

**ASSOCIATION OF GALLATIN AGRICULTURAL IRRIGATORS
2009 WEEKLY LEGISLATIVE HIGHLIGHTS
February 1, 2009**

The session seems to be moving along fairly smoothly from a natural resource perspective. Committees are moving forward with bills and there hasn't been too much contention so far. This will probably change as hours grow longer and patience is stretched. We continue to work with other interested parties to try to come to agreement on bills and amendments. Please do not hesitate to let either Krista or Walt know about issues of concern, comments, and thoughts.

Reports on Hearings Held January 26-January 30

SJ 7– (Brenden, Scobey) Opposition to HR 2421. This bill states that the 61st Legislature adamantly opposes this proposed federal legislation, introduced as H.R. 2421 in the United States House of Representatives in May 2007, and its companion proposal in the United States Senate, S. 1870, and urges Congress not to enact this or similar legislation that may be proposed in the future. The federal legislation redefines water that is subject to the federal clean water act.

SB 22 – (Murphy, R- Cardwell) Create Water Policy Interim Committee. The second house hearing on this bill was held in Senate Finance and Claims on Thursday, January 29. The fiscal note on this bill is fairly significant. This bill was chosen over SB 4 in the House Natural Resources Committee as the best option for moving forward with interim water policy analysis. The bill was amended to make it clear that at least 2 of the members of the committee must hold a water right and must have experience in agriculture.

SB 120 – (Zinke – Whitefish) Revise the controlled groundwater area petition laws. The hearing was held on Wednesday, 1/28/09. This was a DNRC bill that Sen. Zinke carried. The bill does provide a much clearer and more easily understood process for petitioning for a Controlled Ground Water Area (CGWA). It provides a process for local government entities to petition for a CGWA. It also provides that scientific evidence must be presented with the petition and it changes the status of a temporary CGWA. Under this bill temporary CGWA are not subject to the restrictions until it is actually confirmed that there are problems and it becomes a permanent CGWA. The major concern on this bill is the removal of the citizen petition process.

SB 149 – (Brueggeman – Polson) Change of use for municipal or county water and sewer districts. This hearing was also held in Senate Natural Resources on 1/28/09. This bill would allow municipalities and county water and sewer districts to change their place of use without going through the change of appropriation right process. They could not increase their flow rate or volume. The major concern with this bill is that there would be no consumptive use analysis, no determination of whether or not they are in fact expanding their right through the use of any redundant wells built into their system. The paper volume would not be increased but there is real potential for an increase in the “wet water” volume increasing.

HB 41 – (Rep Cohenour, D – E. Helena) WPIC Bill -- Revise water quality laws for aquifer recharge or mitigation also had its second hearing in the house in House

Appropriations on 1/27/09. This bill requires that treated effluent that will be used for mitigation or aquifer recharge be treated to either primary drinking water or nondegradation standards. The bill was amended in committee to make it clear that the requirement only applies to treated effluent and not other discharges. The bill was passed out of committee on a 20-0 vote.

HB 321 – (Cohenour, D – E. Helena) Clarify local government authority regarding public water and sewer. Hearing was held on Thursday, 1/29/09 in House Local Government. Bill clarifies that local government can have more strict standards than state standards for public water and sewer. Makes it clear what steps must be taken by the local government to enact the regulations.

Reports on Bills Heard but still in Committee – January 26 – January 30

SB 93 – (Sen. Jent, D – Bozeman) DNRC Bill -- Clarify groundwater utilization laws in closed basins was heard on 1/14/09. This bill provided that all net depletion results in adverse affect. Proponents were DNRC, DFWP, and Tongue River Water Users Association. AGAI opposed based on the concern that adverse affect is a site and fact specific determination and that it is not a good idea to create a predetermined outcome to a scientific analysis. Executive Action has not yet occurred.

SB 94 – (Sen. Jent, D – Bozeman) DNRC Bill -- Revise closed water basin permitting laws was heard on 1/14/09 in Senate Natural Resources. Again, a majority of those testifying were in opposition. The bill removes the statutory requirements for hydrogeologic assessments for new permit applications in closed basins. A number of entities offered to work with the DNRC on the development of amendments to make the bill work. AGAI has drafted amendments to ensure that the hydrogeologic provisions enacted in HB 831 stay intact. Executive Action has not taken place and amendments are in progress.

HB 25 – (McChesney, D – Miles City) Department of Transportation water rights for wetland projects was heard in House Natural Resources on 1/9/09 and executive action was taken on Friday, 1/23. There were attempts to amend the bill to require permitting. However, the amendment vote failed on a tie vote and the bill failed on a 16-2 vote. The bill is still active since it was not officially tabled. AGAI will continue to track this bill and to work to get it tabled.

HB 39 – (Rep. Cohenour, D – E. Helena) WPIC Bill -- Revise water right enforcement laws passed on 3rd reading 77-22. This bill allows the Attorney General to be involved in enforcement actions as requested by the county attorney. It also provides for appointment of water masters as special masters in the district court and removes the requirement that DNRC try to obtain voluntary compliance before initiating an action. A start at minimizing enforcement costs for senior water right holders that are in nonadjudicated basins. Passed 2nd and 3rd reading in the house and is awaiting transmittal to the Senate.

HB 52 – (McNutt, R – Sidney) – Fund hydrogeologic Study was heard by House Appropriations on January 12. All those who testified were proponents. AGAI supported the legislation stating it is critical to provide sound, unbiased science so that informed decisions may be made with regard to water allocation in Montana. Estimated cost per

basin for the ground water study is \$600,000. MT Bureau of Mines and Geology has determined that approximately 7 basins could be studied per biennium. It would take approximately 5 bienniums to complete all of the basins in MT. Rep. McNutt requested that the legislation be held until the budget picture was better understood. The bill requests \$4.2 million per biennium. Executive Action has not been scheduled. [

Reports on Floor Action Held January 26-January 30

HB 40 – (Rep. Cohenour, D – E. Helena) WPIC Bill -- Revise water right permit process was passed on the house floor with unanimous support. It has been transmitted to the Senate.

Hearings for the week of February 2-6th:

(Note: A hearing only requires a two day notice so this list may change)

Monday 2/2/09

HB 275	LC0191	Robin Hamilton	(H) Hearing -- (H) Natural Resources	02/02/2009; 3:00 PM, Rm 472	Emergency streamflow
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Tuesday 2/3/09

Wednesday 2/4/09

Thursday 2/5/09:

Friday 2/6/09:

Bills Assigned to Committee but not yet Scheduled for Hearing:

SB 303	LC0463	David E Wanzenried	(S) Referred to Committee -- (S) Natural Resources	01/28/2009	Update state water plan
SB 324	LC0190	Verdell Jackson	(S) Referred to Committee -- (S) Natural Resources	01/31/2009	Revise laws related to power generation water rights
HB 379	LC2110	Gordon R Hendrick	(H) Referred to Committee -- (H) Natural Resources	01/27/2009	Revise water law for changes

Bill Drafts to Watch

LC0046	02/08/2008	Bob Story	(C) Draft On	10/08/2008	Criteria for
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			Hold		determination of market value for state land occupied by dams
LC0185	06/26/2008	Verdell Jackson	(C) Draft On Hold	11/10/2008	Prohibit sale of water rights upstream by hydroelectric generators
LC0186	06/26/2008	Verdell Jackson	(C) Draft On Hold	01/19/2009	Clarify adverse affect in water law
LC0187	06/26/2008	Verdell Jackson	(C) Draft On Hold	01/19/2009	Generally revise water use act
LC0188	06/26/2008	Verdell Jackson	(C) Draft Ready for Delivery	01/13/2009	Challenge of certain water rights during adjudication
LC0189	06/26/2008	Verdell Jackson	(C) Draft On Hold	11/10/2008	Subordinate power generation water rights
LC0587	10/15/2008	Jim Shockley	(C) Draft On Hold	01/05/2009	Emergency use of surface water
LC0667	10/24/2008	Gary MacLaren	(C) Draft On Hold	01/14/2009	Generally revise cluster development laws
LC0692	11/05/2008	Jerry W Black	(C) Draft On Hold	11/18/2008	Irrigation sustainability and development act
LC1032	11/21/2008	Michele Reinhart	(C) Draft Ready for Delivery	01/31/2009	Big sky rivers act
LC1396	12/04/2008	Kelly Gebhardt	(C) Draft On Hold	01/14/2009	Revise water rights permitting process
LC1635	12/05/2008	Bradley Hamlett	(C) Draft Ready for Delivery	01/09/2009	Clarify ownership of streambeds concerning property taxation
LC1860	12/16/2008	Rick Ripley	(C) Draft Delivered to Requester	01/28/2009	Revise district court confirmation of federal water contracts
LC1949	12/26/2008	Bob Story	(C) Draft Request Received	12/26/2008	Alter criteria for permitting certain changes to points of

					diversion
LC2077	01/07/2009	Mike Menahan	(C) Draft On Hold	01/31/2009	Limit exempt wells in high growth counties