

AGAI Ripple

AGAIMT.com

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

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Save the date!

AGAI's Annual Membership Meeting

Wednesday, December 7th at Stockman Bank in Belgrade
(6050 Jackrabbit Lane, Belgrade)

Doors open at 5:30 pm for pizza, meeting begins at 6:00pm

AGAI would like to thank Brent Poppe and everyone at Stockman Bank for hosting our annual meeting this year.



AGAI Directors

Walt Sales, Pres.
Al Lien, VP
Jennifer Mohler, Sec/Tres.
Susan Duncan
Alan English
Dan Triemstra
John Hunziker
Ilene Casey

- Committee Reports / Director Elections / Outlook for 2012
- Update on Gallatin Groundwater Investigation Program from Thomas Michalek, Research Hydrogeologist, MT Bureau of Mines & Geology
- **Challenges of Water Availability and Exempt Wells Discussion led by Alan English, with invited guests:**
 - Montana Farm Bureau
 - Montana Stockgrowers Association
 - Montana Well Drillers
 - Montana Building Industry Association
 - Trout Unlimited
 - AGAI
- Also attending Tim Davis, Water Resources Division Administrator for the Montana Department of Natural Resources and Conservation.

Bring your ideas and questions for a great discussion,
along with a dessert for the potluck.

A Word from Walt

What a difference a year makes, we were blessed with a beautiful, and long “Indian Summer”. I hope you’ve been able to finish some needed projects before winter sets in. I also hope that you had a good growing year while enjoying the benefits of the amazing snow pack we held up high.

I want to thank you, the membership, for reaching out and answering our call for help in last fall’s newsletter. We now have three new board members to vote on, increased membership and had the best member involvement this past session in Helena. I am also very grateful for your response to Spencer Smith’s letter soliciting help with our activity in Helena. As you read Krista’s report and attend the yearly meeting you will understand your efforts in keeping AGAI alive is well worth it. To get more of an understanding on issues we’re tracking please go to the AGAI website; AGAIMT.com. We will also be giving reports at the annual meeting.

Listed are a few of the challenges and issues we are facing as water users.....exempt wells, flood control, adjudication, clean water act, competition for the same finite resource, streambed access and channel migration, easement protection, degradation and quality, downstream states, prioritized uses, water banking, drought management, marketing, mitigation and now beginning November 1, 2011, the Montana Pesticide General Permit. The list goes on, my point is how do you keep track and even have a chance at being heard? It can be overwhelming, even for the board to stay updated and informed.

This is where I see one of the great values in AGAI, an organization that is membership driven with a board that is well versed in the protection of water rights. Board members live the effects of changes in water, and full well understand the value of what we do today making an impact on our families’ future. More importantly our board members are part of your community, easily accessible for any questions or help regarding your water.

Moving forward, with help from the membership, understanding the issues and other perspectives, we can manage the list of challenges...making good choices for the future.

AGAI would like to thank the following for their additional financial support!

Barry Schaplow
Don Gillam
Farmers Canal
Francis & Deloris Kelly
Harvey Moss Trust
Jayce Heidema / Plain-Vista Dairy
Joel Dykstra / Hill Farm
John Schutter
Joseph Thorne
Kathyrn Kelly
Klein & Karen Gilhousen
Krista Lee Evans

Kughen Ditch
Larry & Lorraine Kloprien
Lewis Ditch
Moss Family
Peter & Connie Anderson, and Shad and Crystal
Van Dyken / Wheat Ridge Farm
Rita & Frank Cardello
Spain Ferris Ditch
Spencer Smith
Valley Ditch Company
West Gallatin Canal Company

Governmental Affairs Update, Krista Lee Evans

This past year has been another year full of challenges and opportunities involving water and its use in Montana. If you recall, at this time last year we were gearing up for a legislative session that was looking to be a challenge for AGAI's members working to protect their ability to exercise their water rights. Through the hard work and commitment of AGAI's members we had a very successful session. One of our successes was in defeating one bill that we felt was a serious threat to the prior appropriation doctrine – House Bill 433 – Exempt Wells.

Background on the Exempt Well Bill

The impetus behind HB 433 was to address the issues and concerns of the development community which consisted primarily of the Montana Realtors Association, the Montana Water Well Drillers Association, and the Montana Building Industry Association. These concerns were with regard to the definition of “combined appropriation” in DNRC rules and how that definition affected the ability of folks to put in a well that is exempt from the permitting process. This rule had been challenged in a petition for declaratory ruling that was brought by the Clark Fork Coalition and a number of individual water users. In the declaratory ruling request, the petitioners asked that DNRC amend the rule to reflect that a combined appropriation from the same source from two or more wells or developed springs be considered a combined appropriation. The petitioners were essentially saying that if a subdivision used 2 or more wells that tapped into the same aquifer for water it should be considered a combined appropriation and subject to the permitting process rather than the exemption provisions provided in 85-2-306, MCA. At issue in the petition was the petitioners claim that DNRC's interpretation of statute was arbitrary. According to DNRC, an appropriation of ground water by two or more wells from the same aquifer is only a “combined appropriation” if the wells are physically manifold – or connected into the same system. The petitioners felt that a combined appropriation should be when 2 or more wells withdrew water from the same aquifer.

The DNRC issued a declaratory ruling which stated that the Department would initiate rulemaking within 8 months to propose repeal of the “combined appropriation” definition and adoption of a new one. The issue was eventually settled in a settlement agreement in front of the first judicial court. As part of that agreement both parties agreed that if the 2011 Montana Legislature adopted new legislation defining the term “combined appropriation” or removed the term from the Montana Water Use Act, before rulemaking was completed, DNRC would no longer be held to the obligation to adopt rules as provided in the stipulation. While AGAI did not join in the action associated with the petition we watched it very closely. Ultimately, the petitioners and DNRC reached a settlement agreement that required DNRC to adopt rules.

Legislative Action

The Montana Realtors Association, the Montana Water Well Drillers Association, and the Montana Building Industry Association were concerned with policy being set by agency rulemaking rather than by the legislature and wanted the legislative action clause of the stipulation to go into effect so that DNRC would not adopt rules regarding “combined appropriation”. Therefore, the groups brought a bill forward to have the legislature define combined appropriation. The proposed definition in the bill was: "Combined appropriation" means an appropriation of water from the same source aquifer by two or more wells or developed springs for the same beneficial use that are physically connected through a distribution system. While AGAI and other water right groups agreed that there needs to be an exemption for de minimis uses of water through exempt wells we felt that this proposed definition actually expanded the exemption rather than limiting it. Therefore we lobbied in opposition of the bill.

Continued on page 4

Governmental Affairs Update *continued*

Legislative Action *continued*

In general, the legislature agreed that they needed to set the policy rather than the executive branch through rulemaking. Therefore, as a compromise, a study bill was introduced that clearly stated DNRC could not adopt rules and it directed the Water Policy Interim Committee (WPIC) to study the exempt well issue and provide direction to the next legislature. HB 433 did not pass and HB 602 (the study bill) was passed.

Interim Action

WPIC has worked throughout the first part of the interim (the time period between legislative sessions) to frame the exempt well issue, challenges, and problems. As a result of this work all of the interest groups, including AGAI, were asked to develop their proposals for addressing their concerns with exempt wells and present it to WPIC at their January meeting. The AGAI Board and everyone associated with the exempt well issue have been working diligently to frame our perspective so that options and alternatives for addressing any concerns can be presented to the interim committee. AGAI will continue to work with the interim committee to develop a recommendation. Most important to AGAI are two things – (1) Exempt wells are not bad and (2) equality in permitting. If an irrigator must have a permit to appropriate 200 acre feet of water then a subdivision with 20 lots should have to be permitted to appropriate 200 acre feet of water. It is basic fairness.

In an effort to keep AGAI members informed and up to date on the latest water issues, the board has decided to hold a panel discussion as a major part of the AGAI annual meeting discussions. The purpose of this panel is not to create a we vs. them but is an opportunity for all of the sides associated with the exempt well issue to present their perspective. With better understanding, the AGAI board feels that it is more likely we can come to an agreement on how to address the increasing use of wells exempt from permitting in concentrated areas. The entities invited to be on the panel are: Montana Stockgrowers Association, Montana Water Well Drillers Association, Montana Farm Bureau Federation, Montana Building Industry Association, Montana Trout Unlimited, and AGAI.

I am hopeful that the opportunity to hear all of the perspectives related to exempt wells will provide members with an opportunity to better understand the complexities and challenges associated with the use of wells that are exempt from the permitting process.

Promoting AGAI

As president of AGAI, Walt Sales was asked to introduce Jon Tester at a small business opportunity workshop targeted to agriculture that was held at MSU Saturday, March 26. Kathleen Merrigan, Deputy Secretary of Agriculture was the keynote speaker, she and Jon both moderated some of the breakout groups, it was an informative morning with over 150 attendees.

Walt did a great job with his intro and also had a quote, with AGAI mentioned, in The Bozeman Daily Chronicle Sunday paper.

We had a table there with the AGAI banner, added several new names to our mailing list and made some new contacts, including Stockman Bank. AGAI Director, Susan Duncan, was also present.

Walt Sales (right) welcomes Jon Tester to the Gallatin Valley.



District Court “Water Walk” by Al Lien

June 7, 2001, a clear calm day, the day scheduled for the District Court’s “Water Walk”. The water walk an idea was invented by the late Judge Guenther so the courts could inform the attendees of issues that can and do arise with water rights, the complex inflow structures of the irrigation water delivery system, and water source diversion.

It was a most meaningful field day for all in attendance in a somewhat informal setting to observe some of the issues at the ground level.

Since the formation of AGAI, the organization is asked to recommend an area or location that may illustrate court issues. This year, a mile section of the 50 mile long High Line Canal was selected.

The courts covered the river diversion obscured in murky high water of spring snow melt. A part of a high end development included houses (in odd lots below the canal) geology of the terrain, canal bank failures past and more recent.

The tranquil setting and serenity allowed for all to hear the lectures on geology and the news from Court Planning. The only sounds of the day were the horses and wagons allowing for the observation of magpie calls and other wildlife sounds in the setting of natural wildflowers along the tree lined maintenance road that follows the canal.

The tour continued to the tunnel through the sandrock which served to emphasize the quality of the engineering required at the time (1880’s).

A very fine picnic lunch of hamburgers, baked beans and rhubarb pies was furnished for the participants at the conclusion point of the drive.

A thank you to the board of directors of Highline Canal and adjoining landowners for cooperating and permitting this drive.



Water Conveyance Facility Mapping Update

AGAI offers many thanks for the cooperative working partnership with the Gallatin County GIS office, MSU and the Gallatin Conservation District, and our members, as they continue to map the canals and ditches that run through the Gallatin Valley. Now in its’ 4th year. The AGAI Water Conveyance Facilities Mapping Project (canals and ditches) is a successful private, public and academic collaboration to gather needed data for the Gallatin Valley.

Ditches mapped so far include Low Line Canal, High Line Canal, West Gallatin Canal, Farmer’s Canal, Mammoth Ditch, Spain-Ferris Ditch and Middle Creek Ditch. For the Middle Creek Ditch, Allen Armstrong, Gallatin County GIS Manager, said his office has devised some methods to collect the underground routes that these waters take through the city of Bozeman. It is surprising to him how little information is available on the underground routes. This work will help to fill in information for the Middle Creek Ditch as a portion of the waterway layers in Gallatin County.

Continued on page 8

Pesticide General Permit MTG870000 Program Overview

Montana MPDES MTG870000

Effective: 11-1-2011

Permit coverage required before pesticide applied to or over surface water

USEPA regulates within boundaries of Indian Reservations

At least one responsible party will need to be identified as the owner/operator for permit coverage

Coverage is not required for spray drift or applications “near” but not into or over surface water.

Background

Beginning November 1, 2011, the Montana Pesticide General Permit (PGP) is the permitting mechanism for **anyone** who applies pesticides into or over state surface water. Everyone -- from an individual homeowner to a federal agency – with responsibility for pesticide application to or over surface water is subject to this requirement, although the US EPA regulates the application of pesticides to surface water located within the boundaries of an Indian Reservation.

The PGP is not a pesticide permit – it is a **wastewater discharge permit** regulated under the Montana Department of Environmental Quality (DEQ) Montana Pollution Discharge Elimination System (MPDES) program. Discharge of pollutants to state water without a permit is a violation of the Montana Water Quality Act in 75-5-605, Montana Code Annotated (MCA). The PGP program replaces the DEQ’s existing 308 Authorization program. It will be renewable on a five-year basis.

The Montana Department of Agriculture maintains responsibility for all other pesticide certification, licensing, aquatic weed management plans, and enforcement and compliance considerations.

Applicability

At least one responsible party will need to be identified as the owner/operator for permit coverage prior to pesticide application to or over surface water. The responsible party can be the entity with control over the financing, decision-making, or day-to-day control such as pesticide applicators. Although there can be multiple parties involved with pesticide application projects, there needs to be at least one party identified as the owner/operator – through contractual or other arrangements.

Surface waterbodies include streams & rivers, ponds & lakes, wetlands attached to other waterbodies, irrigation canals, and other surface waters. However, the regulations include exceptions for discharge such as to non-returning irrigation canals where the water is used up and cannot reach other state waters, which is clarified in the PGP. In addition, only direct application of pesticides to or over water is required to obtain coverage. The PGP clarifies that “spray drift” and applications made “near” (but not in or over) state surface waters are not regulated under the PGP. And of course a pesticide that is not labeled for use in water cannot be permitted!! Lastly, permit coverage is not required for pesticides that reach surface waters only through storm water discharge.

Pesticide General Permit Overview *continued from pg 6*

Permit Coverage under the PGP

The responsible party must submit a complete Notice of Intent (NOI) package prior to conducting the regulated activity. There is no waiting period for a “permit review” or “permit authorization.” The NOI process is an administrative tool that allows the party to notify the DEQ of their potential regulated activities and certify the party’s intent to comply with the PGP. The DEQ administers this program, including sending a confirmation letter acknowledging receipt of a complete NOI package. Once a complete NOI package is submitted, the owner/operator is covered under the PGP and subject to annual fees, until the five year renewal or until they terminate coverage.

Since there is no “one size fits all,” the DEQ has organized the NOI Form and fee structure to reflect two unique criteria:

- (1) Single county *vs.* multi-county (up to 20 contiguous counties); and
- (2) Under threshold (Tier I) *vs.* over threshold (Tier II) annual treatment area for the NOI submitted.

The annual treatment area within the NOI-permitted area should be estimated for the five year life of the permit coverage. While the number of applications to a water body are considered additive under this program, the applications under different pesticide use patterns are not. As an example, if a county mosquito and weed control district anticipated 60 acres of treatment for mosquitoes and 50 acres for weeds in any given year, they remain below the 100 acre threshold for each and would be classified as a single county under threshold.

Tier I – an NOI for pesticide application areas that remain below the threshold for all pesticide use patterns. The main requirement in the PGP for all owner/operators is to comply with FIFRA and MDA pesticide label requirements.

Tier II- an NOI for pesticide application areas that may be above the threshold for any pesticide use pattern. In addition to the basic Tier I requirements, these larger pesticide applications are required to develop a pesticide discharge management plan, maintain additional records, and submit an annual report. The NOI form contains a table on page 3 that requests the anticipated annual treatment area – in acres of surface water – for each pesticide use pattern for a Tier II NOI (by county).

For application submittals and additional information, please contact:

MT DEQ – Water Protection Bureau
1520 East Sixth Avenue
PO Box 200901
Helena, MT 59620-0901

Phone (406) 444-3080

Webpage

<http://deq.mt.gov/wqinfo/mpdes/pesticides.mcp>

“Once a complete NOI package is submitted, the owner/operator is covered under the PGP until the five year renewal or until they terminate coverage.”

The main requirement in the PGP for all owner/operators is to comply with FIFRA and MDA pesticide label requirements.

AGAI 
125 Jackpot Lane
Belgrade, MT 59714

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Permit #106

Water Conveyance Facility Mapping Update *continued from pg 5*

This fall Diana Cooksey's class, with organizational help from Jim Sutton of Manhattan, is mapping the Perks Canal, which runs through the town of Manhattan.

AGAI is looking for a canal or ditch that the students can map for spring term 2012. If you would like to volunteer your canal or ditch, please contact pamela@littleappletech.com. Someone from the ditch company is asked to attend the GPS class at MSU to explain the need for the mapping. Once the team is assembled then Diana, the students and Allen Armstrong from the county like to have a meeting at the start of the ditch or canal with the ditch rider/tender or someone very familiar with the waterway. There is no charge to your ditch or canal company.



**Want to keep current on water issues?
Go to AGAIMT.com & sign up for email updates.**

Your email will not be shared or used for any purpose other than
AGAI water updates/newsletter.

Don't forget to save the date!

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