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## ***Association of Gallatin Agricultural Irrigators Legislative Update April 12, 2019***

### **General**

The Legislative session is in the home stretch and there are a lot of moving pieces. It is always our goal to have water related legislation addressed prior to this point in the session. Politics always come into play at this point of the session. We have been relatively successful with getting the bills that we are following through the process earlier in the session.

### **Water**

- Aquatic Invasive Species. PENDING

The existing funding mechanism terminates in 2019 so the legislature must come up with a new formula or allow the program to be eliminated. The existing funding mechanism allocated the cost between hydropower entities (except the government) and fishing licenses. Most of the cost is born by hydropower.

There were two different proposals – currently there is one bill left to address the issue – HB 411. The bill is moving quickly and is being amended substantially. The bill that came out of the house changed the funding mechanism to include hydro power, bed tax dollars, motorized boat fees, and fishing license fees. The bill has gone through Senate Natural Resources and Senate Finance and Claims, and the amendments shifted the amount of funding that is coming from the different pieces. This bill will continue to be amended and discussed right up until the end of session.

AGAI supported HB 411 as a reasonable and fair funding mechanism. As the amendments have come on and off the bill AGAI is refrained from taking a position.

HB 44 – Clarify criteria for water rights change process. Rep. Z Brown. States that the adverse effect analysis is specific to the change and that the lack of legal availability does not necessarily mean that there is an adverse effect. AGAI supported the bill.  
PASSED

HB 45 – Clarify criteria for water right permit relying on waiver of adverse effect. Rep. Z. Brown. This again relates to the relationship between legal availability and adverse effect. The ag groups and Senior Water Rights Coalition were able to amend the bill to

include the “findings” during the interim and plan to support the legislation. AGAI supported the bill. PASSED

HB57 – Clarify placement of definitions in water law. Rep. Z. Brown. HB 57 centralized definitions in the water use act. Water users should not see an impact from these changes. AGAI supported the bill. PASSED.

HB 114 – Amend process to appoint water mediator. Rep. Z. Brown. This is the result of Judge Holly Brown’s order sending DNRC and the water users on Willow Creek to water mediation. The concern from DNRC is that there is not a pending case and therefore anyone could request mediation from a court regarding a water issue and wouldn’t have to file a suit. AGAI opposed the bill. THIS BILL WAS WITHDRAWN.

HB 180 -- Limiting transfers by water rights certificate holders. Rep Hamlett. This bill limits what a water right certificate owner (water right that is 35 GPM/10 ac ft or less) can do with their right. There is significant concern that this will affect the property rights associated with a water right. Currently there doesn’t appear to be any supporters. AGAI Opposed the Bill. FAILED

HB 220 – Water Court Decree Timelines. Rep W.Sales. The statutes provide a “reasonable timeframe in which the Water Court should be able to issue decrees”. Since that timeline was put in place there have been changes to the adjudication such as the exempt from filing rights being added. Rep. Sales is extending the timeframe from 2020 to 2024. AGAI supported the Bill. PASSED

HB 286 – Revise water right laws related to state water claims. Rep A. Redfield. This bill is to address the recent actions of DNRC in asserting ownership over privately owned wells and diversion works that are located on private land and used temporarily on state land. The DNRC is opposed to the bill. Director Tubbs feels very strongly that this is a constitutional requirement resulting from the Pettibone decision. The bill was amended to make it clear that the only way the state could claim ownership of a water right that is diverted on private land and put to use on state lands is if (1) a court determines that they own all or a portion of the right; or (2) the state has deed reflecting the transfer of ownership to the state. We have worked with DNRC, the Governor’s office and other folks to try to come to a solution. Unfortunately, we haven’t been able to develop a solution that protects all water users – most importantly our membership, the irrigators. The proposals for amendment that have been provided only protected exempt well owners and not the irrigators. This is the same process that private water right holders must follow. AGAI Supported this bill. PENDING (chance of Veto)

HB 341 and HB 342 – Create special revenue accounts. Rep. B. Brown. These bills are like bills heard last session to provide funding for GWIP (Ground Water Investigation Program) and SWAMP (Surface Water Assessment and Monitoring Program) in the MT Bureau of Mines and Geology. These funding mechanisms are important for the collection of unbiased science related to surface water and ground water in MT. AGAI supported both bills. HB 341 is Pending and HB 342 FAILED

HB 383 – Extend deadline for appeal of streambed permit. Rep. K. White. This bill extended the deadline for appealing a 310 permit. AGAI watched this bill. PASSED.

HB 399 – Revise definition in streambed protection laws. K. White. Changes the definition of a perennial stream for the purposes of the “310 Law”. AGAI watched this bill. FAILED

HB 505 – Require notice to shared water conveyance facilities. Rep. W. Sales. HB 505 clarified that an applicant for a new water right or a change application must notice a conveyance facility if they are adding water to the conveyance or taking water out of the conveyance. This was a significant issue for Gallatin irrigators and there were Gallatin irrigators in attendance at the hearings. AGAI supported this bill. PASSED

HB 600 – Prohibit sale or marketing of exempt water right. Rep. B. Hamlett. This bill would limit what a person who owns an exempt water right (exempt well) can do with their water right. The concern with this bill was the limitation to an existing property right. AGAI opposed the bill. FAILED

HB 708 – Revise volume for groundwater exemption. Rep. B. Hamlett. The bill decreased the volume for an exempt well from 10 ac feet to 2 ac feet. There is concern with limiting the volume when there is no requirement for measurement, reporting or enforcement. A change in volume in statute would most likely have little to no impact on the ground. AGAI opposed the bill. FAILED

HB 711 – Implement provisions of appropriations act natural resources and transfers AIS. Rep. K. Holmlund. Under the existing funding mechanism for AIS there were overpayments of approximately \$1.9 Million that were swept into the AIS Trust fund. This bill tried to sweep the money from the trust fund and use it for other purposes. AGAI opposed this bill. FAILED

HJ 14 – Study future of the Water Court. Rep. B. Hamlett. Study resolutions are assigned to interim committees for analysis during the interim. The water court and the future of the water court has been studied by the Water Policy Interim Committee for the last two interims. Our concern on this study request is that it is not broad enough. There are significant questions about how the Final decrees will work and how they will be administered. AGAI opposed the bill because we felt it should be broader. PASSED

HJ 17 – Joint resolution to Congress asking to fund aquatic invasive species funding. Rep. W. Curdy. The Federal government provides some level of funding to Montana’s AIS program. However, whether the state gets funding from the federal government is very uncertain. Arguably the citizens of Montana are carrying the load for protecting the Columbia River Basin from AIS. AGAI supported. PASSED

SB 32 – Create stream gauge oversight work group. Sen. Sesso. This is an attempt to formalize working and funding relationships related to stream gauges. This past season

there were significant challenges when funding for stream gauges was cut from different state and federal agencies. There are watershed groups throughout the state that rely on the stream gauge data for management purposes. The bill was amended to clearly define who sits on the work group and to provide a termination date in 2023. AGAI supported. PENDING

SB 45 – Revise certain water right adjudication processes. Sen. Cohenour. This bill limits the opportunity to file a motion to amend a water right claim. The purpose is to limit the water users who use the amendment process as an end run to the objection and public notice requirements. The Chief Water Judge expressed concern with the cost of public notice. The bill was amended to eliminate the notice to every water user but retain the notice published in the newspaper. There is concern from irrigated agriculture regarding the limited ability to amend claims. This process is used extensively to address basic issues such as scribner errors. AGAI opposed the bill requesting amendments to address our concerns with the ability to file a motion to amend. FAILED

SB 49 – Amend method for measuring water for aquifer recharge or mitigation. Sen. Cohenour. This bill seems simple but could have serious impacts. The amendments that are being made could impact agricultural carriage water in ditches. Though the department asserts that the carriage water is part of a beneficial use (irrigation) there are recent department decisions that show that is not the case. This bill was amended to make it clear that carriage water must remain for the portion of an irrigation right that is not ultimately used for aquifer recharge or mitigation. AGAI Supported the bill as amended. PENDING

SB 129 – Revise laws related to water projects – Sen. Cohenour. This was another DNRC bill that provided that the water users associated with a state water project had no method of objecting to costs that were less than \$75,000. There was significant concern from state water project water users statewide. The bill was tabled in Senate Natural Resources.

SB 81 – Extend deadline to correct an application for water permit or change. Sen. J. Cohenour. SB 81 changes the deadline from 90 days plus a 30-day extension to a simple 120 days. This should help water users and applicants with working with the department to make sure that their applications meet the requirements of the statutes and rules for correct and complete. AGAI supported this bill. PASSED.

SB 129 – Revise laws related to water projects. Sen. J. Cohenour. This was a bill requested by DNRC that would have changed the amount of money the department could spend on state projects and assign as a cost to the water users. This would have allowed for increased spending without approval from the water users who ultimately must pay the cost. AGAI opposed this bill. FAILED

SB 151 – Clarify notice procedures for exempt right claims – Sen. Fitzpatrick. SB 151 makes it clear that any right that was filed pursuant to the exempt from filing

requirements must be heard as part of a supplemental decree if it wasn't contained in a preliminary decree. This ensures that the exempt from filing claims are treated similarly to the claims that were filed pursuant to the Supreme Court order. PASSED

SB 250 – Establish a process for amending a water right general abstract – Sen. S. Fitzpatrick. The purpose of SB 250 was to put clear guidelines in place for the DNRC when making changes to our water right general abstracts. This was brought on behalf of water right users. This bill will need some more work during the interim to get at the actual issues. AGAI supported. FAILED

SB 296 – Private right of action for waste of water. – Sen. S. Fitzpatrick. SB 296 was drafted to address a district court decision out of Gallatin County that determined that only the County Attorney, Attorney General, or DNRC can bring an action to enforce our water rights. This statute (85-2-114) was put in place to allow the three entities to act but not to limit the right to protect our water rights that we have always had. The purpose of SB 296 is to put back what we've always had and that is the right to bring a cause in district court if the use of our water right is harmed. AGAI supported.  
PENDING