

NEVADA DIVISION OF WATER RESOURCES ANNUAL NEWSLETTER TO LICENSED STATE WATER RIGHT SURVEYORS

May 2016



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MESSAGE FROM JASON KING, STATE ENGINEER

“What do you call a guy with short term memory? Anything you want!” Please don’t let one “average” winter give you short term memory to the effects of the previous four drought years. Although El Niño came through for us this winter (and it could’ve been stronger!), another dry spell could be right around the corner. I hope all the prudent, water saving efforts that were used by you and your clients over the past four years aren’t forgotten. Those efforts are scalable and can be used in wet years as well. The Governor’s Drought Forum this past year highlighted examples, ideas and technologies that can be used to further Nevada’s drought resiliency. The Drought Forum also shined a light on several areas of our water law that may need to be modified.

Having a wet winter doesn’t in anyway slow down the operations here at DWR. We have been working with the Legislative Commission’s Subcommittee to Study Water, chaired by Senator Goicochea, on a number of water issues; we have been reviewing water related bill issues from the Drought Forum’s Final Report presented to the Governor; we are performing more field work than at any time I can remember in my 25+ years at the Division; and we are confronting difficult and controversial issues throughout the state.

One example of such an issue is the conjunctive management of both surface and groundwater. Our office has contracted with USGS and DRI to build a *capture model* of the Humboldt River System. The *capture model* is the best available scientific tool we can use to understand the interconnection

between groundwater pumping and its effects, if any, on the Humboldt River and senior decreed water users. In addition, we have ordered mandatory metering and self-reporting (with a few exceptions), of all groundwater withdrawals within the Humboldt River drainage. Our mantra is “you can’t manage what you can’t measure.” Our office will be working with the stakeholders along the Humboldt River, both surface and groundwater users, over the course of the next four years (that’s when the capture model will be finalized) to adopt a conjunctive management framework on how best to use the capture model results in managing and optimizing water usage in the basin.

Finally, I believe there could be numerous Bill Draft Requests (BDR’s) related to water in the 2017 legislative session given all the water related activities over the past year. Stay tuned.

As always, thanks for everything you do and I hope you have a great 2016 – and don’t have a short memory!

Best Regards,
Jason King, P.E

Water Right Surveyor License Renewals

If your annual renewal is not received on or before the June 30th deadline, your license will expire and you will be required to submit a renewal form with a \$50.00 filing fee for reissuance of your license. New references will not be required if your renewal application is received prior to September 30th. After September 30th, it will be necessary to file a new application with references. When your three references have responded, you will be issued a new Water Right Surveyor number.

GIS Project Update

We continue to update our mapping of active water rights. Features are created for the active points of diversion (PODs) and places of use (POUs) using the maps that are filed with the State Engineer in support of the water right applications. To date, we have mapped more than 26,400 PODs and nearly 14,600 POUs. These features are accessible using our web mapping application, available on our web page, <http://water.nv.gov/> under the Mapping & Data tab. We are keeping current with new applications as they are submitted to our office and we are editing existing POUs of irrigation rights to reflect any changes that occur when they are certificated.

A few things to consider: Though we have created features for only the active rights, over time, some of these features will represent rights that have become inactive due to cancellation, change applications, denials, forfeiture, or withdrawals. These features will continue to be displayed in the web map application. It is important to review the status of the water right linked to the feature. Be advised there are many claims of reserved and vested right that do not have a map on file with the State Engineer; features were not created for these claims. There may be a water right associated with a particular location even though no feature (POD or POU) is displayed in our web map application. It is important to check the Water Rights database for possible filings in your area of interest.

Compliance Update

As of June 2015, Thomas C. Pyeatte Jr., P.E. was promoted to Water Planning, which includes the Division's Compliance and Enforcement work. As the number of new Alleged Violation cases continues to increase each year, the Compliance and Enforcement Program continues to successfully obtain compliance with statutes, regulations and State Engineer's decisions pursuant to Nevada water law. During calendar year 2015, there were 52 new Alleged Violation cases that were initiated. An increase of total cases by 40% from 2014's case total of 37 cases initiated. There were 32 alleged violators that came into compliance in 2015, 3 Notice of Alleged violation warning letters were sent, 2 Finding of Alleged Violation and Violation Orders were issued, 0 Hearing to Show Cause was conducted. To date, one penalty has been assessed for exceeding the allowed irrigated acreage and for irrigation outside of the permitted place of use and no penalties were assessed in 2015.

Applications and Proofs of Beneficial Use for Stockwater

Applications for stockwater (new appropriations or change applications) and Proofs of Beneficial Use filed for stockwater permits now require the filing of a signed and notarized affidavit from the applicant or permittee stating that they meet the requirements of NRS 533.503. Please note that the affidavit is required for both private and public land, and the affidavit must be signed by the applicant or permittee. Affidavits signed by agents cannot be accepted.

Applications for Extension of Time

When submitting an Application for Extension of Time, please remember to address the actions taken by the permittee that demonstrate steady application of effort to complete the project and place the water to beneficial use. Whenever possible, provide specific numbers such as units served or acres irrigated and include actual meter readings of water used if applicable. Lack of steady application of effort may result in denial of the extension and cancellation of the water right.

Temporary Stock Water Applications – Some Clarification

A summary of the Temporary Application to Appropriate Groundwater for Livestock was presented in the 2014 newsletter, referencing NRS 533.503. What was not emphasized in this summary was the requirement by the applicant to provide other information to the State Engineer so that the necessity of the application can be determined per NRS 533.503.2(b). Some of the items the Basin Engineer will be considering are if the applicant has existing stockwater rights in the area, if those livestock are in need of an additional source due to drought conditions, or any other factors that would justify the need for this unique temporary appropriation of groundwater. To avoid delay in processing these applications, the applicant should provide detailed information on items 11 and 12 of the application form.

Diversion Rate Only Permits

The Diversion Rate Only permit is requested on the standard “Application to Appropriate the Public Waters...” form. Diversion rate only requests must be connected to a single existing permit or certificate in good standing. Ideally, a diversion rate only permit would be used to add additional diversion rate to a well containing a water right where changes in the practical operation of the well require a higher flow rate than was permitted. Examples of this may be an older well that has been re-drilled and provides the opportunity to divert water at a higher rate, or a change in irrigation practice/equipment that demands additional flow. In limited cases that are supported by good cause, a diversion rate only permit can be requested for an additional point of diversion, and would be associated with a single existing permit or certificate. In any case, if the existing associated permit or certificate is cancelled, withdrawn or otherwise becomes invalid, the diversion rate only permit would be administratively withdrawn by this office.

Totalizing Meter Reading Website (available May 2016)

The Division diligently worked on a new website over the last year that will allow the public an additional way to provide their totalizing meter readings. This website will provide the ability to see previous meter readings, annual usage data and information about the totalizing meters that are installed. The website will also provide some water right information tied to the point of diversion (POD) that the totalizing meter is installed at such as the manner of use, location data and the permitted duty. The Division will be releasing this new website May 2016. To use the website a user account will need to be setup by the Division linking your totalizing meter with your account.

Use of Water For Domestic Purposes

The State Engineer finds it is necessary to remind Nevadans of the limitations on using water from a domestic well. Most domestic well owners in Nevada are aware of the statutory limit of two (2) acre-feet per year on the amount of water that may be used from their well. However, this limitation is only half of the story when it comes to domestic well use under Nevada water law. One must also refer to the statutory definition of domestic use found in Nevada Revised Statute (NRS) 534.013.

NRS 534.013 sets out the limits regarding the use of water from a domestic well. It provides that “domestic use” or “domestic purposes” extends **only** to culinary and household purposes directly related to a single-family dwelling and an accessory dwelling unit for a single-family dwelling, if provided for in an applicable local ordinance. These purposes may include without limitation, the watering of a family garden and lawn and the watering of livestock and any other domestic animals or household pets, if the amount of water drawn does not exceed the maximum amount of two acre-feet per year set forth in NRS 534.180.

Thus, domestic water use may include a family garden or household pets and even livestock; however, it must be by definition associated with a single-family dwelling or, in the case where “mother-in-law quarters” are allowed by local ordinance, a single family dwelling and accessory dwelling unit.

This means that water use from a domestic well to support a commercial enterprise, such as a horse boarding business or raising produce or livestock for sale, is not considered domestic use and requires that a water right be obtained through the Nevada Division of Water Resources. Indeed, even if produce is being grown for large distribution beyond single-family use, regardless of whether it is for profit or not, it would not fit the definition of domestic use and a water right would be needed. Of course if a residence is being served by a public water supplier, these requirements would not apply.

Our shared water resources are under increasing pressure from all water users. This pressure brings with it increased scrutiny from other well owners and the general public who are increasingly reporting to the State Engineer incidents of improper water use from domestic wells without benefit of a water right. It is the goal of the State Engineer to conserve, protect and manage Nevada’s valuable water resource and to bring such situations into compliance with Nevada water law. Please feel free to call Division of Water Resources staff with any questions.

Flood Awareness Week and Website

Nevada Flood Awareness Week. With the goal of increasing flood awareness and enabling Nevada citizens to become more flood resilient, the Floodplain Management staff and the multi-agency Nevada Flood Awareness Planning Team - in conjunction with the Nevada Silver Jackets - hosted Northern Nevada’s inaugural Flood Awareness Week campaign the week of November 10-15, 2014. This Flood Awareness campaign included a Gubernatorial Proclamation, a press conference with the Governor, FEMA, State and local officials, the creation of an award winning, interactive website (nevadafloods.org), billboard advertisements, radio and television spots, distribution of flyers, brochures and booklets, flood table presentations for communities and schools, social media flood awareness materials posted to Facebook and Twitter, local community sponsored events and City and County flood awareness proclamations. Flood Awareness Week this year will be from November 14-19, 2016; please visit the Nevada flood information website at <http://nevadafloods.org/>. for more information on upcoming events throughout 2016.

FEMA Updates Elevation Certificate Form

In July 2012, the U.S. Congress passed the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) which calls on the Federal Emergency Management Agency (FEMA), and other agencies, to make a number of changes to the way the National Flood Insurance Program (NFIP) is run. Some of these changes have already occurred, and others will be implemented in the coming months. Key provisions of the legislation will require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how Flood Insurance Rate Map (FIRM) updates impact policyholders. The changes will mean premium rate increases for some—but not all—policyholders over time. Homeowners and business owners are encouraged to learn their flood risk and talk to their insurance agent to determine if their policy will be affected by BW-12.

On March 21, 2014, President Obama signed the Homeowner Flood Insurance Affordability Act of 2014 into law. This Consolidated Appropriations Act of 2014 (Omnibus), prohibits FEMA through the NFIP from implementing Section 207 of the BW-12 Flood Insurance Re-form Act of 2012. Section 207 directed FEMA to ensure that certain properties' flood insurance rates reflects their full risk after a mapping change or update occurs. Section 207 has not yet been implemented and is not related to changes to flood insurance rates that have already taken place. NOTE: The Omnibus does not roll back any rate increases that have already occurred as a result of BW-12. For more information, please see the following link: <http://www.fema.gov/media-library/assets/documents/90829>.

Of the many factors that determine the full risk rate of a structure, the single most important is the elevation of the structure in relation to the Base Flood Elevation (BFE). A community's Flood Insurance Rate Map (FIRM) indicates the area of the community that has a 1% or greater annual chance of flooding. That area is called the Special Flood Hazard Area. The NFIP Elevation Certificate (EC) is an administrative tool of the NFIP which is used to provide elevation information necessary to ensure compliance with community floodplain management ordinances, to determine the proper insurance premium rate, or support a request for a Letter of Map Amendment (LOMA). Elevation data reported on a FEMA EC must be certified by a licensed Engineer, Surveyor or Architect.

FEMA released an updated Elevation Certificate form on January 6, 2016 and all Elevation Certificate (EC) surveys should utilize the new form. FEMA will permit a "phase-in" of the revised EC on a voluntary basis. During the 12-month transition period which, FEMA will accept the most recent version of the form. Elevations certified after the last day of the transition period must be submitted on the new Elevation Certificate form with the expiration date of November 30, 2017. The new Elevation Certificate form is available online at: http://nfpiservice.com/Stakeholder/W_16002/FEMA%20Form%20086-0-33Legal.pdf.

eLOMA Expedites FEMA's LOMA Process

The electronic Letter of Map Amendment (eLOMA) is a web-based application within the Mapping Information Platform (MIP) that provides licensed land surveyors and professional engineers (collectively referenced as Licensed Professionals or LP's) with a system to submit simple Letter of Map Amendment (LOMA) requests to FEMA. This tool is designed to make a determination based on the information submitted by the Licensed Professional and allow them to generate a determination from FEMA in minutes. The initial release of eLOMA will enable LP's to make requests for existing single residential structures or properties, provided no fill has been placed to raise the elevations of the structure or property. Approximately half of the LOMAs processed annually (about 10,000 cases) meet the requirements of eLOMA. To learn more about eLOMA and to register with FEMA to become an eLOMA Licensed Professional, go to the MIP website at: www.hazards.fema.gov.

FEMA National Flood Hazard Layer

A tutorial video, now available on the NDWR website, shows you how to use FEMA's National Flood Hazard Layer (NFHL) to view FEMA mapped flood zones in Google Earth. The NFHL is a computer database that contains FEMA's flood hazard map information, including Digital Flood Insurance Rate Map (DFIRM) databases and Letters of Map Revision (LOMRs). The NFHL provides DFIRM and LOMR data as one integrated dataset so flood zones may be easily viewed across Flood Insurance Rate Map (FIRM) panel boundaries, with Google Earth satellite imagery as a base layer. One no longer needs to obtain individual DFIRM databases or FIRM panels and then locate and integrate the subsequent changes caused by LOMRs. The database is continuously maintained by FEMA and its contractors so updated FIRMs and map revisions

are incorporated into the NFHL as the maps become effective. See:

<http://fema.maps.arcgis.com/home/webmap/viewer.html?webmap=cbe088e7c8704464aa0fc34eb99e7f3>.

Website

The Division's website is continually updated with news briefs, hearing dates, coming events and new features. The website presents a "live" look at the Division's Water Rights Database allowing the public to track the progress of pending applications or check the status of existing water rights. Visit us at <http://water.nv.gov>. This database is a very valuable and powerful tool for water right professionals and permittees. The Division strives to make the database as complete and accurate as possible, but mistakes do happen. Please help the Division maintain and improve the database by notifying us of any omissions or errors that you may find. If you have any questions, comments or suggestions regarding the website, please email Brian McMenamy (bmcmenamy@water.nv.gov).