

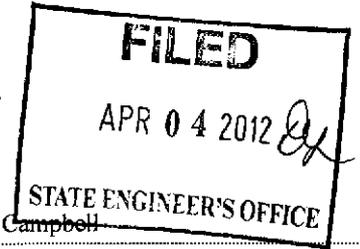
IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 81638⁹ & 81639

FILED BY Belli Ranch Estates Association

ON March 5, 2012

PROTEST



Comes now Debi Horton

Printed or typed name of protestant

whose post office address is 595 River Bend Dr, Reno, Nv 89523

2820 Erminia Rd. Reno, Nv 89523

Street No. or PO Box, City, State and ZIP Code

whose occupation is

and protests the granting

of Application Number 81638 & 81639

, filed on March 5,

2012

by Belli Ranch Estates Association

for the

waters of Belli Ranch Estates Association

situated in Washoe County

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

These applications violate: (1) Federal 4 acre feet per acre water law regarding 1944 Truckee River Orr Ditch Decree

(2) Nevada State Supreme Court Adavan decision 10/08

(3) 10/08 Washoe County District court order CV06-00007, Judge Perry

As proposed, these new permits add 5 properties for a total of 77.98 acres of ground while the total available water decreed to Belli Ranch is only 77.66 acre feet which is one acre foot per acre.

The 2011 Adams Stipulation does not supercede Judge Perry's Order.

THEREFORE the Protestant requests that the application be denied, subject to prior adjudicated rights, & insufficient water.

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Debi Horton

Agent or protestant

Debi Horton

Joe Campbell

Printed or typed name, if agent

Address

595 River Bend Drive

2820 Erminia Rd

Street No. or PO Box

Reno, Nevada 89523

Reno, Nev. 89523

City, State and ZIP Code

(775) 329-3600

(775) 786-7650

Phone Number

E-mail

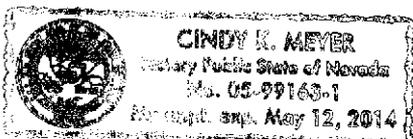
Subscribed and sworn to before me this

30th

day of

March

, 2012



State of

Nevada

County of

Clark

Notary Public

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† \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

To: State Water Engineer, Dear Melissa,

1/25/11

The 10/08 Adaven Nevada Supreme Court decision states on page 2 that a prospective buyer is responsible for doing his own chain of title work at the County Recorder's office to learn whether or not water is deeded to them. Further, it says anyone doing the work should come to the same determination. Clearly, none of the DeLipkau clients or beneficiaries did or had done this prior to purchase. Or, they would have come to the same conclusion as Bob Firth who testified as an expert witness in Judge Perry's court 10/08. None of these lower lots in question had any deeded water at their respective initial sales date, nor when these current owners bought (Huddleston 2001, Edney 1999, Smith 1986, 2002, Djukanovich 1999, Franchi 1998).

038-651-02 038-661-03 038-661-02 038-661-12 038-661-11

The Adaven decision confirms that water is real property just as the dirt of a parcel and may be separately deeded, sold, put up as collateral for another purchase, and/or have its place of use changed within the confines of the owner's deeded property. The developers of Belli Ranch Estates, while they owned the property, legally changed "the place of use" of their water by permit 48742 to the Nevada Division of Water Resources, together with a map in 1985, BEFORE the lower lots in question were sold originally. These lower lots are not on the 1985 place of use map. While it is true the process was not completed by the developer, the 1985 map was accepted and followed by the State Engineer for 23 years and was finalized before these lower lots filed suit against the Nevada State Engineer, once they learned they have no deeded water. This is no justification for taking our water, or making them wet lots.

The Adaven decision also clarifies that appurtenance is tied closely to showing beneficial use of the water. Water can't be held just for speculative purposes⁴ (Huddleston, Edney, and Smith have all said they want some ability to enhance the value of their property at some future sale date.).^{6,7} Water must benefit the land which is why a place of use map is required and the State Engineer checks from time to time to confirm that water is being used where the place of use map says it is to be used. This has been done since 1985 on the upper bench of Belli Ranch Estates with the water in question. The Edney and Smith properties have never been irrigated since the ranch became a subdivision and the Huddleston property has merely received free water from upstream neighbors' runoff and/or Sierra Pacific/TMWA's mistaken delivery until Firth's 10/08 testimony in District Court with Judge Perry proved with legitimate chain of title work that Huddleston has no deeded water either. *see TMWA schedule from Hydrologist B.T. Hawk*

Further, regarding water, there is no such thing as prescriptive rights. So, that Huddleston, Boge, Gilson, Monfalcone, etc. have managed to take more water than they are entitled to, doesn't mean legally that they have any claim to continue to do so. *see ARS 533.060 #55*

Red numbers reflect ADADA citations

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Washoe county District Judge Perry ruled 10/08 that "Campbell/Horton have a pre-existing legal right to the land area depicted on the 1985 map (48742) x 4/acre feet per acre (Orr Ditch Decree 1944). 23.5 acres of irrigable land area x 4/ac/ft = 94 acre/feet needed to satisfy the 1985 map. "That only 64 acre/feet is owned by the Assoc., we are some 30 acre/feet short if all 1985 map wet lots irrigated to the max just in these allocated areas. As such, Judge Perry accepted Campbell's pro rata model - 1985 area wet lot divided by total land area 23.5 acres = % total that wet lot is entitled to from the main Steamboat Headgate.

This "pre existing legal right" for Horton/Campbell extends to all 1985 wet lots on the upper bench. This 10/08 ruling is just as valid and important legally as the prior legal decision protecting upper bench private deeded water owners from being forced to give back water 15227 to the Assoc. (also a mistake of the developer). The only water four of the five current board members have the authority to give away by yearly temporary permit or sell to another Belli member, is their privately owned or deeded water! We do NOT give the board the authority to take any of our water proved up by Judge Perry 10/08. And, we believe Perry's decision protects all 1985 wet lots from such arrogant decisions by these 2009/2010 board members, the very reason we filed suit is 2006. *Court order 10/08 supercedes 5th petition agreements. CV66-00007*

We do NOT agree to retry the case before Adams merely because Huddleston, et al and/or the Board don't like the Perry results, protecting wet lots from them and the board.

We find it reprehensible and believe it is illegal that 2009/2010 board members have not copied, sent, or explained the permanent "takings" from wet lots that they are trying to force down our throats. Firths calculations showing these permanently reduced allocations that have been printed and available since at least January 2010. *see NRS 533,060 #5*

Some year ago, Boge wanted more water than his allotment and also just wanted to force everyone to receive equal amounts of water to benefit himself. Water is not a democratic math problem! It is significant that there was no response from wet lots willing to give up any of their allocation. Now, without even asking, this board wants to add in five more users (lower lots) and divide the water by 36%. The wet lots already said no, but these board members have their own agenda and say their decision is in the best interest of the Association.

Debi Horton

Joe Campbell

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2010 WASHOE POWER DITCH (Claim Nos. 97-97A):

TOMWA
SEATTLE

No.	Claim No.	APN	TWMA DIS	Name	2008	2009	2010	2011	2012								
1		3986104	YES	Bath, Linda and Kathleen	2885	ARENZ	CT	RENO	NV	89822	875-157	BOX 234	4788	YES	12.900	42.300	42.300
2		3986103	YES	Simon, William and Jennifer	2886	ARENZ	CT	RENO	NV	89822	827-4478	BOX 5	4029	YES	3.700	18.200	18.200
3		3986102	YES	Huddleston, Philip & Athena	2945	MARIC	ROAD	RENO	NV	89822	224-4223	BOX 5	1368	NO	8.200	8.000	8.000
4		3986101	YES	Martony, James and Barbara	3015	MARIC	ROAD	RENO	NV	89822	771-8240	BOX 6	4918	NO	2.200	8.000	8.000
5		3986111		French, Mark		MARIC	ROAD	RENO	NV	89822			408	NO			
6		3986112		Dolanovich, Kelly and Gaudien	3043	MARIC	ROAD	RENO	NV	89822	875-2282	BOX 6	1575	NO			
7		3986102		Smith, James R.	3115	MARIC	ROAD	RENO	NV	89822			2367	NO			
8		3986103		Estey, Sally	3166	MARIC	ROAD	RENO	NV	89822			2466	NO			
9		3986104		Johnson, David C.	3205	MARIC	ROAD	RENO	NV	89822			1188	YES	0.200	0.200	0.000
10		3986107		Gaudin, Carl L. & Elaine M.	3205	MARIC	ROAD	RENO	NV	89822			4283	YES	0.200	0.200	0.000
11		3986108	YES	Byrdges, Steve and Marra	3306	MARIC	ROAD	RENO	NV	89822	896-1722	BOX 6	1695	YES	2.900	8.700	8.700
12		3986115	YES	Eveson, Mark & Susan	3356	MARIC	ROAD	RENO	NV	89822	345-0526	BOX 10	2390	YES	2.200	8.200	8.200
13		3986114	YES	DeCarlo, Carol	3356	MARIC	ROAD	RENO	NV	89822			2060	YES	0.200	0.200	0.000
14		3986203	YES	Leapor, Philip and Susan	3250	MARIC	ROAD	RENO	NV	89822	232-1982	BOX 57	2780	YES	1.200	4.200	4.200
15		3986204	YES	Larson, Vincent	3300	MARIC	ROAD	RENO	NV	89822	345-2722	BOX 8	2410	YES	0.200	0.200	0.000
16		3986205	YES	Garcia, Gerardo S. & Paez S.	3300	MARIC	ROAD	RENO	NV	89822			2390	YES	0.200	0.200	0.000

SUB-TOTAL

63,938 21,823 92,092 92,092

From Bill Howie, Hydrologist TWMA

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NRS 533.060 Right to use limited to amount necessary; loss or abandonment of rights; no acquisition of prescriptive right; reservation of rights by State.

1. Rights to the use of water must be limited and restricted to as much as may be necessary, when reasonably and economically used for irrigation and other beneficial purposes, irrespective of the carrying capacity of the ditch. The balance of the water not so appropriated must be allowed to flow in the natural stream from which the ditch draws its supply of water, and must not be considered as having been appropriated thereby.

2. Rights to the use of surface water shall not be deemed to be lost or otherwise forfeited for the failure to use the water therefrom for a beneficial purpose.

3. A surface water right that is appurtenant to land formerly used primarily for agricultural purposes is not subject to a determination of abandonment if the surface water right:

(a) Is appurtenant to land that has been converted to urban use; or

(b) Has been dedicated to or acquired by a water purveyor, public utility or public body for municipal use.

4. In a determination of whether a right to use surface water has been abandoned, a presumption that the right to use the surface water has not been abandoned is created upon the submission of records, photographs, receipts, contracts, affidavits or any other proof of the occurrence of any of the following events or actions within a 10-year period immediately preceding any claim that the right to use the water has been abandoned:

(a) The delivery of water;

(b) The payment of any costs of maintenance and other operational costs incurred in delivering the water;

(c) The payment of any costs for capital improvements, including works of diversion and irrigation; or

(d) The actual performance of maintenance related to the delivery of the water.

5. A prescriptive right to the use of the water or any of the public water appropriated or unappropriated may not be acquired by adverse possession. Any such right to appropriate any of the water must be initiated by applying to the State Engineer for a permit to appropriate the water as provided in this chapter.

6. The State of Nevada reserves for its own present and future use all rights to the use and diversion of water acquired pursuant to chapter 462, Statutes of Nevada 1963, or otherwise existing within the watersheds of Marlette Lake, Franktown Creek and Hobart Creek and not lawfully appropriated on April 26, 1963, by any person other than the Marlette Lake Company. Such a right must not be appropriated by any person without the express consent of the Legislature.

[8:140:1913; A 1917, 353; 1919, 102; 1943 NCL § 7897] (NRS A 1979, 1161; 1999, 2031)

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2 of 3 DOCUMENTS

ADAVEN MANAGEMENT, INC., A NEVADA CORPORATION, Appellant, vs. MOUNTAIN FALLS ACQUISITION CORPORATION, A NEVADA CORPORATION; AND COMMERCIAL FEDERAL CORPORATION, A FOREIGN CORPORATION D/B/A COMMERCIAL FEDERAL BANK, Respondents.

No. 48429

SUPREME COURT OF NEVADA

191 P.3d 1189; 2008 Nev. LEXIS 77; 124 Nev. Adv. Rep. 67

September 11, 2008, Filed

PRIOR HISTORY: [**1]

Appeal from a district court summary judgment in a water rights action. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

DISPOSITION: Affirmed.

LexisNexis(R) Headnotes

Civil Procedure > Summary Judgment > Appellate Review > Standards of Review
Civil Procedure > Appeals > Standards of Review > De Novo Review

[HN1] An appellate court reviews district court orders granting summary judgment de novo.

Civil Procedure > Summary Judgment > Standards > Genuine Disputes

Civil Procedure > Summary Judgment > Standards > Legal Entitlement

[HN2] Summary judgment is appropriate if, after viewing the record before the district court in the light most favorable to the nonmoving party, no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. Whether an issue of fact is material is controlled by the substantive law at issue in

the case, and a factual dispute is genuine if the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.

Real Property Law > Water Rights > General Overview [HN3] Water rights are a separate "stick" in the bundle of property rights.

Real Property Law > Water Rights > General Overview [HN4] Neither Nev. Rev. Stat. § 533.040 nor the anti-speculation doctrine limits the alienability of water rights.

Real Property Law > Water Rights > Beneficial Use [HN5] Nev. Rev. Stat. § 533.040(1) provides that beneficially used water is deemed to remain appurtenant to the place of use. Section 533.040(2) allows water rights to be severed from the land to which they are appurtenant and put to beneficial use elsewhere, but only when certain conditions are met. Thus, when water is appurtenant to land, the owner of the water right has the right to use the water to benefit that land. But nothing in § 533.040 prevents the transfer of water rights ownership to someone other than the owner of the land; the statute governs the place of the water's use. Therefore, the term "appurtenant" in § 533.040 refers to where the water right may be put to beneficial use, not ownership. Because the

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transfer of ownership to water rights does not allow the new owner to automatically use the water at a different location, that transfer does not amount to a severance controlled by § 533.040.

Real Property Law > Water Rights > Beneficial Use
[HN6] See Nev. Rev. Stat. § 533.040.

Real Property Law > Water Rights > Beneficial Use
[HN7] The anti-speculation doctrine precludes speculative water right acquisitions without a showing of beneficial use.

Real Property Law > Water Rights > General Overview
[HN8] The anti-speculation doctrine by itself does not limit transfers of water rights ownership.

Real Property Law > Deeds > General Overview
Real Property Law > Water Rights > General Overview
[HN9] In Nevada, water rights must be transferred by deed, and such deeds must be acknowledged and recorded in the office of the county recorder of each county in which the water is applied to beneficial use and in each county in which the water is diverted from its natural source. Nev. Rev. Stat. § 533.382(3). A deed so recorded imparts notice of the contents of the deed to all persons at the time the deed is recorded, and a subsequent purchaser or mortgagee shall be deemed to purchase and take with notice of the contents of the deed. § 533.382(1). If, however, a deed has not been properly recorded, a subsequent purchaser of water rights for value without actual or constructive notice of a previous purchaser's interest in the water rights who properly records his or her deed before any previous purchaser is entitled to the water rights. Nev. Rev. Stat. § 533.383(2)(d).

Real Property Law > Deeds > General Overview
Real Property Law > Water Rights > General Overview
[HN10] See Nev. Rev. Stat. § 533.383(2)(d).

Real Property Law > Deeds > General Overview
Real Property Law > Water Rights > General Overview
[HN11] The county recorder maintains recorded deeds, including those transferring water rights. Nev. Rev. Stat. § 247.120(1)(a). By statute, a county recorder is required to keep indices of all deeds arranged by the names of the

grantors and grantees. Nev. Rev. Stat. § 247.150. A prospective purchaser of land may search those indices to ensure that the person attempting to sell the property has clear title to it. To search the indices, the prospective purchaser would first search the grantee index for the purported owner's name to ascertain when and from whom the purported owner received the property. Using that name, the purchaser would check the grantee index for the names of each previous owner, thus establishing the chain of title. The purchaser must then search the grantor index, starting with the first owner in the chain of title, to see whether he or she transferred or encumbered the property during the time between his or her acquisition of the property and its transfer to the next person in the chain of title. Whether or not a purchaser of real property performs this search, he or she is charged with constructive notice of, and takes ownership of the property subject to, any interest such a title search would reveal.

Real Property Law > Deeds > General Overview
[HN12] Nev. Rev. Stat. § 111.312 requires deeds conveying real property interests to display the assessor's parcel numbers only for the transferred property.

COUNSEL: Harrison, Kemp, Jones & Coakley, LLP, and Jennifer C. Dorsey, Las Vegas; Taggart & Taggart, Ltd., and Paul G. Taggart, Carson City, for Appellant.

Hale Lane Peek Dennison & Howard and Jeremy J. Nork and Rachel K. Melendon Kent, Reno, for Respondents.

Jones Vargas and John P. Sunde, III, Megan Barker Bowen, and Erin E. Dart, Reno, for Amicus Curiae.

JUDGES: HARDESTY, J. GIBBONS, C.J., MAUPIN, DOUGLAS, CHERRY and SAITTA, JJ., concur.

OPINION BY: HARDESTY

OPINION

[*1190] BEFORE THE COURT EN BANC.¹

1 The Honorable Ron Paraguirre, Justice, voluntarily recused himself from participation in the decision of this matter.

By the Court, HARDESTY, J.:

In this appeal, we consider whether water rights may

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be transferred separately from the property to which they are appurtenant without prior severance under *NRS 533.040*. We also consider whether the anti-speculation doctrine adopted by this court in *Bacher v. State Engineer* 2 limits the ability to acquire a security or ownership interest in a water right separately from the land to which the right is appurtenant. Because *NRS 533.040* and the anti-speculation [**2] doctrine focus on maintaining water's beneficial use, not its ownership, we conclude that such transfers are not limited by either *NRS 533.040* or the anti-speculation doctrine.

2 146 P.3d 793 (2006).

Finally, having determined that water rights are freely alienable, we address appellant Adaven Management, Inc.'s argument that even though the water rights at issue had been sold before Adaven bought the land to which they were appurtenant, it nevertheless owns the water rights because they were purchased with the land and without notice of the prior sale. We conclude that Adaven [**191] has failed to demonstrate that a genuine issue of material fact exists concerning whether it had notice of respondents' prior recorded interest in the water rights at issue. Therefore, we affirm the district court's grant of summary judgment in this quiet title action.

Factual and Procedural Background

In 1998, E.A. Collins Development Corporation purchased 520 acres of Nye County, Nevada, land and the appurtenant water rights from Perry and Norma Bowman, who had used the land and water for agricultural purposes.³ The water rights purchased included approximately 1,185 acre feet of Permit 22735, which [**3] is at issue in this case.⁴ After the purchase, E.A. Collins allowed the Bowmans to remain on and farm the property while it took preliminary steps toward developing the land.

³ Water rights are "appurtenant" to land when they are "by right used with the land for its benefit." *Black's Law Dictionary* 103 (6th ed. 1990).

⁴ In the initial sale, the Bowmans retained the rights to 50 acre feet of water under Permit 22735 and to 40 acres of the land to which Permit 22735 was appurtenant. They later obtained the rights to an additional 240.24 acre feet of water under the permit. Although we refer to Permit 22735

throughout this opinion for convenience, we consider only the approximately 1,185 acre feet of water that is the subject of this appeal.

In 1999, E.A. Collins received a loan from respondent Commercial Federal Bank (CFB), pledging by deed of trust several parcels of land and water rights as security. The security included Permit 22735 but not the land to which it was appurtenant. CFB recorded the deed of trust in Nye County that same year.

One and a half years later, following E.A. Collins's bankruptcy, CFB foreclosed on the secured property. At the foreclosure sale, CFB purchased the property, [**4] and then, on March 3, 2001, it recorded in Nye County a trustee's deed upon sale. The foreclosure sale included the Permit 22735 water rights but not the land to which the water rights were appurtenant. Thus, as of March 3, 2001, the Permit 22735 water rights had been transferred to CFB. CFB then sold Permit 22735 and the other property that it had acquired at the foreclosure sale to its wholly owned subsidiary, respondent Mountain Falls Acquisition Corporation (MFAC), and MFAC recorded a special warranty deed in Nye County on June 17, 2002. Neither CFB nor MFAC claim that they filed a report of conveyance for Permit 22735 with the State Water Engineer at the time they acquired the permit or anytime thereafter.

After the date of the foreclosure sale, in 2001, Adaven purchased from E.A. Collins the land to which Permit 22735 was appurtenant by a deed that included "[a]ll water rights relating to, upon, benefiting, belonging or appertaining to the real property"; Adaven recorded the deed in Nye County on December 18, 2001. Seven months later, in July 2002, Adaven filed a report of conveyance for Permit 22735 with the State Water Engineer.⁵ Adaven then filed an application with the State [**5] Water Engineer to change the use of the water from agricultural to quasimunicipal to allow Adaven to begin developing home sites on the land to which Permit 22735 was appurtenant.

⁵ *NRS 533.384(1)* requires "[a] person to whom is conveyed an application or permit to appropriate any of the public waters, a certificate of appropriation, an adjudicated or unadjudicated water right or an application or permit to change the place of diversion, manner of use or place of use of water" to file with the State Water Engineer a "report of conveyance," which includes

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information regarding title to the water right and the place of its use. The State Water Engineer, under *NRS 533.386*, uses the report of conveyance to determine whom to treat as the owner of the water right.

The instant dispute arose when CFB learned of Adaven's asserted ownership interest in Permit 22735 and, on behalf of MFAC, wrote to the Department of Water Resources, asserting its interest in Permit 22735. In response to the dispute, the State Water Engineer indicated that he would take no further action regarding Permit 22735 until title was quieted. Adaven then filed a district court complaint to quiet title. MFAC answered the [**6] complaint, counterclaimed against Adaven, and moved for summary [**1192] judgment. After a hearing, the district court granted MFAC summary judgment, and Adaven now appeals.

DISCUSSION

[HN1] We review district court orders granting summary judgment de novo.⁶ [HN2] Summary judgment is appropriate if, after viewing the record before the district court in the light most favorable to the nonmoving party, "no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law."⁷ Whether an issue of fact is material is controlled by the substantive law at issue in the case, and a factual dispute is genuine if "the evidence is such that a rational trier of fact could return a verdict for the nonmoving party."⁸

6 *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1028, 1029 (2005).

7 *Id.* at 731-32, 121 P.3d at 1031.

8 *Id.* at 731, 121 P.3d at 1031.

Water rights are freely alienable property interests separate from the land to which they are appurtenant

Adaven argues that *NRS 533.040* and the anti-speculation doctrine adopted by this court in *Bacher v. State Engineer*⁹ prevent E.A. Collins from validly pledging Permit 22735 as security for a loan without also pledging the land to which [**7] Permit 22735 was appurtenant or seeking severance of the water right from the land. We have previously held that [HN3] water rights are a separate "stick" in the bundle of property rights.¹⁰ However, we have never considered whether water rights are freely alienable without regard to the land to which the water rights are appurtenant or the

ability of the transferee to put the water to beneficial use. We now conclude that [HN4] neither *NRS 533.040* nor the anti-speculation doctrine limits the alienability of water rights.

9 146 P.3d 793 (2006).

10 *Dermody v. City of Reno*, 113 Nev. 207, 212, 931 P.2d 1354, 1358 (1997).

NRS 533.040 does not require severance of appurtenant water rights before the water rights become separately alienable

Adaven argues that transferring water rights separately from the land to which they are appurtenant, either by pledging them as security or selling them outright, amounts to severing the water rights from the land, which act is governed by *NRS 533.040* and allowed only with approval of the State Water Engineer when certain conditions are met.¹¹ As Adaven contends, [HN5] *NRS 533.040(1)* provides that beneficially used water is "deemed to remain appurtenant to the [**8] place of use." *NRS 533.040(2)* allows water rights to be severed from the land to which they are appurtenant and put to beneficial use elsewhere, but only when certain conditions, not at issue here, are met. Thus, when water is appurtenant to land, the owner of the water right has the right to use the water to benefit that land.¹² But, contrary to Adaven's assertion, nothing in *NRS 533.040* prevents the transfer of water rights ownership to someone other than the owner of the land; the statute governs the place of the water's use. Therefore, the term "appurtenant" in *NRS 533.040* refers to where the water right may be put to beneficial use, not ownership. Because the transfer of ownership to water rights does not allow the new owner to automatically use the water at a different location, [**1193] that transfer does not amount to a severance controlled by *NRS 533.040*.

11 *NRS 533.040* reads, in pertinent part:

[HN6] 1. Except as otherwise provided in this section, any water used in this State for beneficial purposes shall be deemed to remain appurtenant to its place of use.

2. If at any time it is impracticable or to the public beneficially or economically at the

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place to which it is appurtenant, the right may [**9] be severed from the place of use and be simultaneously transferred and become appurtenant to another place of use, in the manner provided in this chapter, without losing priority of right.

12 *Dermody*, 113 Nev. at 209 n.1, 931 P.2d at 1356 n.1. We note that *Dermody* incorrectly quotes and attributes the definition of "appurtenant" used therein to *Mattix v. Swepston*, 127 Tenn. 693, 155 S.W. 928, 930 (Tenn. 1913); that definition may be correctly attributed to *Black's Law Dictionary* 103 (6th ed. 1990).

In this case, when E.A. Collins purchased the land and water rights from the Bowmans, it arranged for the Bowmans to continue using the Permit 22735 water to benefit the land to which it was appurtenant. It then pledged Permit 22735 as security on a loan, which led to CFB's purchase of Permit 22735 at the foreclosure sale, and finally to CFB's later sale of Permit 22735 to MFAC. None of these changes in ownership altered where Permit 22735 could be put to beneficial use, and therefore, no severance as contemplated by *NRS 533.040(2)* occurred.

The anti-speculation doctrine does not limit an entity's ability to acquire water rights from a private owner

In *Bacher*, this court adopted Colorado's [11N] anti-speculation [**10] doctrine, which, as articulated by this court, "precludes speculative water right acquisitions without a showing of beneficial use." 13 The anti-speculation doctrine was first espoused by the Colorado Supreme Court in *Colorado River Water Conservation v. Vidler Tunnel*. 14 In that case, Vidler applied for a right to store 156,238 acre feet of water from the Colorado River. 15 To obtain the appropriation it sought, Vidler was required to prove that it had "an intent to take the water and put it to beneficial use." 16 Vidler planned to use 2,000 acre feet of water to irrigate land it owned but did not have definite plans to put the remaining portion of the water to beneficial use and had not entered into any contracts committing third parties to definite beneficial uses. 17 Because selling water rights to make a profit at some point in the future was not a beneficial use, 18 the court held that the appropriation

was valid only for the 2,000 acre feet of water for which Vidler demonstrated a definite beneficial use, irrigating its own land, and rejected the appropriation with respect to the additional 154,238 acre feet Vidler requested. 19

13 146 P.3d at 799.

14 197 Colo. 413, 594 P.2d 566, 568-69 (Colo. 1979), [**11] superseded in part and affirmed in part by statute, 1979 Colo. Sess. Laws 1366, 1368-69, as recognized in *Matter of Bd. of Cty. Com'rs*, 891 P.2d 952, 959-61 (Colo. 1995). But see *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1, 37 (Colo. 1996) ("Although Vidler has most often been cited as defining the anti-speculation doctrine, we did not articulate a new legal requirement in that case, but rather merely applied longstanding principles of Colorado water law.").

15 *Vidler*, 594 P.2d at 566-67.

16 *Id.* at 568.

17 *Id.* at 567.

18 *Id.* at 568-69.

19 *Id.* at 569-70.

After *Vidler*, the Colorado courts have applied the anti-speculation doctrine to many situations, each of which require a determination of whether a water right will be put to beneficial use. 20 However, in Colorado, the anti-speculation doctrine does not prevent a property owner from selling to a third party his or her right to draw water. 21 Thus, the anti-speculation doctrine in Colorado [**1194] focuses on the use of water, not ownership.

20 See, e.g., *Ground Water Com'n v. North Kiowa Bijou*, 77 P.3d 62, 80 (Colo. 2003) (holding that the anti-speculation doctrine applies to application for determination of a Denver Basin designated ground water [**12] use right); *Upper Black Squirrel Creek v. Goss*, 993 P.2d 1177, 1184 (Colo. 2000) ("Intent to appropriate for beneficial use is a necessary factor in the Commission's decision whether to grant a well permit application; Colorado's anti-speculation doctrine applies."); *Municipal Subdistrict v. OXY, USA, Inc.*, 990 P.2d 701, 708 (Colo. 1999) ("[I]ntentional diligence applications are subject to the anti-speculation doctrine."); *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1, 20, 39 (Colo. 1996) (holding that, with some modification, the anti-speculation doctrine applied to a

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municipality's application for change of use); *Jaeger v. Colorado Ground Water Com'n*, 746 P.2d 515, 523 (Colo. 1987) (holding that the anti-speculation doctrine applied to appropriations in designated ground water basins).

21 *Bayou Land Co. v. Talley*, 924 P.2d 136, 149 (Colo. 1996); see also *Nielson v. Newmyer*, 123 Colo. 189, 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 [**13] of the land may be conveyed together with any part of the water right and the remainder be retained." (citations omitted)).

Likewise, in *Bacher*, we applied the anti-speculation doctrine to a situation requiring the demonstration of beneficial use.²² That case concerned an application for an interbasin transfer of water.²³ We noted that interbasin water transfers are subject to the beneficial use requirement and that a statutory "need" requirement reflected the beneficial use policy.²⁴ We held that, to demonstrate need, the transfer application had to "specify the intended beneficial use of the appropriation."²⁵ Applying the anti-speculation doctrine, we concluded that an entity that was not intending to put the appropriated water to use itself nonetheless had demonstrated need when it showed a contractual or agency relationship with the party who intended to put the water to beneficial use.²⁶ We thus adopted the anti-speculation doctrine as a limitation on an entity's ability to demonstrate beneficial use when it did not have definite plans to put water to beneficial use or a contractual relationship with an entity that had such plans. We did not adopt the anti-speculation doctrine [**14] as a limit on the free alienability of water rights,²⁷ and now we clarify that [HN8] the anti-speculation doctrine by itself does not limit transfers of water rights ownership.

22 See 146 P.3d 793, 799 (2006).

23 *Id.* 146 P.3d at 795.

24 *Id.* 146 P.3d at 797. The "need" requirement for an interbasin transfer stems from NRS 533.370(6)(a), which requires an applicant for an interbasin water transfer to demonstrate "the need to import the water from another basin."

25 *Bacher*, 146 P.3d at 799.

26 *Id.* 146 P.3d at 798-99.

27 *Id.* 146 P.3d at 799.

Therefore, neither NRS 533.040 nor the anti-speculation doctrine limited E.A. Collins's ability to offer Permit 22735 as security on the loan from CFB separately from the land to which it was appurtenant or CFB's ability to thereafter buy and sell the water right. We next consider whether Adaven was a bona fide purchaser for value who took title to Permit 22735 when it purchased the land to which it was appurtenant.

*Because CFB had properly recorded its interest in Permit 22735 before Adaven took title to the land, Adaven had constructive notice and did not take title to those water [**15] rights*

Adaven next argues that the district court erred in granting summary judgment for MFAC because genuine issues of material fact exist as to whether Adaven had notice of CFB's interest in Permit 22735 when it took title to the land to which Permit 22735 was appurtenant. Adaven argues that it did not have constructive notice of Permit 22735's mortgage or sale because a reasonable record search would not have revealed CFB's interest in Permit 22735. MFAC responds that because the deed of trust from E.A. Collins granting a security interest in Permit 22735 to CFB was recorded in October 1999 and the trustee's deed upon sale was recorded in March 2001, Adaven had constructive notice of CFB's claim when it purchased the land in December 2001. We agree.

[HN9] In Nevada, water rights must be transferred by deed, and such deeds must be acknowledged and "[r]ecorded in the office of the county recorder of each county in which the water is applied to beneficial use and in each county in which the water is diverted from its natural source."²⁸ A deed so recorded "impart[s] notice of the contents of the deed to all persons at the time the deed is recorded, and a subsequent purchaser or mortgagee shall [**16] be deemed to purchase and take with notice of the contents of the deed."²⁹ If, however, a deed has not been properly recorded, a subsequent purchaser of water rights for value without actual or constructive notice of a previous purchaser's interest in the water rights who properly records his or her deed before any previous purchaser is entitled to the water rights.³⁰

28 NRS 533.382(3).

29 NRS 533.383(1).

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30 See *NRS 533.383(2)(d)* ([HN10] "An application or permit to change the place of diversion, manner of use or place of use of water, that has not been recorded as required by *NRS 533.382* shall be deemed void as against a subsequent purchaser who in good faith and for valuable consideration purchases the same application, right, certificate or permit, or any portion thereof, if the subsequent purchaser first records his deed in compliance with *NRS 533.382*.").

[HN11] [*1195] The county recorder maintains recorded deeds, including those transferring water rights. 31 By statute, a county recorder is required to keep indices of all deeds arranged by the names of the grantors and grantees. 32 A prospective purchaser of land may search those indices to ensure that the person attempting to sell the property has clear [*17] title to it. To search the indices, the prospective purchaser would first search the grantee index for the purported owner's name to ascertain when and from whom the purported owner received the property. 33 Using that name, the purchaser would check the grantee index for the names of each previous owner, thus establishing the "chain of title." 34 The purchaser must then search the grantor index, starting with the first owner in the chain of title, to see whether he or she transferred or encumbered the property during the time between his or her acquisition of the property and its transfer to the next person in the chain of title. Whether or not a purchaser of real property performs this search, he or she is charged with constructive notice of, and takes ownership of the property subject to, any interest such a title search would reveal. 35

31 See *NRS 247.120(1)(a)* ("[E]ach county recorder shall . . . record separately . . . the following specified documents: (a) Deeds, grants, . . . transfers and mortgages of real estate, [and] releases of mortgages of real estate."); *NRS 247.150(1)* ("Each county recorder shall maintain two separate indexes in his office for the separate alphabetical [*18] recordation of the various classes of documents specified in *NRS 247.120*.").

32 *NRS 247.150*.

33 11 *Thompson on Real Property* § 92.05(a)(3) (David A. Thomas, ed., 2002).

34 *Black's Law Dictionary* defines "chain of title" as a "[r]ecord of successive conveyances, or

other forms of alienation, affecting a particular parcel of land, arranged consecutively, from the government or original source of title down to the present holder." *Black's Law Dictionary* 229 (6th ed. 1990).

35 See *Snow v. Pioneer Title Ins. Co.*, 84 Nev. 480, 484-86, 444 P.2d 125, 127-28 (1968).

Adaven argues that a search of the grantee-grantor indices would not have revealed CFB's interest in Permit 22735 for three reasons: (1) the grantor listed on the trustee's deed upon sale was Stewart Title of Nevada, not E.A. Collins; (2) the deed of trust was only intended to, and would only be interpreted to, encumber the water rights appurtenant to the encumbered land; and (3) the deed of trust did not include the assessor's parcel number for the land to which Permit 22735 was appurtenant. Construing the factual record in the light most favorable to Adaven, we conclude that Adaven has failed to demonstrate a genuine issue of material [*19] fact. 36

36 See *Wood v. Safeway, Inc.*, 121 Nev. 724, 731-32, 121 P.3d 1026, 1031 (2005).

Adaven's first argument disregards the undisputed fact that CFB recorded the deed of trust by which E.A. Collins pledged Permit 22735 as security for a loan. The deed of trust was indisputably within the chain of title and would have been revealed by a search of the grantee-grantor indices. Even if the trustee's deed upon sale of the property was not within the chain of title, 37 the existence of the deed of trust within the chain of title was sufficient to require Adaven to make further inquiry, and therefore, Adaven was charged with notice of what would have been revealed. 38

37 We note that, under *NRS 247.150(5)*, the county recorder is required to index such a deed under the name of the original trustor, in this case E.A. Collins. Therefore, the trustee's deed upon sale should have been within the chain of title, and we only assume that it was not because of the posture of this case.

38 See *Snow*, 84 Nev. at 485 No. 444 P.2d at 127-28.

Adaven next argues that the deed of trust did not clearly encumber Permit 22735. Adaven argues that the language of the deed conveyed interests only in water rights that [*20] were appurtenant to the land being encumbered. However, the deed of trust clearly states that

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it encumbers the Nye County property described in exhibit A to the deed [*1196] and the water rights described in exhibit B to the deed. Exhibit B is a list that clearly includes Permit 22735. Although Adaven insists that it should not be charged with notice of an interest listed only on the thirteenth page of a single-spaced document, we disagree. When the first page of a deed provides that the deed conveys water rights and that 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.

Finally, Adaven argues that CFB failed to comply with *NRS 111.312* by failing to include the assessor's parcel number for the land to which Permit 22735 was appurtenant on the first page of the deed of trust. We conclude that [11N12] *NRS 111.312* requires deeds conveying real property interests to display the assessor's parcel numbers only for the transferred property.³⁹ Neither party argues that Permit 22735 was assigned its own parcel number, and the deeds by which CFB acquired Permit 22735 did not [**21] transfer the real property to which it was appurtenant. Therefore, *NRS 111.312* did not require the deed to include a parcel number for Permit 22735 or the land to which it was appurtenant.

39 2001 Nev. Stat., ch. 59, § 1, at 478, provides:

1. The county recorder shall not record with respect to real property, a notice of completion, a declaration of homestead, a lien or notice of lien, an affidavit of death, a mortgage or deed of trust, or any conveyance of real property or instrument in writing setting forth an agreement to convey real property unless the document being recorded contains:

(a) The mailing address of the grantee or, if there is no grantee, the mailing address of the person who is requesting the recording of the document; and

(b) The assessor's parcel number of the property at the top of the first page of the document, if

the county assessor has assigned a parcel number to the property. The county recorder is not required to verify that the assessor's parcel number is correct.

In 2003, the Legislature amended *NRS 111.312* to expressly state that "[a]ny document relating exclusively to the transfer of water rights may be recorded without containing the assessor's parcel number [**22] of the property." 2003 Nev. Stat., ch. 451, § 47, at 2781. Although this amendment does not apply to this action because the deeds in question were recorded in 1999 and 2001 and the amendments were prospective, if the amendment applied, we would reach the same result. 2003 Nev. Stat., ch. 451, § 67, at 2792.

Because CFB complied with the recordation requirements, Adaven had constructive notice of Permit 22735's mortgage and sale. No genuine issue of material fact exists concerning whether a search of the grantee-grantor indices would have revealed the deed of trust encumbering Permit 22735. Upon discovering the deed of trust, Adaven had a duty to inquire concerning that encumbrance, and thus, Adaven is charged with notice of what that inquiry would have revealed: the trustee's deed upon sale.

The difficulty of searching for transfers of water rights separate from the land to which they are appurtenant is a reflection of the system in place for recording those transfers. We note that recipients of transferred water rights are required to file a report of conveyance with the State Water Engineer;⁴⁰ however, under the current system, failure to do so has no effect on a subsequent purchaser's [**23] notice of the transfer. The system of documenting water rights transfers could be greatly improved, but until then, the difficulty that Adaven had in finding a reference to CFB's or MFAC's interests in Permit 22735 does not affect whether it had constructive notice. Therefore, MFAC's validly owns Permit 22735, and summary judgment for CFB and MFAC was appropriate.

40 *NRS 533.384*.

CONCLUSION

Summary judgment for MFAC was appropriate because no genuine issue of material fact existed.

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191 P.3d 1189, *1196; 2008 Nev. LEXIS 77, **23;
124 Nev. Adv. Rep. 67

regarding Adaven's notice of CFB's interest in Permit 22735, and neither *NRS 533.040* nor the anti-speculation doctrine limit the free alienability of water rights as separate property. Therefore, we affirm the district court's

summary judgment.

GIBBONS, C.J., MAUPIN, DOUGLAS, CHERRY
and SAITTA, JJ., concur.

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STATE ENGINEERING CENTER

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February 25, 2009

State of Nevada
Division of Conservation and Natural Resources
Division of Water Resources
901 South Stewart Street
Suite 2002
Carson City, Nevada 89701

Re: Belli Ranch Estates

Dear Sir:

Please see the Order of the Second Judicial District Court indicating that Belli Ranch water moved from the lower bench is to be distributed to the wet lots in accordance with the water map on file with the state engineer. The court provided the Association with time to file the application, but it must be processed in accordance with the settlement agreement approved by the court.

Sincerely,

William E. Peterson / hwl

William E. Peterson

WEP:hwl
Enc.

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OCT 15 2008

OCT 13 2008

HOWARD W. CONYERS, CLERK
BY: *[Signature]*
DEPUTY CLERK

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

DEBRA HORTON and JOSEPH HORTON,

Plaintiffs,

vs.

CASE NO.: CV06-00007

DEPT. NO.: 9

BELLI RANCH ESTATES ASSOCIATION,
a Nevada non-profit cooperative corporation;
STEVEN N. HERMAN; BARBARA A.
HERMAN; FLOYD W. LEWIS, JR.;
SUSAN LEWIS, individuals; and DOES
I-X, inclusive,

Defendants.

ORDER

Plaintiffs are seeking to confirm and enforce a Settlement Agreement reached in an Arbitration proceeding.¹ Defendants contend that because the Settlement Agreement contains a provision that the matter would be dismissed with prejudice upon the payment of \$5,000.00, which was paid, the Court no longer has jurisdiction. See, SFPP, L.P. v. Second Judicial Court, 173 P.3d 715 (Nev. 2007). Defendants further argue that Plaintiffs are not allowed to confirm the Arbitration Stipulation (Award) because a civil action was not commenced within 30 days after the decision in a non-binding arbitration.

This Court previously stayed this action and allowed it to be moved to the active calendar. Plaintiffs also contend that Defendants have not complied with all the terms of the Stipulation

¹ Plaintiffs are asking for a Temporary Restraining Order, Preliminary Injunction and/or Sanctions and Contempt Orders.

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1 thereby invalidating the requirement for dismissal with prejudice. The case has not been dismissed
2 and probably could not be as long as there is a dispute about compliance with the Stipulation. The
3 Court finds that it has jurisdiction. *SFPF, supra*.

4 In the Courts' view, NRS 38.330(5) applies to the commencement of a civil action within 30
5 days when a party is dissatisfied with the Arbitrator's decision. Conversely, a party seeking to
6 enforce a decision when a civil action is not commenced may do so within one year. The Plaintiffs
7 are seeking the later remedy. *Id.* Plaintiff's Motions are timely. Defendants' Motion to Dismiss is
8 DENIED.

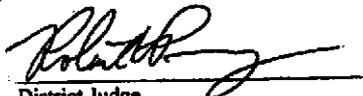
9 Plaintiffs are asking the Court to require the HOA to hire a qualified water master to
10 administer the delivery of irrigation water at Belli Ranch. The evidence shows that Plaintiffs are
11 entitled to receive irrigation in amounts shown on the Water Map filed with the Nevada State Water
12 Engineer, which was created and filed, at or before, the time the Belli Ranch Development was in
13 existence. Article 6.3 of the CC&R's mandates water distribution in accordance with the Water
14 Map. Paragraph 6.2.1. requires the HOA to hire a qualified Water Master to oversee the distribution.

15 Defendants contend that the HOA has modified the rules to allow for a new method of
16 "democratic" allocation of the water. The Court finds that regardless of whether the water
17 distribution may or may not be fairly allocated, the Plaintiffs have a pre-existing legal right as
18 determined by the Water Map on file. The relevant facts are not in dispute. Therefore, Plaintiffs'
19 Motion for Summary Judgment is GRANTED.

20 Plaintiffs' Motion for a Preliminary Injunction requiring Defendants to appoint a Water
21 Master is also GRANTED. Plaintiffs are ordered to post a bond of \$1,000.00. The Court is not
22 satisfied that Plaintiffs have shown that Defendants have failed to use best efforts to change the
23 water allocation. The Court believes it was within the reasonable exercise of their judgment to
24 suspend the process in the face of potentially unaffordable litigation expenses. Plaintiffs' Motion to
25 require further unspecified action at this time is DENIED.

26 Dated this 13 day of October, 2008.

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District Judge

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CERTIFICATE OF SERVICE BY MAILING

Pursuant to NRCF 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 13 day of October, 2008, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

William E. Peterson, Esq.
Morris, Pickering & Peterson
6100 Neil Road, Suite 555
Reno, Nevada 89511

Louis S. Test, Esq.
Hoffman, Test, Guinan & Collier
429 West Plumb Lane
Reno, Nevada 89509

Gary M. Fuller, Esq.
Guild, Russell, Gallagher & Fuller, Ltd.
100 West Liberty Street, Suite 800
Reno, Nevada 89505

Sheila Mansfield
Sheila Mansfield

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JUDICIAL DISTRICT

Honorable Judge Perry
Washoe District Court Dept. #9
RE : Case # CV06-00007

November 4, 2011

Dear Sir,

The protest / appeal in Adams court is an end run around your 10/13/08 order CV06-00007. To date, we have not received our water allocation as per 48742 and the Assoc has never hired a water master, both of which you ordered. Further the proposed water charter is illegal and punitive.

You stated the court believes it was reasonable of Pres. Huddleston to pull the transfer permit (which only benefited him) to avoid unaffordable litigation expenses. When the State Engineer approved permit 77788, Huddleston sued the State Engineer for some of the Assoc water, once it was proved he and his neighbors have no deeded water.

This appeal now includes language that presumes to overturn your order of which the Belli Assoc. is still in contempt, and the whole thing is coming back to your court's jurisdiction if the current proposed stipulation is signed by the judge and attorneys. The stipulation is in direct violation of the order and the original map. The federal water master confirmed that water is to be delivered based upon land area pro rata, **not pool and repool** after board members take what they want. There is no extra water to pool and repool confirmed by court appointed water expert Bob Firth.

Our pre-existing right is measured by land area times 4 aer feet per acre, but this new stipulation will reduce our allocation to 2 aer feet per acre while giving Huddleston et al 4 aer feet per acre. He has no pre-existing legal right to water as determined by the water map on file. He and his neighbors as plaintiff's in this appeal are not on the 1983 allocation map, nor do they have water deeded to their properties. They bought their lots 12 - 16 years after the developer deeded what he owned to satisfy 48742 map wet lots.

Supposedly, this bunch wants to settle this latest appeal to avoid more litigation expenses (the same excuse Huddleston used three years ago). They mean to take 16% of the water from each of 27 wet lots so they can irrigate 1/3 of their larger parcels. All 27 homeowners have the same pre existing right to the water based upon the original map. This amounts to constructive condemnation, a taking. There are no prescriptive rights with water.

There is a hearing in Adams court 11/8/11 which is really a protest against the State Engineers' approval of 77788 which Huddleston et al initiated only when they learned they have no deeded water and they are not on the map. The State Engineer made his decision of approval after determining the facts and the water has been moved. They want to include language in this

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appeal to try to supersede your order, to get what they want anyway. It's an end run around the original stipulation the Assoc. is still in contempt of and your order CV06-00007. The whole appeal is merely a diversion from our case which you settled 10/13/08 which no one will enforce.

As presented, this new stipulation will put the whole issue back in your court. This board has had three years to comply with your order and they have proven they are incapable of doing so, merely because they don't want to. This is clearly contempt of your order. If they disagree with your order they should appeal to the Nevada Supreme Court, not use this new stipulation to undermine your order.

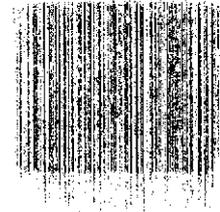
This has become a tangled web of deceit, bullying, abuse and water theft. Please help us know how we can protect our investments of 22 years. We were told about this hearing 10/31. Our atty has had enough of the HOA craziness and won't attend, but recommends we do even though we were bifurcated in Jan. 2011.

Regarding the \$1000 bond in the order, we were told, "Oh, don't worry about it. If Perry really wants the \$1000 he'll ask for it." Is it true that since we didn't pay the bond, that the Assoc. doesn't have to follow the order? And, if that's true, then can we pay the bond now and have the order enforced?

Respectfully,

Debi Horton

Joe Campbell



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CONSTRUCTIVE CONDEMNATION

877-838-8464

Definition: situation in which land is not taken but its owner is deprived of use to some extent or a diminishment of value

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