

RECOMMENDATION FOR POSSIBLE CONSIDERATION BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY WATER

ADAPTIVE MANAGEMENT

Adaptive management is a decision-making process that promotes learning while doing. It allows for and encourages flexibility in the face of uncertainties. The approach involves exploring alternative ways to meet objectives, predicting outcomes based on the available information, implementation of an action, and learning from the results and adjusting management's actions if necessary. It is **NOT** a mechanism to simply approve water rights and figure out at a later time how to mitigate conflicts. It is a prudent water management approach in the driest state in the nation. All too often it cannot be known with absolute certainty whether a particular water development application(s)/project can be developed without impacting existing water rights until pumping and subsequent monitoring occurs. Courts have held that water right applications should not be granted in the face of uncertainty or without specific established triggers for action without knowing how a water system will react. Using adaptive management would allow for the beneficial use of water while striking a balance between long-term knowledge gained to protect and utilize the resource and achieving the best short-term outcomes based on current knowledge.

Recognizing an adaptive management approach in law will provide legal support to State Engineer decisions on water right applications in the face of uncertainty.

NRS 533.3705 currently allows the State Engineer to limit the initial use of water under a permit to a quantity that is less than the total amount approved for under the application and provides that the use of an additional amount of water may be authorized by the State Engineer at a later date if additional evidence demonstrates to the satisfaction of the State Engineer that the additional amount of water is available and may be appropriated in accordance with Nevada water law. This proposed revision to the water law would expand that authority to include adaptive resource management, which provides for additional monitoring and management in the use of the water, and provide for augmentation or mitigation to avoid conflicts with existing rights to maximize the beneficial use of a shared and limited resource.

It is important for the reviewer to note that the State Engineer's Office is currently litigating aspects of adaptive management in both the Southern Nevada Water Authority's groundwater importation project from rural, eastern Nevada and in KVR's applications in Kobeh Valley that proposes a large molybdenum mine.

Does the recommendation revise one or more current *Nevada Revised Statutes* (NRS)? If “Yes,” please provide the reference to the NRS citation(s) affected by the recommendation, if known.

Yes, NRS 533.3705

What group or person is making the recommendation?

Nevada State Engineer Jason King

What is the name and contact information of the person who can provide additional information for the recommendation, if necessary?

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