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To: Association of Gallatin Agricultural Irrigators

From: Krista Lee Evans

RE: MT Legislative Update – Sine Die Report

Date: May 3, 2021

Outlined below are the water related bills that AGAI participated in or tracked during the 2021 Legislative session.

**HB 632 – Implement Receipt of and Appropriate Federal Stimulus and COVID Recovery Funds.** HB 632 has many complexities and there is concern with the lack of federal direction currently. HB 632 provides funding mechanisms for a multitude of different projects and processes. There is opportunity for government entities to receive funds and there may be opportunities for private entities such as ditch companies to receive funds. It will be critical to track implementation of HB 632 to determine eligibility. This bill is law.

**AGAI Position: Support**

**SB 13 – Revise DNRC Adjudication Benchmarks.** SB 13 came out of the Legislative Water Policy Interim Committee. This bill extends the benchmarks for DNRC claim examination to allow for exempt from filing claims to be included in preliminary decrees. This bill is law.

**AGAI Position: Support**

**SB 20 – Clarify the Use of River Basin Councils.** This bill also was the result of the Water Policy Interim Work and provides guidance on what types of entities must be included on a river basin council and how they are used. This bill is law.

**AGAI Position: Monitor**

**SB 29 – Revise Weather Modification Laws.** SB 29 provides a process for a weather modification project to be licensed. The bill clarifies that any environmental review that must be conducted must be paid for by the applicant. The licensing requirements include public notice and issuance of a license by the Department of Natural Resources and Conservation. This bill passed the Senate and House Natural Resources but was defeated on the House floor.

**AGAI Position: Support**

**SB 37 – Permit Exemption for Berkley Pit Water.** The owners/operators of the mine in Butte are required to keep the Berkley Pit water at a certain level. Currently, this water is being treated and discharge in Silver Bow Creek. SB 37 was an attempt at creating an exemption for the use of this treated water without a water right. AGAI was actively engaged in discussions with the parties and expressed concerns about the need for sideboards on this water use. The parties agreed and plan to work on the legislation in the upcoming interim. The bill was Tabled in Senate Natural Resources.  
**AGAI Position: Oppose as drafted**

**SB 44, SB161, and SB 174. Revise Subdivision Laws.** All three of these bills removed or amended the requirement that agriculture and agriculture conveyance facilities be considered in the subdivision and zoning process. AGAI worked with the proponents and sponsors to amend all three bills to ensure that this analysis still takes place. All three bills passed the legislature. SB 44 has been signed by the President, SB 161 is law, and SB 174 has been transmitted to the Governor.

**AGAI Position: Monitor amendment retention.**

**SB 55 – Revise the Process for Water Right Ownership Updates.** This bill was also a Water Policy Interim Committee bill that AGAI was actively involved in during the interim. The purpose of this legislation is to make the ownership update process less reliant on automatic updates related to the use of geocodes. This bill is law.

**AGAI Position: Support**

**SB 87 – Revise coal-fired power/water right owner legal responsibilities.** This bill as introduced required the owners of a coal-fired power plant to give their water rights to the city that relies on that water (Colstrip). The bill also required that the plant owners continue to pay for and provide delivery infrastructure and to pay for the cost of pumping. There was significant concern with the precedent this would set for delivery infrastructure. The bill was amended to remove these requirements and, in its place, conduct a feasibility study. This bill has been returned from enrolling.

**AGAI Position: Oppose as introduced/Support with amendments**

**SB 136 – Clarify Criteria for Permits and Water Right Changes.** SB 136 clarifies that the analysis of “legal availability” by DNRC in the permit and change processes only relates to the legal demands associated with water rights and not water quality considerations. This bill has been transmitted to the Governor.

**AGAI Position: Support**

**SB 231 – Revise Exempt Well Laws Related to Family Transfer Parcels.** This is a bill that has been in front of the MT Legislature before. The concern related to this bill is the concentrated use of exempt wells and the family transfer process. AGAI worked with the sponsor and the proponent and the bill was amended to remove the exempt

well portion of the bill. This bill has been sent to enrolling.

**AGAI Position: Monitor amendment retention.**

**SB 260 – Generally Revise Laws Related to Property Interest and the Transfer of Businesses.** SB 260 essentially states what can be considered a “takings”. AGAI worked with the sponsor and proponents to amend the bill to include language that makes it clear that a DNRC decision with regard to a water right permit or change is not considered a takings. This bill failed to pass the House on second reading amendments.

**AGAI Position: Monitor amendment retention**

**SB 302 – Extend Authorization on Deadline for Use of Navigable Riverbed.**

Agriculture was actively involved in passage of the initial legislation as it relates to navigable riverbeds. Once a river is deemed navigable for title by a court of competent jurisdiction the underlying riverbed is deemed state trust land. SB 302 extends the deadline under which an entity (like an irrigation diversion structure owner) can apply for a lease, license or easement to retain their use of the riverbed. This bill has been transmitted to the Governor.

**AGAI Position: Support**

**SB304 – Revise Establishment of Stock Water Rights on Federal Land.** The intent of SB 304 was to state that the Federal Government cannot own water rights. AGAI worked with the sponsor and the proponents to modify the language of the bill to avoid creating conflicts with the many Federal and Tribal Reserved Water Right Compacts that exist in MT. Ultimately, the constituent asked for the bill to be tabled. Ag groups had concerns with the property rights questions related to the bill and potential McCarran Amendment Act violations. The bill was pulled by the Sponsor. The issues raised in SB 304 resulted in SJ 27.

**AGAI Position: Monitor**

**SB 307 – Revise Liability Limits for Irrigation Operators.** SB 307 is the result of a court case that stated the limitation of liability did not apply to a canal or any other infrastructure as the statute only refers to a ditch. SB 307 outlines all irrigation infrastructure as being limited in liability. This bill is law.

**AGAI Position: Support**

**SB 338 – Revise Civil Liability Laws.** SB 338 is a Montana Chamber of Commerce priority that establishes that a landowner owes a trespasser no duty of care with respect to the condition of the property. Those individuals are on the property without permission or knowledge of the landowner and should not be able to hold the landowner responsible for actions they have taken. The landowner would still be liable for any injury to person or property for an act or omission that constitutes willful or wanton

misconduct. The bill is law.

**AGAI Position: Support**

**SB 348 – Revise Laws for Use of Reclaimed Wastewater for Snowmaking.** SB 348 is a priority for the Big Sky Community as they work towards alternatives for managing their wastewater. SB 348 puts a timeline on the process for the discharge permit required by the Department of Environmental Quality. The use of snowmaking as a management tool is beneficial to downstream water users as it puts the reclaimed wastewater back into the basin. This bill has been transmitted to the Governor.

**AGAI Position: Support**

**SB 352 -- Clarify Objections to Water Rights.** SB 352 amends the statute to make it clear that an entity must own a water right to have standing to object in the adjudication, new permit, or change processes. This bill was tabled in House Natural Resources.

**AGAI Position: Support**

**SB 354 – Revise laws related to land servitudes and easements.** As introduced, SB 354 simply provided that an easement owner could post signage stating that they owned the easement. SB 354 was significantly amended in the house with the end result pulling in all prescriptive easements. The amendments were of significant concern to entities who hold prescriptive easements for uses such as ditches or powerlines. AGAI worked with the sponsor and other members of the Senate to develop amendments to address our concerns. In the end, the House amendments were removed from the bill. This bill has been sent to enrolling.

**AGAI Position: Oppose as amended by the House/No position as finally amended and passed.**

**SB 371 – Repeal CSKT Water Rights Compact.** The CSKT Water Rights Compact was ratified by the US Congress late in 2020. The Compact was then ratified by the CSKT Tribal Council making the agreement fully ratified by all parties. AGAI members support the CSKT Compact as a reasonable resolution to the CSKT off reservation water rights claims. The legal note associated with SB 371 stated concerns such as breach of contract. SB 371 was tabled in Senate Natural Resources.

**AGAI Position: Oppose**

**SB 384 – Revise laws related to Aquatic Invasive Species hydroelectric fee.** SB 384 reduces the amount that must be paid by hydroelectric owners towards the AIS program by \$1 Million. DNRC and FWP will use a budget amendment to absorb the cost within the agencies. AGAI supported this legislation as a more fair allocation of costs for funding the program. This bill has returned from enrolling.

**AGAI Position: Support**

**SB 390 – Establish the Water Severance Beneficial Use Act.** SB 390 created a beneficial use fee for hydroelectric water rights where the power is delivered out of state. There was significant concern with SB 390 as created a water use tax. The bill was tabled in Senate Taxation.

**AGAI Position: Oppose**

**SB 404 – Require Water Meters for Exempt Appropriations.** SB 404 required that all exempt from permitting wells have a meter. This included existing wells. This bill was pulled by the sponsor.

**AGAI Position: Oppose**

**SB 405 – Prohibit Sale or Marketing of Exempt Ground Water.** SB 405 stated that water from an exempt from permitting well could not be sold and could not be used for mitigation water. This bill was pulled by the sponsor.

**AGAI Position: Oppose**

**SB 406 – Revised Exempt Appropriation Volume.** SB 406 reduced the volume associated with an exempt from permitting well from 10 AF to 5 AF. There was concern about the broad-brush approach and the impact of not having site specific analysis.

**AGAI Position: Oppose**

**SJ 27 – Study of Water Rights on Taylor Grazing Act Lands.** This study evolved from concerns raised by water users that lease BLM/Taylor Grazing Act Lands. The sponsor had introduced a bill that was ultimately pulled at the request of the constituent who requested the legislation. There is some concern with treating federally owned state-based water rights differently than state-based water rights owned by others. The bill passed Senate Natural Resources.

**AGAI Position: Watch**

**SR 12 – Confirm Appointment of Associate Judge of the Montana Water Court.** The Chief Judge and Associate Judge of the Montana Water Court are appointed by the Chief Justice of the Montana Supreme Court. This appointment must be confirmed by the Montana Senate. Associate Judge Steve Brown was reappointed by the Chief Justice and confirmed by the Senate.

**AGAI Position: Support**

**SR 47 – Confirm Governor’s Appointment to the 18<sup>th</sup> Judicial District.** The vacancy created in the 18<sup>th</sup> Judicial District by the retirement of Judge Holly Brown was filled by an appointment by Governor Bullock. Peter Ohman was appointed to this position. Of the three District Court positions that were appointed by Bullock, Judge Ohman is the only judge that was confirmed by the MT Senate. Judge Ohman will be

responsible for the Gallatin River Enforcement project.

**AGAI Position: Support**

**SR 53 – Confirm Governor’s Appointment for Director of Department of Natural Resources and Conservation.** This resolution sought to confirm the appointment of the new Director of the Department of Natural Resources and Conservation, Amanda Kaster. Ms. Kaster will serve at the pleasure of the Governor.

**AGAI Position: Support**