

AGAI Ripple

AGAI's mission is to be the guardian and advocate of the Gallatin River system and its historically decreed water rights.

A Word from Walt

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It is hard for me to believe that it's time to write the Spring newsletter, but rest assured our secretary (Jennifer Mohler) has done her best to remind me to get this to her. Seasons seem to change much more quickly (minute to minute) than what I remember from years past. It looks like we can all be thankful for snow packs that are near normal and for moisture that makes mud, lots of mud.

Just as we are making it through another season, the same goes for another session. I want to take this time and space to thank the Board by having the insight to hire Krista Lee Evans as our lobbyist. She has done wonders for you the user, and the State, as she continues to work in our great legislative process of State government. Her background in agriculture and the political process (including personalities and possibilities) have been noticed here at home and in Helena. Please be sure to read her report later in the newsletter, and you can also read her updates on our website.

I would also like to thank two retiring board members for their work in setting up AGAI and making sure that we were able to continue our work in the future. Spencer Smith has decided to retire his term and enjoy his time with his wife and family. I am grateful for his work as our treasurer, maintaining the books and keeping a close eye on our expenses. Spencer was very involved in setting up the structure of our dues and the work that was needed when we were applying for our nonprofit status. Thank you for getting us off to a solid start, Spencer!!!

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Help AGAI save \$ - let us email you the newsletter!

Please consider providing AGAI your email address so we can email you the newsletter in our efforts to use our funds wisely. Your email address will not be given out or used for any reason other than for the newsletter.

Contact AGAI's secretary Jennifer Mohler at jenmohler@hughes.net to get on the e-newsletter mailing list.

Upcoming Events

Spring Water Meeting, April 8th at 7 pm

Sponsored by Judge Holly Brown and Judge Bruce Lobel, the meeting is scheduled for Wednesday, April 8 at 7 pm at the Gallatin County Courthouse Community Room.

Check out our own Walt Sales in a new PBS documentary! April 17, 2009.

You can catch Walt Sales, representing AGAI, in the upcoming documentary on PBS on April 17 (as of press time, with one more edit in New York to go, he was still in the program).

"On Thin Ice" will change the way Americans think about global warming. Too much of the climate change discussion is cast in the future tense, that is, predictions of what could happen in three or four decades. This program will allow us to see climate change right now and to make connections between global warming and crucial life and death issues such as competition for water, global food security, and national security. The story takes place in India and Montana in Hyalite Canyon and Glacier National Park.

Check your local PBS station for times. For more about the show and a link to the trailer, check out: www.pbs.org/now/on-thin-ice.html

A Word from Walt continued

Mick Seeberg was also one of the founding members; actually he was one of the three that met with this idea of being proactive, while protecting our water rights and their use. Seeing and believing in this need carried him from bringing users together to start dialog on the need, to drafting bylaws and then to work as the chair of the legal committee. During that time I got to know what made Mick tick. He is a very driven person who was willing to invest much of his time and money to the formation and continuation of AGAI. I wish I was able to share with you how much Mick has done for us, but being limited on space (and my writing ability), you will have to read between the lines.

Saving the most important recognitions for last, my thanks to Louise Smith and Kathryn Seeberg, for allowing the many times that could have been spent loving, caring and being enjoyed together instead being spent doing the same to something else.....AGAI. These women let the time their husbands spent with AGAI come before their needs. I want to thank both Louise and Kathryn for sharing their husbands with us, by doing so you have helped many water users today and tomorrow.

My last pitch, please come to the Spring District/Water Court water meeting. This will be held April 8 @ 7:00 p.m. in the Gallatin County courthouse community room. We will be discussing water bills that were presented and passed this session. It is also a good opportunity for us to share our concerns with the Courts and keep them informed on our issues. I really feel we are blessed to have this opportunity to share and communicate at this venue. We are fortunate to have Courts willing to take the time to listen to our concerns and to have their door open to us.

As always give me a call if you have any questions or concerns about where AGAI is headed. We need to hear from you. Give Spencer and Mick a call thanking them for their work in protecting your future in agriculture. Have a great Spring!

By Walt Sales

Legal Update

LIVE OR LET DIE? SENIOR WATER RIGHTS PROTECTED FOR ANOTHER SESSION.

The 61st Legislative session is drawing nearer to an end and senior water right holders can breathe a sigh of relief. While not all of the bills we supported survived the legislative process, AGAI was able to play a critical role in stopping attempts by municipalities, regional water authorities, wetlands advocates and others to exempt themselves from the DNRC permitting process. HB 25, HB 275, HB 379, SB 149, SB 396, and SB 461 were exemption bills. All of them, except SB 396, which was amended substantially to become an emergency replacement point of diversion bill, have died throughout the process.

The fact that this many bills came forward this session trying to get exemptions shines a light on the challenges facing our senior water right holders. Supply and demand curves have crossed and the demand for our water is becoming greater and greater. Arguably, in closed basins, the demand curve has exceeded the supply curve for a long time. While the permitting process can be onerous – whether it is for a new water right or for a change in appropriation right – this process is absolutely critical to our ability to ensure that our constitutionally protected water rights are not adversely affected by new or changed uses.

Why is the navigability of a river an important issue for water right holders and diversion owners to understand? The PPL v. Montana lawsuit brought this issue to the forefront when the District Court determined that beds of navigable rivers are not only state land but school trust land. The Montana Constitution requires that any user of school trust land compensate the school trust for full market value. The Constitution also guarantees existing water rights and the right to exercise those water rights. Essentially, if an irrigation structure is located below the low water mark on a river that is navigable for title purposes, it is likely that the structure owners will be required to compensate the school trust for the use of the property.

The biggest issues are:

- Which rivers are navigable for title? (A different legal test than whether or not a river or stream is navigable for recreational purposes)
- Is the structure (irrigation diversion, bridge, etc) located below the low water mark?
- How can we ensure that structure owners not be required to pay “back rent” for past use of the river beds like was required of PPL (to the tune of \$40 million)
- How can the Constitutional requirements of school trust lands and water right holders be balanced?

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Legal Update *continued*

AGAI has worked diligently with President Story on SB 507 to develop sideboards and a process that would apply to the right of irrigation diversion owners to use navigable river beds in Montana. This piece of legislation points out that diversion owners have been paying taxes on the underlying property for years – in some cases since statehood. There should be no requirement for paying for past use of the navigable river bed. This legislation is critical to protect our right to exercise our water rights and to continue to irrigate.

SB 465 also addresses the navigability issue and the challenges faced by land owners when the Department of Revenue arbitrarily removed property from private landowners and placed it under state ownership in the tax rolls. This was unacceptable to most water users and Senator Hamlett has drafted this legislation to make it clear that the title of a river bed cannot be determined by an administrative agency – either the Department of Revenue or the Department of Natural Resources and Conservation. Title can only be determined by a court of competent jurisdiction.

So far, AGAI has had a very successful year in the legislature. There are multiple legislators who have worked very closely with us to help ensure our water rights and our ability to continue to use those water rights is protected. The challenges never go away – they just change shape or form. Thanks to outstanding support from individual AGAI members we have had a significant presence in the Capitol.

By Krista Lee Evans

Weekly updates regarding the session activities are posted on AGAI's website at www.AGAIMT.com and please feel free to contact Krista Lee Evans at blakecrk@gmail.com or Walt Sales at salesranch@theglobal.net.

AGAI Water Conveyance Facilities Mapping Project

Thanks to a fact-filled presentation from Al Lien at the MSU canal mapping presentation for the spring GPS course, seven students signed up to (hopefully) complete the mapping of the Low Line Canal. On March 9, these students attended a field trip kindly offered by last year students Curtiss Swets and Steve Tilden to show some of the attributes - flume, intake, siphon, headgate, etc. - the students would come upon while mapping. Diana Cooksey from MSU, AGAI representative Mick Seeburg, Van Shelhamer of GeoEssentials, Inc., Allen Armstrong and Frank Dougher from the Gallatin County GIS Department also attended.

As this course is offered each semester, we expect an ongoing supply of these wonderful student volunteers to work on the mapping while fulfilling at the same time a course requirement. Other than time spent with the students, there is no cost to AGAI. We are thankful for the level of cooperation and interest we have received from all the entities involved. AGAI would like to thank Dan Kimm and TJ Dykema of the Low Line Canal for their help with the mapping work being done this semester.

By Pamela Hainsworth



AGAI would like to thank our partners in this ongoing effort:

- Diana Cooksey of Montana State University
- Allen Armstrong and Frank Dougher of the Gallatin County GIS Department
- MSU students Curtiss Swets and Steven Tilden
- Dan Kimm & TJ Dykema of the Low Line Canal

Photo courtesy of Diana Cooksey. MSU students and others gather around a canal feature during the Canal and Ditch mapping 101 Field Trip.

Local Update

Even though there has been a slow down in development, AGAI is continuing to work with city planning departments throughout the valley on subdivision regulations regarding irrigation infrastructure. The regulations (adopted at the county level in 2008) require developers to communicate with the canal companies and individual water right holders at the start of the process, and allow those directly impacted to have a voice regarding impacts to the ditch prior to preliminary plat approval.

Al Lien has been actively working with the Bozeman City Planning Department for the past year, and the process is underway, albeit slow.

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Local Update *continued*

Jennifer Mohler initiated the process in Belgrade with the assistance of Jason Karp and Heidi Jensen of the Belgrade Planning Department. Several AGAI members (Sue Duncan, Duane Burkenpas, Joe Miller, Al Lien, Tom Milesnick, Dave Pruitt, & Brad Bean) attended the Belgrade Planning Board meeting on March 30 and spoke to the need and benefits of the regulations. The board was very receptive, and Jennifer will continue to work with Jason and Heidi to move the process forward.

Finally, I want to again thank Sean O'Callaghan with the County Planning Department. He continuous to help AGAI members with this issue and we greatly appreciate it!

By Jennifer Mohler

The Rural View of Storm Water

In the country, rainfall soaks into the soil. Any excess filters down to the water table and eventually, into springs and streams. Precipitation is viewed as a blessing.

In urban areas, rooftops and pavement allow no infiltration and the water runs off. Run off water carries fertilizers, herbicides and pesticides, pet manure from lawns and petrochemicals from roadways. If the runoff is heavy, it can carry soil, leaves, and trash in suspension. Storm water is viewed as waste-water, that needs to be removed as soon as possible.

When urban development encroaches on farmland the two views collide. Developers want to get rid of waste water. Irrigation ditches going through a subdivision seem like a ready solution. Irrigation ditches are engineered to carry water by gravity flow (like streams). But they are designed to carry only the amount that the farmers have a right to divert from the river or stream source. Storm water carries pollutants that farmers don't want on their fields. "Extra water" from storm water diversions during the irrigation season may overwhelm the capacity of the system. In winter, such additions can freeze in the ditch and cause flooding. Farmers get calls from angry homeowners about flooding.

But these problems can be negotiated. The City of Bozeman and Farmer's Canal Company have a written agreement about storm water runoff diverted into the Canal. Spain-Ferris Ditch has an agreement with the gravel pit east of Belgrade for disposal of water from the pit. Ditch company representatives, planners, and developers are learning to discuss their needs earlier in the development process before problems arise.

Municipal governments and subdivision developers often believe that irrigation ditches through urban areas are unnecessary and should be abandoned. Irrigation ditches can't just stop at the city limits. Where will the water go? Perhaps the ditch serves irrigators beyond the city limits on the other side of town. The Montana Water Court and irrigators contend that abandonment of water rights is a serious legal matter cannot be done on a whim.

By Susan Duncan



Don't forget to check out AGAI's new legislative page for weekly updates.

www.AGAIMT.com