



# AGAI Ripple

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

**In this issue:**

A Word from Mike	2
Governmental Affairs Update	2-3
Did You Know - New Water Court Decree Ahead For The Gallatin?	4-5
Big Sky Community Public Meeting on Water Resources	6

**Save the date!**

## AGAI's Annual Membership Meeting

Wednesday, December 7<sup>th</sup> at Stockman Bank in Belgrade  
( 6050 Jackrabbit Lane, Belgrade)

**Doors open at 6:30pm , meeting begins at 7:00 pm**

Enjoy the dessert potluck & get updated on current water issues.

Committee Reports - Director Elections - Budget  
Legislative Update & 2017 Outlook

**Spotlight Presentation:**

### Grass Valley French Ditch Mitigation Project: Capturing the value of senior agricultural water rights and conveyance systems in a growing county

Grass Valley French Ditch Company provides senior water rights to buyers looking to mitigate the impacts of development in the Missoula area. The Grass Valley French Ditch Company is one of Missoula's oldest and largest irrigation companies. Now, as Montana's first permitted water bank, the Company is proud to bring its substantial senior rights and long history successfully managing water to buyers looking for mitigation water in the Missoula area.

**AGAI would like to thank Brent Poppe & everyone at Stockman Bank for hosting our annual meeting again this year!**

**Thank you  
Watson Irrigation,  
Aquatech &  
Montana Land  
Reliance for  
supporting AGAI!**



**A Word from Mike**  
*By Mike Gaffke AGAI President*

I want to invite all of you to our annual meeting December 7<sup>th</sup>. This meeting is both a time to talk about our accomplishments of the past year and also share our plans for the upcoming year.

As Gallatin Valley's irrigators and water right holders we have been entrusted with the care and stewardship of a precious and valuable resource. This comes with the responsibility to preserve and protect it and also to help "guide its course" (pun intended). This will be one of the focuses of this year's meeting, guiding the course of our waters future. With over a hundred year of caring for and managing our water recourses your input and participation is essential. We each have an obligation not only to be educated and informed on the issues facing us but also to educate and inform others who also care about these issues.

Only by coming together can we accomplish the important task. Our annual meeting is one place to accomplish this and I hope to see you there.

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

The Water Policy Interim Committee moved forward a significant number of bills after their interim's deliberations. These bills include:

LC323 – Clarify Water Commissioner Appointments – This legislation makes it clear that it is 15% of the water rights or 15% of the flow rate of the water rights on the source are required to petition for a water commissioner through the District Court

LC324 – Require Education Program for Water Commissioners – This bill requires water commissioners to attend training. The goal is to provide consistency across basins.

LC325 – Clarify Definition of Water Right Change – The definition for a change in appropriation right is amended to make it clear that moving from one method of irrigation to another does not require the water right owner to go through a change of use.

LC326 – Statutory Appropriation for GWIP – This bill provides a statutory appropriation for the Ground Water Investigation Program (through the Bureau of Mines and Geology) for \$250,000 per year.

LC327 – Clarify Process for Updating Water Right Transfer – To ensure that property owners are updating the DNRC ownership database when property is sold. A significant portion of this proposal allows the Water Court to terminate the water rights if the ownership information isn't provided.

LC564 – Limit Adverse Effect Analysis – This legislation provides that an applicant for a new water right or a change in use is not required to prove a lack of adverse effect for any water right identified in a written consent to approval filed in connection with a permit application. The legal availability criteria must still be met and a call can still be made.

*...continued page 3*

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

*...continued from pg 2*

LC565 – Direct DEQ Assumption of Dredge and Fill Permits – This bill addresses what is currently 404 Permits through the US Corps of Engineers. The bill directs the MT Department of Environmental Quality to begin the process of assuming these permitting requirements.

LC566 – Establish Surface Water Assessment and Monitoring Program (SWAMP) – This legislation creates a program in the Bureau of Mines and Geology that is similar to the Ground Water Investigation Program except it applies to surface water measurement and analysis. The bill also provides a \$250,00 per year statutory appropriation.

LC567 – Allow Water Court Review of Certain DNRC Decisions – This legislation allows an entity that loses in front of DNRC on a new appropriation or change application to appeal to either the Water Court or the District Court. Under existing law the appeal must be to the local District Court.

#### Legislative Session Outlook

The Department of Natural Resources and Conservation has pre-introduced 4 proposals. These include:

LC480 – Temporary Lease Statute – This bill will amend the temporary lease statutes so that they are more clear with regard to the number of years a right can be leased without going through a change process, clarifies the time in which an objection must be filed, and other clean up type language.

LC481 – Salvage and Conserved Water – The language in this legislation attempts to delineate between salvage water and conserved water. Under the proposed language – salvaged water would be that water that was not historically consumed (like water that seeps from a ditch) and if it was to be put to a new use must be limited to a nonconsumptive use. Conserved water would be water that is made available by making a consumptive use more efficient. Under this type of a water right the “new” water could be used for a consumptive use.

LC482 – Revise Process for Exempt Claims – This bill applies to the instream stock and domestic uses from pre 1972 that were not required to be filed in the adjudication. Sets a specific date – February 28, 2019 as the deadline for filing these claims. If claims are not filed then they are subordinate to all other water uses on the source.

LC483 – Abandonment and Drought – This bill makes it clear that water rights are not abandoned if the water users are participating in a drought plan or there has been a drought declaration in a specific area. Some areas of the state have expressed concern that they are hesitant to turn water back into the river to keep the river wet because they don't want their water rights to be considered abandoned.

There are currently 4 additional “Generally Revise Water Laws” bills that have been requested but have no details. These would appear to be placeholder bills.

**Did You Know - New Water Court Decree Ahead For The Gallatin?**  
*by Colleen Coyle*

**Did you know?**

Montana's water rights reexamination and "second decree" process is now underway, and the Gallatin will be one of the early basins to receive a second decree, potentially as soon as the next year or two. Some of you remember back in 1984, to the Water Court decree process. The preliminary decree or "second decree" will basically repeat that process with a few modifications. DNRC will do a limited review of claims to look for potential issues and problems, and water users will be able to object to their own and other's rights. Under Montana statutes, in order to finish the adjudication, "second decrees" must be issued for all basins, like the Gallatin, that were issued before 1997.

In practical terms, this is an opportunity to look for errors or problems with your own water rights, and to object to other water rights that you believe have errors or would adversely affect you. Now is a good time to look over your water rights for potential errors. You can get your water right abstracts from DNRC, from their website (<http://wr.msl.mt.gov>), or from working with attorneys or consultants, who use these methods (and some use Water Sage to save time, [www.watersage.com](http://www.watersage.com)). You might start looking over your abstracts for incorrect owner names and addresses - errors are common, and could interfere with your ability to receive notices. You also want to think about how your water rights have been used historically, since prior to 1973, and see if the water right accurately reflects that use. Does the abstract correctly show your flow rate, priority date, and locations where water is used, ditches that you divert from, and time of year that you divert? If not, you may want to prepare to object to your claim, or there may be other steps you need to take sooner to address errors so that your claims appear in the decree correctly.

This time, the Court will also address any "issue remarks" that are held over on your claims from the first decree, and any issue remarks that DNRC adds during the reexamination it is going to do now.

**Why is this happening?**

Montana's general statewide stream adjudication began in 1982. Everyone who believed they or their predecessors had established a water right was required to file a claim form by April 30, 1982. Over 200,000 claims were filed. The Montana Water Court was established to adjudicate these claims, and it has been proceeding through the state ever since, river basin by basin, to complete this enormous litigation.

The legislature originally planned for every basin to have three decrees- a temporary preliminary decree (all water users with rights based on state law); a preliminary decree (which would also include the federal and Indian reserved rights), and a final decree. In 1997, the legislature changed the law to expedite the process and remove that second step, but by law, every decree that was issued prior to 1997 must still have a second decree round prior to final decree. Over 90,000 of the 200,000 claims statewide are located in basins that must have a second decree.

*...continued page 5*

**Did You Know - New Water Court Decree Ahead For The Gallatin?**  
*by Colleen Coyle*

*...continued from pg 4*

Now this process is underway- the Flint Creek basin has been issued, with an objection deadline in February. The Musselshell River will possibly be issued by the end of the year. The Water Court has issued an order requiring DNRC to reexamine claims, reexamination is taking place currently. Claimants in the Jefferson River basin (41G) are being contacted about potential issues. The tentative schedule for the first few years includes the following basins, although this is subject to change:

<u>Basin</u>	<u>Projected Decree Issue Date</u>
Flint Creek (Basin 76GJ), (Phillipsburg area)	Issued – objection deadline 2/17
Clarks Fork Yellowstone River (Basin 43D)(Red Lodge area)	December 2016
Musselshell River (Basins 40A and 40C)	December 2016
Jefferson River (Basin 41G)	2017
Gallatin River (Basin 41H)	After 41G
Shields River (Basin 43A)	After 41H
Yellowstone River (Basin 43B)	After 43A
Boulder River (Basin 43BJ)	After 43B
Missouri River above Holter Dam (Basin 41I)	After 43BJ

Water rights owners are encouraged to work with the DNRC to resolve issues arising during examination of claims and after the decree has been issued. Working with the DNRC may help water users minimize or avoid litigation over claims in the Water Court.

The second decree process will address errors which could interfere with water commissioner's work in the future - like legal description and ditch name errors and inconsistencies, source name errors, water rights that overclaim old decrees and filed notices of appropriation.

The second decree is also an opportunity for water users to file claims for their exempt livestock and domestic rights, and to have those claims included in these second decrees. This saves water right owners the cost of doing notice for these claims.

### **Information Helps Protect Water Rights**

Water is a key asset to agricultural operations in Montana. This second decree process involves new litigation, but also provides an opportunity for errors to be corrected. Take the time to review your water rights in order to prepare. This step brings us closer to final decrees and completing the adjudication process.

**Big Sky Community Public Meeting on Water Resources**  
**December 6, 4 to 6 PM**

The Big Sky Sustainable Water Solutions Forum (Forum) will host a “Community Town Hall Meeting” on Tuesday, December 6<sup>th</sup>, 2016 to share information on water resources in the Big Sky area. The public is welcome to join from 4 to 6 PM at Buck’s T-4 Lodge. Panel presentations and an opportunity for questions will be 4 to 5:30 PM, followed by networking from 5:30 to 6 PM. For more information about the event, contact Stephanie Lynn at [stephanie@gallatinrivertaskforce.org](mailto:stephanie@gallatinrivertaskforce.org) or visit [www.gallatinrivertaskforce.org](http://www.gallatinrivertaskforce.org).

**AGAI Directors**

Mike Gaffke, Pres.

Al Lien, V.P.

Dan Triemstra, Sec.

Jennifer Mohler, Tres.

Walt Sales

Craig Bos

Ilene Casey

Susan Duncan

John Hunziker

Doug Braaksma

Please visit our website [www.agaimt.com](http://www.agaimt.com) for more information on activity regarding respective subjects.

AGAI monthly meetings are held on the last Thursday of the month at the Garden Café at 11am. Visit with us if you have any remarks or concerns - we WANT your feedback.

**See you at the Annual Membership Meeting on  
December 7!**

