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

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water to be hydrologically connected. The District argued that the DNR exceeded its authority in adopting this rule because no statute permitted the DNR to cross natural resources district boundary lines when making determinations regarding the appropriated status of river basins, subbasins, and reaches. Moreover, the District argued that the Act expressly provided that the DNR should evaluate independently the hydrological connection in each of the state's river basins. According to the District, the language implied that the DNR should not consider areas outside a river basin in determining appropriated status.

The court held that the Act authorized the DNR to adopt a rule that considered the geographic area in one river basin when making its determination that a second river basin was fully appropriated. The court examined the legislative history of the Act and found that the legislature was aware of the hydrological connections between surface water and ground water, and wanted to protect those resources. The legislature also considered that the hydrological connections often affected more than one natural resources district when drafting the Act. Additionally, the legislature explicitly required that the DNR consider hydrologically connected areas in making determinations of the appropriated status of a river basin. The Act explicitly requires consideration of hydrological connections in determining the appropriated status of river basins, but the Act did not set forth any limitations on the DNR's ability to define the connection.

The court affirmed the decision of the trial court that the DNR did not exceed its authority in adopting a rule that considered the geographic area in one river basin when making its determination that a second river basin was fully appropriated.

*Adam Hernandez*

## NEVADA

**Adaven Mgmt., Inc. v. Mountain Falls Acquisition Corp., 191 P.3d 1189 (Nev. 2008)** (holding that: (1) water rights are freely alienable property interests separate from the land to which they are appurtenant; and (2) the anti-speculation doctrine does not limit an entity's ability to acquire water rights from a private owner separately from the land to which the right is appurtenant).

E.A. Collins Development Corporation ("E.A. Collins") purchased 520 acres of land in Nevada, along with the appurtenant water rights. Later, E.A. Collins received a loan from Commercial Federal Bank ("CFB") that pledged the water rights as security, but not the land to which the rights were appurtenant. Subsequently, CFB foreclosed on the secured property following E.A. Collins' bankruptcy. CFB purchased the water rights at the foreclosure sale and then resold those rights to Mountain Falls Acquisition Corporation ("MFAC"). After the foreclosure sale, Adaven Management, Inc. ("Adaven") purchased the land to which the water rights were appurtenant, and the deed in-

cluded “[a]ll water rights relating to, upon, benefiting, belonging or appertaining to the real property.” When Adaven applied to change the water use, CFB learned of Adaven’s asserted ownership interest and, on behalf of MFAC, asserted its interest in the water rights. Adaven’s complaint to quiet title followed. The Fifth Judicial District Court granted summary judgment in favor of MFAC and Adaven appealed to the Supreme Court of Nevada.

Adaven argued that Section 533.040 of the Nevada Revised Statutes (“NRS”) and the anti-speculation doctrine prevented E.A. Collins from pledging the water rights without either (1) pledging the land to which the water rights were appurtenant, or (2) seeking severance of the water right from the land pursuant to NRS Section 533.040. NRS section 533.040(1) provides that beneficially used water is “deemed to remain appurtenant to the place of use,” and NRS Section 533.040(2) allows property owners to sever water rights from the land to which they are appurtenant and put them to beneficial use elsewhere, but only after meeting certain conditions. Adaven asserted that transferring the water rights separately from the land to which they were appurtenant amounted to severing the water rights from the land, and the statute required that the State Water Engineer approve the transfer, approval that the transferring parties did not obtain.

The Supreme Court of Nevada found NRS Section 533.040 governs the place where the owner may put the water to beneficial use, but does not prevent the transfer of water rights ownership to someone other than the owner of the land. The court noted the transfer of ownership does not allow the new owner to automatically use the water at a new location. Here, none of the changes in ownership altered where the owner could put the water rights to beneficial use, and the water continued to benefit the land to which it was appurtenant.

The court rejected Adaven’s assertion that the anti-speculation doctrine limited an entity’s ability to acquire appurtenant water rights from a private owner separately from the land’s water benefits. According to the court, the anti-speculation doctrine limits an entity’s ability to demonstrate beneficial need when it does not have definite plans to put the water to beneficial use or a contractual relationship with an entity that has such plans. However, the court clarified the anti-speculation doctrine by itself does not limit transfers of water rights ownership, even if a transfer separates the ownership of the water right from the ownership of the land it benefits.

In sum, the court held water rights are freely alienable. The court concluded that NRS Section 533.040 and the anti-speculation doctrine focus on maintaining water’s beneficial use, not its ownership, and as such, MFAC validly owns the water rights. Accordingly, the court affirmed the district court’s summary judgment for MFAC where no genuine issue of material fact existed regarding Adaven’s notice of CFB’s interest in the disputed water rights.

Julie K. Anderson

**Anderson Family Assocs. v. Hugh Ricci, P.E., 179 P.3d 1201 (Nev. 2008)** (holding that although vested water rights are subject to state regulation under Nevada law, an application for a change of use permit does not subject the water rights to an impairment statute because vested rights cannot be impaired or diminished in value unless intentionally abandoned).

The Nevada Supreme Court considered whether Carson City ("City") lost priority on certain vested water rights after the State Engineer canceled the City's change of use permit application. Both the City and Anderson Family Associates ("AFA") own water rights in Ash Canyon Creek. The Ash Canyon Creek waters were originally granted as part of an 1885 court decree.

After obtaining additional water rights in Ash Canyon Creek, the City applied for a change of use permit to exercise the rights. However, the City failed to fulfill the permit's conditions. The State Engineer canceled the permit, but later reinstated it once the City satisfied the conditions. AFA then petitioned the State Engineer, contending that the City's water rights were subject to Nevada Revised Statute § 533.395, which provides that the cancellation of a permit replaces the original appropriation date with the date the petitioner filed the petition to rescind the cancellation. The State Engineer disagreed, answering that Nevada Revised Statute § 533.085(1), Nevada's nonimpairment statute, prohibited him from applying § 533.395 to the City's water rights because the rights had vested before Nevada enacted the current statutory code. AFA petitioned the district court for judicial review of the State Engineer's decision, but the district court denied AFA's petition. This appeal followed.

The court first discussed the general framework of water rights in Nevada. Appropriators can hold one of three types of water rights: vested, permitted, or certificated. The court defined vested rights as those that existed under Nevada common law, before the enactment of Nevada Revised Statute Chapter 533 in 1913. The State Engineer grants permitted rights. Certificated rights are perfected permitted rights. The court held that vested rights are not subject to Nevada's Statutory Rights provisions because they were decreed before such provisions were enacted. Additionally, the court held that vested, prestatutory rights can only be lost through intentional abandonment.

In support of its position, the court relied on several previous Nevada opinions. Citing *Ormsby County v. Kearney*, the court explained that although vested rights are subject to state regulation, no one can impair or diminish in value such rights. Additionally, relying on *In re Waters of Manse Spring*, the court explained that one who acquired rights before 1913 can only lose them through intentional abandonment. Thus, because the City's rights were decreed in 1885 and had