22375 along with other property acquired at the foreclosure sale to its wholly owned subsidiary, Mountain Falls Acquisition Corporation (“MFAC”).¹² Subsequently, MFAC recorded the Permit 22375 water rights in a special warranty deed with the county, but neither CFB, nor MFAC, reported the conveyance to the State Engineer’s Office.¹³

After the date of the foreclosure sale, Collins sold to Adaven Management Inc. (“Adaven”) the land to which Permit 22735 was appurtenant.¹⁴ Included in its deed were “[a]ll water rights relating to, upon, benefitting, belonging or appertaining to the real property.”¹⁵ Adaven then recorded its deed with the Nye County recorder and filed a report of conveyance for Permit 22375 with the state engineer seven months later.¹⁶ To facilitate its residential development plan, Adaven also filed a separate application with the state engineer to change the use of the Permit 22375 water rights from agricultural use to quasimunicipal use.¹⁷ When CFB learned of Adaven’s asserted ownership interest in Permit 22375, it filed a letter with the Department of Water Resources on behalf of MFAC asserting its own interest in Permit 22375.¹⁸ The State Water Engineer indicated that he would take no further action regarding Permit 22375 until the parties settled the issue of title.¹⁹

8. *Id.* Note that section 533.382 of the Nevada Revised Statutes provides that “every conveyance of an application or permit to appropriate any of the public waters . . . must be made by deed . . . and [r]ecorded in the office of the county recorder of each county in which the water is applied to beneficial use . . .” to perfect an entity’s title to a water right in Nevada. NEV. REV. STAT. § 533.382 (1995).

9. *Adaven*, 191 P.3d at 1191.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* Note that section 533.384(1) of the Nevada Revised Statutes requires “[a] person to whom is conveyed an application or permit to appropriate any of the public waters . . . , or an application or permit to change the place of diversion, manner of use or place of use of water” to “[f]ile with the State Engineer, a report of conveyance which includes” pertinent information regarding title to the water right, and to its place of use. Section 533.386 further provides that the State Water Engineer shall use this information in its determination of proper ownership of the water right. NEV. REV. STAT §§ 533.384(1) and 533.386. A fuller discussion of compliance with these statutes is found below.

14. *Adaven*, 191 P.3d at 1191.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

C. PROCEDURAL HISTORY

Adaven filed its action to quiet title in the District Court of the State of Nevada, asserting that it was the proper owner of Permit 22375.²⁰ In MFAC's Answer, MFAC counterclaimed against Adaven and moved for summary judgment.²¹ After a hearing, the district court held that MFAC was the proper owner of the permitted water right and granted MFAC summary judgment.²²

III. ADAVEN MANAGEMENT, INC., V. MOUNTAIN FALLS ACQUISITION CORPORATION

A. THE NEVADA SUPREME COURT'S HOLDING

The Nevada Supreme Court upheld the district court's decision and ruled that MFAC had properly acquired title to Permit 22375.²³ The court determined that neither statutory requirements, nor the anti-speculation doctrine, prevented Collins from selling its water rights separately from the land to which the waters were appurtenant.²⁴ Furthermore, the court charged Adaven with constructive knowledge of the prior transfer and denied Adaven's various claims that the deed was unclear as to its water rights encumbrance.²⁵

B. DISCUSSION

In its appeal, Adaven argued that section 533.040 of the Nevada Revised Statutes²⁶ and the anti-speculation doctrine prevented Collins from validly pledging the Permit 22375 water rights as security for a loan without also pledging the land to which they were appurtenant.²⁷ Adaven further argued that the district court erred in granting MFAC summary judgment because a genuine issue of material fact existed as to whether Adaven had constructive notice of MFAC's interest in Permit 22375 because a reasonable record search would not have revealed it.²⁸

1. Section 533.040 of the Nevada Revised Statutes ("NRS") does not Require Severance of a Water Right from the Land Prior to a Change in Ownership

The court first considered whether NRS 533.040, which allows a party to sever its water right from the land and put it to beneficial use elsewhere only when it "is impracticable to use water beneficially or

20. *Id.*

21. *Id.* at 1191-92.

22. *Id.* at 1192.

23. *Id.* at 1196.

24. *Id.*

25. *Id.*

26. NEV. REV. STAT. § 533.040 (1995).

27. *Adaven*, 191 P.3d at 1192.

28. *Id.* at 1194.

economically at the place to which it is appurtenant," requires severance of the appurtenant water right from the land before the party can freely sell it to third parties.²⁹ The court noted that Nevada law has long regarded water rights as real property interests, and thus, separate "sticks" in the bundle of property rights.³⁰ As a matter of first impression, however, the court considered whether the severance requirement under NRS 533.040 prevented an owner of a water right from freely selling that water right to a new owner without regard to the land on which the right was appurtenant.³¹ Adaven argued that assigning ownership of a water right separately from the appurtenant land, either by selling it or pledging it as security for a loan, amounted to a severance of the water right from the land, which it claimed is an act governed by NRS 533.040.³² The court concluded, however, that nothing in its reading of the statute limited the transfer of water rights ownership to someone other than the owner of land; rather, the court found that the statute governed only the place the water's of use.³³ Therefore, the term "appurtenant" referred only to the land on which a party must use the water beneficially, and – contrary to Adaven's assertion – not to ownership of the land.³⁴ Since the mere transfer of ownership to water rights does not allow a new owner to automatically use the water at a different location, the court held that a transfer of ownership does not amount to a severance governed by NRS 533.040.³⁵ Applying its interpretation to the facts at issue, the court found that the sale of Permit 22375 did nothing to alter the water's place of use, and was, therefore, not a severance controlled by NRS 533.040.³⁶

2. The Anti-Speculation Doctrine Does Not Prevent a Purchaser of a Water Right from Acquiring the Right Separately from the Appurtenant Land

The court next considered whether Nevada's anti-speculation doctrine limited the ability of a party to acquire an ownership or security interest in a water right apart from land to which the water

29. Section 533.040(1) of the Nevada Revised Statutes ("NRS") provides that water used for a beneficial purpose is "deemed to remain appurtenant to the place of use," and NRS 533.040(2) allows a party to sever the water rights from the land to which they are appurtenant and put to beneficial use elsewhere only if a party first proves to the state engineer that "it is impracticable to use water beneficially or economically at the place to which it is appurtenant." NEV. REV. STAT. §§ 533.040(1), and (2) (1995).

30. *Adaven*, 191 P.3d at 1192; *see also* *Dermody v. City of Reno*, 931 P.2d 1354, 1358 (1997) ("Nevada law is clear that appurtenant water rights are a separate stick in the bundle of rights attendant to real property."). Thus, as real property, any deed of land that fails to reserve the appurtenant water right conveys a water right. *Zolezzi v. Jackson*, 297 P.2d 1081, 1082 (Nev. 1956).

31. *Adaven*, 191 P.3d at 1192.

32. *Id.*; *See also* NEV. REV. STAT. § 533.040 (1995).

33. *Adaven*, 191 P.3d at 1192.

34. *Id.*

35. *Id.* at 1192-93.

36. *Id.* at 1193.

right was appurtenant.³⁷ The court began its discussion by recognizing the state's adoption of the anti-speculation doctrine under *Bacher v. State Engineer*,³⁸ in which the Nevada Supreme Court embraced the Colorado Supreme Court's articulation of the anti-speculation doctrine.³⁹

In general, the laws of all western states require a party to apply water continuously to an actual, beneficial use.⁴⁰ The anti-speculation doctrine precludes water resource speculation⁴¹ by requiring potential appropriators to articulate how and when they will apply a water right to an actual, beneficial use.⁴² The court noted, however, that under Colorado law, the anti-speculation doctrine focuses on the use of water, and not on preventing a property owner from selling to a third party their appropriative right.⁴³ Additionally, the court stated that when it adopted the anti-speculation doctrine in *Bacher*, it did so as a limitation on an entity's ability to demonstrate a beneficial use when it was without an actual plan to use the water beneficially.⁴⁴ The court did not intend the anti-speculation doctrine to limit the free alienability of a water right.⁴⁵ Similar to its determination of NRS 533.040, the court held that the anti-speculation doctrine applies only to ensuring water's beneficial use, and not to limiting an entity's right of free alienability of its water rights.⁴⁶ As a result, the court found the anti-speculation doctrine adopted in *Bacher* inapplicable to water rights ownership, and therefore, did not bar the transfer of the Permit 22375 water rights from Collins to CFB, and then to MFAC.⁴⁷

3. Due Diligence Requirements of a Prospective Purchaser Acquiring Irrigated Nevada Lands and Its Appurtenant Water

The final issue before the court involved Adaven's assertion that,

37. *Id.*

38. *Bacher v. State Engineer*, 146 P.3d 793 (Nev. 2006).

39. *See Colorado River Water Conservation v. Vidler Tunnel*, 594 P.2d 566, 568-569 (1979), *aff'd in-part and superseded in-part by statute*, 1979 Colo. Sess. Laws 1366, 1368-69.

40. Janet C. Neuman, *Beneficial Use, Waste, and Forfeiture: The Inefficient Search for Efficiency in Western Water Use*, 28 ENVTL. L. 919, 962-63 (1998).

41. Speculation is the act of "buying or selling . . . something [for resale] with the expectation of profiting from [future] price fluctuations. BLACK'S LAW DICTIONARY 1435 (8th ed. 2004).

42. Sandra Zellmer, *The Anti-Speculation Doctrine and Its Implications for Collaborative Water Management*, 8 NEV. L.J. 994, 998 (2008).

43. *Adaven*, 191 P.3d at 1193-94 n.21 (discussing *Bayou Land Co. v. Talley*, 924 P.2d 136, 149 (Colo. 1996)); *see Nielson v. Newmyer*, 228 P.2d 456, 458 (Colo. 1951) ("[A] water right is a property right separate and apart from the land on which it is used. . . . The land for which it was appropriated or on which it has been used may be conveyed or held without the water, and the water may be conveyed or held without the land, or any part of the land may be conveyed together with any part of the water right and the remainder be retained." (citations omitted)).

44. *Adaven*, 191 P.3d at 1194.

45. *Id.*

46. *Id.*

47. *Id.*

although Collins sold the Permit 22375 water rights prior to its purchase of the benefitted land, Adaven had the better claim to the water rights under its property deed guaranteeing all appurtenant water rights. Adaven argued that the court improperly charged it with constructive notice because a search of the grantor-grantee indexes would have failed to reveal MFAC's interest in Permit 22375 for three reasons: (1) the deed of trust by which Collins encumbered Permit 22375 was unclear inasmuch as it did not explain clearly the encumbered water rights except by reference to a separate exhibit found thirteen pages into the deed; (2) the deed of trust did not show Collins as the grantee of the water rights and instead showed only the Trustee's name, Stewart Title of Nevada; and (3) the deed of trust did not include an assessor's parcel number for the land to which Permit 22375 was appurtenant.

Under Nevada law, a party must transfer a water right by deed, and must ensure that the transfer is acknowledged and "[r]ecorded in the office of the county recorder of each county in which the water is applied to beneficial use . . ."⁴⁸ Such a recording imparts notice to all persons at the time the county records the deed.⁴⁹ If a party fails to properly record its deed with the county recorder, however, a subsequent purchaser of a water right for value, who lacks actual or constructive notice of a previous purchaser, but who properly records their interest before the previous purchaser, successfully takes title to the water rights.⁵⁰ Therefore, a prospective purchaser must search the county's record of deeds via the grantor-grantee index system to ensure that the person attempting to sell the property interest has clear title to it.⁵¹

Because both CFB and MFAC properly complied with the statutory requirements and recorded with the Nye County recorder their interests in Permit 22375, the court charged Adaven with constructive notice of the earlier recorded deeds.⁵² The court summarily dismissed the claim that the deed of trust was unclear, and stated that where "the water rights are described in a clearly marked exhibit, the deed is not unclear because a searcher has to turn to page thirteen to read the description of the water rights conveyed."⁵³

Additionally, although Adaven was correct in its assertion that the deed of trust did not contain Collins' name as the seller, and therefore a search of the grantor-grantee indexes under that name would not have revealed the sale of the water right, the court found that the deed of

48. NEV. REV. STAT. § 533.382(3) (2003). Note, however, that section 533.382(3) of the Nevada Revised Statutes does not require any filing of conveyance in the State Engineer's Office to perfect title. *Id.* Thus, both CFB and MFAC properly followed the parameters of the statute when they filed the conveyance in the Nye County recorder's office. *Id.*

49. NEV. REV. STAT. § 533.383(1) (2003).

50. NEV. REV. STAT. § 533.383(2)(d) (2003).

51. *Adaven*, 191 P.3d at 1195.

52. *Id.* at 1196.

53. *Id.*

trust itself was indisputably within the property's chain of title.⁵⁴ Thus, the court reasoned that the deed of trust's presence within the chain of title gave Adaven sufficient notice of some sort of a conveyance.⁵⁵ Therefore, Adaven should have further investigated whether the holder of the water right had reconveyed the water right back to the property, or whether the current land owner had ultimately sold the water right away.⁵⁶

In addition, although MFAC failed to include in its deed an assessor's parcel number for the land to which Permit 22375 was appurtenant, the court determined that the statute required an assessor's parcel number only for the transferred property itself, in this case Permit 22375. Since neither party disputed the fact that the deed for Permit 22375 contained its own parcel number, and because the sale did not transfer any of the property to which the water was appurtenant, the court concluded that the statute did not require MFAC to include in its deed an assessor's parcel number for lands to which its permitted water rights were appurtenant.⁵⁷

Finally, the court noted that although section 533.384 of the Nevada Revised Statutes requires recipients of water rights to file a report with the state engineer,⁵⁸ neither CFB's, nor MFAC's failure to do so affected its title in any way.⁵⁹ The court stated that under Nevada's current system, a party's failure to notify the state engineer has no effect on a subsequent purchaser's notice of the transfer.⁶⁰ Notwithstanding a brief critique of Nevada's need for improvement of its current recording system, the court held that no genuine issue of material fact existed as to Adaven's constructive notice of MFAC's interest in Permit 22375 and affirmed the district court's summary judgment.⁶¹

54. *Id.* at 1195.

55. *Id.*

56. *Id.*

57. *Id.* at 1196.

58. Section 533.384 of the Nevada Revised Statutes requires a person to whom a conveyance of a water right is made to "[f]ile with the State Engineer . . . a report of the conveyance [including an] abstract of the title; . . . a copy of any deed, written agreement or other document pertaining to the conveyance; and any other information requested by the State Engineer." NEV. REV. STAT. § 533.384(1)(a) (2003).

59. *Adaven*, 191 P.3d. at 1196. Section 533.386(5) of the Nevada Revised Statutes outlines the consequence for failing to record a transaction with the State Engineer. "The State Engineer shall not consider or treat the person to whom . . . [a]n application or permit to appropriate any of the public waters . . . is conveyed as the owner or holder of the [right] for the purposes of this chapter, including, . . . all advisements and other notices required of the State Engineer and the granting of permits to change the place of diversion, manner of use or place of use of water, until a report of conveyance is confirmed [the State Engineer]." NEV. REV. STAT. § 533.386(5) (2005). Note, however, that the above section of the statute deals only with a water right in an administrative capacity, and does not impose restrictions on perfecting title. *Compare* section 533.382 of the Nevada Revised Statutes (requiring filing with the country recorder in which the water is put to beneficial use before title can be perfected).

60. *Adaven*, 191 P.3d. at 1196.

61. *Id.*

IV. ANALYSIS

The Nevada Supreme Court's decision in *Adaven* is important for two reasons. First, it clarifies that under Nevada law, water rights are separate and transferable property interests. This clarification should provide commercial lenders with greater assurances as to the free alienability of a water right and should create less uncertainty in financing real estate development projects that involve water rights.⁶² Furthermore, the *Adaven* decision provides owners of water rights increased flexibility because it allows them to market their water rights independent of the property on which they use the water.⁶³ This should simplify the process of securing project financing by allowing owners to borrow against their water rights without pledging the underlying property as well.⁶⁴

Secondly, *Adaven* makes clear that for transactions occurring after 1995, the first good faith purchaser to record their water right at the county recorder's office has the better claim to title.⁶⁵ This requirement first emerged in 1995 when the Nevada State Legislature added both sections 533.382 and 533.383 to the Nevada Revised Statutes. These additions require owners to record their deeds with the county recorder prior to perfecting their rights.⁶⁶ Prior to 1995, the law appeared to create a race purely to the state engineer's office to perfect title to a water right.⁶⁷ The law simply stated that conveyances of permits were not binding, except between the parties, unless a purchaser of a water right filed its conveyance for record in the state engineer's office.⁶⁸ The Nevada State Legislature repealed this section by adopting sections 533.382 and 533.383 to the Nevada Revised Statutes in 1995. Thus, the *Adaven* decision further clarifies sections 533.382 and 533.383 and indicates that the location of the race to record first is in the county recorder's office alone.⁶⁹ In its decision, the court determined MFAC had the better claim because it recorded its deed with the county first, notwithstanding its failure to notify the state engineer of its conveyance.⁷⁰

As *Adaven* illustrates, the difficulty in searching for transfers of water rights separate from the land to which they are appurtenant remains an area of complex legal navigation. While the court recognized *Adaven's* difficulty in searching for the transfer ownership of the Permit 22375 water rights separate from land to which they were appurtenant,

62. Rew R. Goodenow and John R. Zimmerman, *The Nevada Supreme Court Clarifies Free Alienability of Water Rights*, Nev. Law., Sept. 17, 2009, at 16.

63. *Id.*

64. *Id.*

65. Greg Walch, *Water Rights Sales and Transfers in Nevada: Evaluating Water Rights for Acquisition 12* (Nov. 5, 2008) (unpublished article, on file with the author).

66. NEV. REV. STAT. §§ 533.382-383 (1995).

67. Walch, *supra* note 65, at 19.

68. NEV. REV. STAT. § 533.385(2) (repealed in 1995).

69. Walch, *supra* note 65, at 19.

70. *Adaven*, 191 P.3d at 1196.

it still charged Adaven with notice of the previously recorded deed. Thus, until such time the Nevada State Legislature passes new legislation to improve the system of documenting water rights transfers, prospective purchasers must thoroughly research title, looking to both the water right and the land to which the water right is appurtenant.⁷¹ Furthermore, the prospective purchaser of a water right must also research its interest in both the State Engineer's Office and the applicable county recorder's office to uncover any potential wild deed issues.⁷² For prospective purchasers, this means reviewing with the county recorder the grantor-grantee indexes and all land ownership records.⁷³ In terms of the state engineer, prospective purchasers must locate any letters the state engineer issued prior to 1995 indicating record ownership of a water right with the State of Nevada.⁷⁴

V. CONCLUSION

In this case of first impression, the Nevada Supreme Court has clarified the free alienability of water rights in Nevada, ruling that a party may transfer ownership of water rights separately from the property to which they are appurtenant without prior severance of the right for use at a different location. Further, the court has held that Nevada's anti-speculation doctrine does not prevent a good faith purchaser from acquiring a water right separate from the land to which the right is appurtenant. This decision should provide some flexibility and guidance to borrowers and lenders who wish to use water rights as secured property in development projects. The decision also makes clear that in a potential transaction for the sale of land, the responsibility of finding any encumbrances (i.e., the severance of ownership of a water right) falls squarely on the prospective purchaser of the land at interest and its appurtenant water right. As such, an interested purchaser wishing to purchase irrigated lands in Nevada must look at both the title to the land and to the appurtenant water rights. Furthermore, the interested purchaser should perform their search at both the State Engineer's Office and the applicable county recorder's office.

Craig Adams

71. Walch, *supra* note 65, at 19.

72. See Greg Walch, *Treading Water Law - A Nevada Water Rights Primer*, NEV. LAW., Nov. 6, 1998, at 18.

73. *Id.*

74. *Id.*