



REFLECTIONS FROM THE PRESIDENT

With the ongoing mission to be guardian and advocate of the Gallatin River System through the protection of historically decreed water rights the current AGAI Board members are actively recruiting new committee members and Board Directors. I am anticipating, because of all that is going on in this valley with water claims, there will be a waiting list of individuals clamoring to be a part of this Board. Every ditch will want a representative involved because it gives your ditch a chance to help set policy and impact the preservation of your irrigation rights and thus your way of life. To have your voice heard begin attending the AGAI Board meetings held the last Thursday of each month, 11 a.m. at the corporate offices of Rocky Mtn. Supply, 210 Gallatin Farmers Ave. Belgrade.

The 41H Decree for the Gallatin objection period has closed. Notices of the Filing of an Objection and Opportunity to File Counter objections were sent out on Thursday, May 30th, 2019.

THE NOTICES AND PRE-OBJECTION LIST ARE AVAILABLE AT:
<https://courts.mt.gov/Courts/Water/Notices-and-Information/public-notice-and-information-on-active-basins>.

THE COUNTER-OBJECTION FORM IS AVAILABLE AT:
<https://courts.mt.gov/courts/water/legal>.

Counter-objections must be received by the Water Court by July 29, 2019. As your ditches and canals plan and budget for the upcoming year you might consider the potential legal costs involved with this process and how you will address that cost. See the complete article about the adjudication process inside this newsletter.

Thank you to all ditch members who gathered at the AGAI Annual Meeting for the honest discussion outlining current ditch challenges. This dialogue has provided AGAI with direction for 2019 and in the future. The number 1 concern expressed was infrastructure issues Number 2 concern was issues of ditch maintenance. Please read the Communication Committee report in this newsletter to see how we are beginning to help you address these issues.

Questions have risen about the tax liability of ditch companies. We reached out for advice. Because it is very ditch specific we can only provide general answers. If your ditch has any paid staff such as an administrative person or bookkeeper you must be certain you are following state and federal wage and hour rules. If your ditch still does not have any formal organizational structure, include an accountant and or an attorney as you plan for structure to be certain what your tax obligations are when you first organize. If you are a formally organized ditch or canal and you are not clear about the taxes it is good advice to again contact an accountant and/or attorney and get this matter resolved sooner than later.

Thank you to our new sponsors Blake Creek Project Management and NorthWestern Energy and to our continuing sponsors, Watson Irrigation, Montana Land Reliance, and Aquatech,. Thank you also to ditches, canals, and individuals who donated in addition to paying their annual dues this year.

ILENE CASEY, AGAI PRESIDENT

WATER MITIGATION OPTIONS IN THE GALLATIN VALLEY

AN EDUCATION CAMPAIGN

CAMPAIGN SUMMARY (A COMPLETE SUMMARY OF THIS CAMPAIGN CAN BE FOUND AT AGAIMT.COM)

In response to increasing demand for water in the Gallatin Valley, as well as a myriad of proposed mitigation projects coming from outside groups, AGAI undertook a collaborative education campaign with the city of Bozeman and Gallatin Co. to educate its members about the various mitigation options available to water rights holders. A second and equally important mission of this campaign was to focus on educating the general public about the significant water management and conservation assets provided by current water management practices, and the long-standing culture of shared sacrifice and water stewardship practiced by the irrigation community in the Gallatin River Watershed.

AGAI formally established a “Mitigation and Augmentation Committee” comprised of ditch company representatives. This committee, under the supervision of AGAI’s Board of Directors, oversees all functions of the educational campaign.

To complete the education portion of this campaign:

- (1) Farmers Canal Company worked with AGAI and the Water Policy Interim Committee to host a legislative tour of the canal to provide insight to legislators, legislative staff, and others in attendance on the FCC/Bureau of Reclamation Water Efficiency study that is being conducted on the canal.
- (2) AGAI Sponsored two different workshops in the Gallatin:
 - a. Gallatin Valley Agriculture – Planning for the Future – November 2018. Focused on Water related issues in the Gallatin Valley and planning for the future.
 - b. Greater Yellowstone Ag Forum – February 2019. Focused on water rights, water right web tools, and water adjudication.
- (3) AGAI and Blake Creek Project Management worked with MSU Extension, DNRC, Trout Unlimited, Water Section of the State Bar, and One Montana to develop the MontGuide, “Water Rights in Montana: An Overview” This document is available and used in the Gallatin and statewide. A copy of the document can be viewed on the AGAI website under downloads.
- (4) At AGAI’s annual meeting in 2016 the primary speakers was Carl Saunders from the Grass Valley French Ditch Company of Missoula. Grass Valley French Ditch Company is the first in the state of Montana to create a private water bank, which provides senior water rights to buyers looking to mitigate the impacts of development in the Missoula area. The purpose of Carl Saunders’ presentation was to provide an example of agricultural water being changed to marketing for mitigation and to allow AGAI members to ask questions and gain an understanding of how a private water bank is developed through a ditch company.
- (5) Members of the Mitigation and Augmentation Committee, AGAI Board, and AGAI contracted staff met with 15 AGAI member ditch companies across the Valley to present at their annual board meetings and discuss the idea of water mitigation.
- (6) AGAI sponsored a Green Drinks event on August 15, 2017. Green Drinks is a monthly, informal gathering of people from local non-profits, businesses, academia, government, and the local community to learn about and discuss environmental and sustainability topics. The goal of the AGAI Green Drinks event was to share the story of significant water management and conservation assets provided by current water management practices, as well as the long-standing culture of shared sacrifice and water stewardship practiced by the irrigation community in the Gallatin Valley.
- (7) A statewide discussion at MSU in May 2019 on irrigation efficiency and the impacts to watersheds and late season river flows was attended by AGAI Board members as well as AGAI contract staff and irrigators, hydrologists, tribal, state, and federal employees from across Montana.
- (8) Blake Creek Project Management is currently working with the City of Bozeman to develop a proposal for AGAI and Farmers Canal Company for signage at the City Sports Park that provides information on irrigation. The Sports Park is irrigated with agricultural irrigation water and is a prime opportunity to educate urban folks on the value of irrigated agriculture and the relationship between shared shortages and keeping the river wet.

In addition to the education portion of the grant a specific case study was done working with Farmer’s Canal. The focus of this case study was on legal support assessing bylaws, inventorying existing practices, and possibly beginning the process of data collection that could inform the change of use process. From this study AGAI received a valuable document to serve as a guide and to be available for use for by AGAI member ditches and canals including a checklist and sample bylaws. [It is available at www.agaimt.com](http://www.agaimt.com)

PARTNERS

AGAI facilitated this project by partnering with the Gallatin Conservation District, Blake Creek Project Management, and One Montana.

CONCLUSION

If the ongoing development and implementation of various water mitigation and future water supply strategies is to be successful, that success will depend on the up-front engagement and ownership from the local agricultural community. The work accomplished through the “Education Campaign Regarding Water Mitigation Options in the Gallatin Valley” lays a strong foundation for AGAI to continue engaging agricultural and urban communities on topics of water mitigation and future water supply strategies.

AGAI is committed to sharing information with our membership and engaging members in development of outreach and education campaigns. We encourage members to reach out to AGAI through attending the monthly board meeting (last Thursday of each month at Rocky Mountain Supply in Belgrade) or sending us an email at info@agaimt.com. AGAI looks forward to hearing from our membership on the ongoing education and outreach through the City/County grant as well as any other new opportunities or challenges that you see facing Gallatin Agricultural Irrigators.

DISTRICT COURT ENFORCEMENT IN THE GALLATIN

There are several surface water sources in the Gallatin that are “enforced”. Water users and water managers reference the enforcement in everyday conversation about water delivery and water use. Some, however, may not understand why the sources are enforced, who does the enforcement, and who pays for the enforcement.

There are some areas of Montana where District Court decrees (that pre-date the current Water Court decrees) were issued to address any number of water delivery issues and disputes. Other areas or sources have never been subject to a decree and are having their first experience through the Water Court Decrees. Some of the old district court decrees were basin wide, some were for a particular river or stream, and some were between 2 or more users. The Gallatin operated under a district court decree (Bell v. Armstrong) since 1909. Interestingly, the district court in Bell v. Armstrong contracted with engineers to analyze water and water use in the Gallatin Valley prior to issuing the decree. Most district court decrees do not have the detailed analysis and requirements that are contained in Bell v. Armstrong.

WHY DOES THE DISTRICT COURT ENFORCE THE DELIVERY OF WATER?

The power of the district court is necessary in many instances because the availability of water is limited and is often contentious between neighbors.

A district court enforces a decree through a water commissioner. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right issued by DNRC.

WHEN IS A SOURCE ENFORCED?

There are different alternatives that can trigger the District Court appointment of a water commissioner.

- (1) A source is enforced when the owners of at least 15% of the water rights affected by the decree or at least 15% of the flow rate of the water rights affected by the decree petition the district court for appointment of a commissioner and enforcement.
- (2) If the water users are not able to obtain support from at least 15% of the water rights affected or at least 15% of the flow rate of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may appoint a water commissioner.
- (3) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued by the Water Court through the adjudication process, the judge of the district court may appoint a water commissioner if DNRC and one or more water users submits an application to the district court. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right issued by DNRC.

WHO PAYS FOR THE WATER COMMISSIONER?

The water commissioner is required to file a report with the district court regarding water delivery as part of the enforcement action. Once the commissioner files the report, the clerk of district court sends a letter to each person mentioned in the report that outlines the amount of water that was delivered to the user and for which the user is liable for payment. The more senior a water right the longer they are “served” by the commissioner delivering water and the more they will have to pay for the commissioner’s time. Once a water right is “shut off” the water user is no longer required to pay for the commissioner.

A water user can object to the water commissioner’s report and the amount taxed against the water user within 20 days after the mailing of the notice. If no objections are filed, the district court judge will issue an order fixing the amount due from each of the water users.

TEAMWORK IN THE GALLATIN

Irrigators and other water users in the Gallatin have operated under a district court water commissioner for so long that most just take it for granted and some have never had it any other way. Starting with the Bell v. Armstrong decree in 1909, water users in the Gallatin have long recognized the role of the District Court in administering water in the valley. We are privileged in the Gallatin to have a District Court Judge, Judge Holly Brown, who understands water law and is actively engaged in the enforcement project. Judge Holly and her staff work with AGAI annually to do a “water walk” which is extremely helpful for all water managers and water users. This type of effort to truly understand how water moves and is used on the ground is not often seen and we are proud of our relationship with the court.

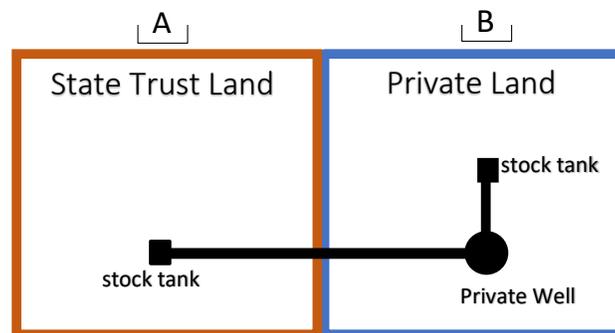
AGAI LEGISLATIVE UPDATE

The 66th Montana Legislature adjourned sine die on April 25, 2019. This session didn't disappoint in that water policy is a significant issue in front of the legislature. AGAI tracked over 50 pieces of legislation through the legislative process. AGAI Government Affairs, in consultation with the AGAI Legal Committee and AGAI Board, took positions on bills that we felt would help or hurt AGAI members.

The 2019 Session saw AGAI members attending hearings and providing testimony on bills. Input from home is critical to our legislative process and legislative committees are always happy when constituents come to share their views and experiences. Thanks to those AGAI members that helped on a number of bills. Please go to the AGAI website --- www.agaimt.com for a detailed analysis of the bills, the position AGAI took on each bill, and the final outcome of the legislation.

There were several high-profile pieces of legislation that directly impacted AGAI membership. One bill in particular – HB 286 – has significant impacts for Montana water users that use their water rights on state trust land.

Water right laws related to state trust land asserting ownership of water rights



The state is claiming that the water right diverted from the well on PRIVATE LAND (B) but temporarily used on state trust land (A) during the period of the lease is at least partially owned by the state.

HB 286 clarifies that the state of Montana may only obtain an ownership interest in a water right or ground water development works (diverted from private land) if a court determines the state is an owner of that particular water right or if the state is in possession of a deed transferring ownership of the water right to the state. This is the same requirement that other water users have to meet. The state is asserting that they have a constitutional right to a portion of our water rights based on a 1985 MT Supreme Court case (Pettibone). However, the MT Water Court has ruled differently than what the state is asserting. **IF THE QUESTION IS CONSTITUTIONAL THEN IT IS VERY IMPORTANT THAT A COURT MAKE THE DETERMINATION NOT THE DEPARTMENT.** It is also very important that water users have due process to protect their property rights. The Court process provides due process.

Why is this clarification needed? The Department of Natural Resources & Conservation (DNRC) Trust Land Mgmt Division has claimed partial ownership of state land lessee's private water rights if the water is used on trust land – even if the well is on private land. Lessees receive a notification from DNRC that the state is now a co-owner of their water right that has been diverted, developed, and perfected on their private land.

For years, landowners have chosen to manage their land and the state land they lease in the most productive, sustainable manner possible. For some, that meant diverting water from their private well or developed spring (that they paid for) onto their state lease. Landowners made these decisions under the assumption that their water right was protected.

While the state has asserted this "ownership" of the stock and agricultural water rights, they have not done the same to city water rights that are used on trust land.

HB 286 was supported by: Montana Farm Bureau Federation, Montana Stockgrowers Association, Senior Water Right's Coalition, Association of Gallatin Agricultural Irrigators, Montana Water Resources Association, Montana Well Drillers Association, and private water right holders.

WHAT HAS AGAI HAS DONE FOR ITS MEMBERS SINCE THE ANNUAL MEETING

SUSAN DUNCAN, COMMUNICATIONS CHAIRMAN

LEGISLATIVE/LEGAL

Tracked water issues in the legislative session and kept AGAI members apprised of actions taken, on our website.

Initiated a workshop on the Adjudication Process for irrigators on June 11 at the Conservation District in Manhattan.

Local Legal Committee and Farmers Canal resolved the Norton Ranch Objection.



NETWORKING/OUTREACH

Future Water Committee is exploring prospects and partnerships related to finding opportunities for water storage in the Upper Gallatin.

Board members networked with other water resource organizations in the Gallatin Valley.

Six AGAI members gave input on irrigation issues to a committee working on a joint growth plan for Bozeman, Belgrade and the County - Triangle Plan.

AGAI sponsored and participated in Montana Land Reliance's Ag Forum and the Annual Ag Appreciation Banquet.

ADMINISTRATIVE/INTERNAL COMMUNICATIONS

AGAI hired a bookkeeper to keep track of our income, grants, and expenditures to assure accountability.

AGAI is contracting to fill a part time Administrative Coordinator position by July, 2019. Grant money is set aside for this position.

AGAI has a new logo, website, emails, business cards, and brochures paid for by a DNRC grant. And a new post office box. PO Box 1308, Belgrade, MT 59714.

Elected Curtis Dykstra (Spain-Ferris Ditch) to the Board.

Board members attended ditch meetings and produced this Post-Legislative Session Newsletter.

Speakers Jen Boyer (Triangle Plan), Wendy Williams (Montana Aquatic Resources), Chris Mahoney (NRCS) presented brief talks about their organizations at Board meetings.

BOARD MEETINGS ARE OPEN TO AGAI MEMBERS AND THE PUBLIC.

WATCH THE WEBSITE FOR MORE USEFUL INFORMATION.

WATER RIGHT ADJUDICATION PROCESS IN THE GALLATIN

IN A NUTSHELL . . .

- The adjudication is a statewide lawsuit that is addressed basin by basin – as a claimant you are part of this litigation.
- All claimants are part of the litigation – municipal, irrigation, commercial, etc.
- You must be involved in the process (objection, counterobjection, notice of intent to appear) to protect your water right.
- The Gallatin had an old district court decree – Bell v. Armstrong
- The Water Court issued a temporary preliminary decree on September 26, 1985.
- The next step is a Preliminary Decree – the decree was issued on October 9, 2018 and we are all dealing with this right now. Yes, you already did this once in the Temporary Preliminary Decree – this is the next phase and you have to be involved again.
- The next step (some time in the future) is a Final Decree
- Goal: Have all the pre 1973 Claims “final” through a final decree.
- The multiple decree phases (temporary preliminary, preliminary, and final) is to allow water users to be involved and protect their claims (water rights)

WHAT YOU NEED TO DO . . .

- You are involved in litigation – pay attention to all notices, letters, etc., from the Water Court.
- Deadlines for different pieces of the process will be communicated to you from the Water Court.
- YOU CANNOT AFFORD TO IGNORE ANY PAPERWORK OR INFORMATION RECEIVED FROM THE WATER COURT OR DNRC.

The water adjudication laws are set up in a way that requires water right claimants to object to each other. It is important to remember that water rights are a property right and all water right claimants have the right to take necessary steps to protect their property right. In the adjudication that means objecting to other claims that may adversely impact their water right.

IN THE GALLATIN . . .

The notice of entry of preliminary decree and notice of availability was published for the Gallatin (Basin 41H) by the Water Court on October 11, 2018. Pursuant to state law, water users had until April 9, 2019 to file objections to claims. An extension was granted by the Water Court to extend the objection deadline to May 9, 2019. Once the objection deadline passes water users have 60 days from the date the notice is sent from the Water Court to file a counterobjection – July 29, 2019.

****NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY:** October 11, 2018

All claimants receive notice from the Water Court with direction on how to file an objection and what to consider.

What you should do:

1. Review the abstract of your own water right claim or claims.
 2. Review the abstracts of all other water rights that affect your water right.
 3. Decide if these abstracts correctly identify pre-July 1973 water use.
 4. Decide if you want to file objections.
 5. File your objections with the Water Court on or before the filing deadline.
-

Your water right can be affected by what is in your abstract and other abstracts in the Decree. The Montana Department of Natural Resources and Conservation (DNRC) examined all the claims. Elements of your claim may have been changed because of information the DNRC obtained during examination. If your abstract shows changes, you can challenge the changes by filing an objection with the Water Court.

If you believe your water right claims or someone else's water right claims in this Decree do not reflect their historical (before July 1, 1973) beneficial use, you can file an objection.

****INITIAL OBJECTION DEADLINE:** April 9, 2019

****EXTENDED OBJECTION DEADLINE:** May 9, 2019

After the time for filing objections has passed, the Water Court will notify you by mail if someone objects to any of your claims. If someone objects to your water right claims, then you are entitled to file counterobjections to their claims. The Water Court will notify you of the time when counterobjections must be filed. The Water Court will set a date for all interested parties to notify the Water Court of their intent in participating in any hearings.

If you received an objection to a claim, you have the right to file a counterobjection against any claims owned by the individual that objected to your claim. Only the water right claimant can decide if it is in their best interest to file a counterobjection.

You might file a counterobjection if:

1. you have concerns or believe there are inaccuracies in their claim or claims.
2. you want to ensure that their claims are held to the same standard of review as your claims.
3. filing a counterobjection might facilitate settlement discussions on both the original claim that received the objection and any claims that you counterobject to.

****COUNTEROBJECTION DEADLINE:** July 29, 2019

****NOTICE OF INTENT TO APPEAR DEADLINE:**

Set by the Court after the Counterobjection Deadline has passed.

Water users may still be involved with someone's claim if the water user missed the objection and counterobjection deadlines. However, the water user's involvement is limited to monitoring the process in the water court or changing elements of the claim that are already on the objection list or have an issue remark.

****CASES IN FRONT OF THE WATER COURT:**

Once all the deadlines have passed the water master will consolidate cases and begin case proceedings.

Settlement: The settlement process is an informal step that the water master will set after consolidation of cases. Parties need to show progress towards settlement.

If no objections on a claim but the claim has issue remarks: The Water Court may resolve remarks based on information in the claim file or the Claimant can be sent to DNRC to resolve the remarks.

If other parties are involved: The Water Court will issue an order setting a status conference. The parties can talk about the objections and a path towards settlement. If there is not a settlement, the Water Court will issue a hearing tack scheduling order to begin the litigation process in front of the Court.



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