

**Governmental Affairs Update**  
*by Krista Lee Evans*

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

The founders of AGAI recognized the challenges that were coming for water users in the valley. They recognized the benefit of banding together to protect what is arguably their most valuable property right – their water rights.

In order to protect water users in the Gallatin, AGAI has taken an active role in the state legislative process. Gallatin Valley water users water rights have been under attack at every legislative session since AGAI was organized.

AGAI is well respected across the state for your activities and leadership in protecting water rights, protecting the prior appropriation doctrine, and advocating for policies that allow Montana's irrigators to protect their property rights. AGAI and your board is looked to as leaders in the State and in the Gallatin Valley to represent agriculture's view points on everything from land use planning to the challenges and opportunities that are coming with basin 41H moving into the next decree phase. It is a pleasure to work with a represent individuals who are passionate about agriculture and the critical relationship of water rights to your success.

**Legislative Issues:**

The 2017 Legislative session was a successful session for AGAI. The primary focus of our representation in Helena was around the fact that a water right is a property right and it is imperative that those property rights be protected – both in the adjudication process and the new appropriation and change of use process. Now that the Legislators have gone home the state policy issues surface in two arenas – interim legislative committees and executive branch agency rule making and policy statements.

The interim committees are working on policy issues that are likely to surface in the 2019 session. In general, interim committees use the time in between legislative sessions to take an in depth look at contentious or complicated policy issues. The two primary interim committees that undertake water and water right related issues are the Environmental Quality Council (EQC) and the Water Policy Interim Committee (WPIC).

WPIC has chosen to focus their time this interim on two primary issues: exempt wells and the change in appropriation process. Both issues could impact irrigated agriculture and it is critical that AGAI continue to participate. AGAI has always stated that the group is not opposed to the use of exempt wells – AGAI is opposed to the concentrated use of exempt wells to avoid the permitting process. AGAI has continued to advocate for this position through the initial meetings of WPIC. The “change process” is the administrative process that a water user must go through if they plan to “change” the way they use their water right – such as a change in a point of diversion, a change in type of beneficial use, or a change in place of use. AGAI will continue to be involved in these discussions to ensure that the process protects existing water rights but is not so onerous that it takes away new opportunities for water users.

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The primary issue that EQC will be focusing on that impacts AGAI is the issue of aquatic invasive species (AIS). If mussels do spread throughout Montana the impact to irrigated agriculture could be substantial due to the damage they can cause to irrigation infrastructure such as pumps, etc. It is in agriculture's best interest to protect against the spread of AIS in Montana. As I am sure all of you are aware, funding for the AIS program is a substantial point of discussion. The current funding mechanism combines an increase to in state and out of state fishing licenses and a fee against hydroelectric energy production. This funding formula terminates right after the 2019 legislative session. In the 2017 session there were attempts to assess a fee against irrigated agriculture. While this was unsuccessful in the 2017 session it is very likely that the fee or tax will be considered again in the 2019 session. It is critical that AGAI continue to participate in these discussions so that irrigated agriculture is not unfairly assessed a fee.

**Executive Branch Activities:**

The Department of Natural Resources and Conservation (DNRC) proposed rules defining the term combined appropriation (which ties in to when a permit is needed when exempt wells are being used). The definition of combined appropriation has been the subject of multiple pieces of legislation over many years, multiple proposed rules, and multiple court cases. With the Supreme Court's decision in 2016 on the former definition there is a bit more clarity. WPIC has oversight responsibilities on rulemaking during the interim. WPIC has chosen to delay the DNRC's proposed rule. The result of this rulemaking will be very important to existing water users and when a permit (and associated adverse effect analysis) will be required. AGAI did provide public comment on the proposed rule and will continue to be engaged in the process.

**Judicial Branch Activities:**

The Montana Supreme Court issued a significant decision in early November regarding the CSKT Water Rights Compact. The Court stated that both the Compact and the legislative process to adopt the compact were constitutional. Passage of the CSKT Compact and any associated federal settlement will move Montana water users much closer to finalization of the statewide adjudication and protection of our water rights in the Gallatin. The Gallatin (Basin 41H) will be moving into the Preliminary Decree. The Water Court is estimating that this should happen within the next 6 months to 1 year. It is critical that you as water users be engaged in the decree process. At a minimum evaluate your own water rights and how they are reflected in the decree. It would also be advisable to analyze other claims that might impact your water right to ensure that those claims accurately reflect the water's use.

**Conclusion:**

Water and the availability of water continues to be a divisive and extremely important issue in the Gallatin and Montana. AGAI should be commended for your foresight in recognizing how important it is to be involved and have input into decisions that will impact your ability to continue your agricultural operations.