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To: AGAI Board of Directors

From: Krista Lee Evans

RE: Montana Legislature Activity

Date: March 7, 2021

The Montana Legislative Session has reached the halfway point – known as “transmittal” – for which all general bills must pass from one house to the other to remain alive for this session. The state budget will take priority in the upcoming weeks and the general (or policy) bills also make their way through the rest of the process. AGAI has worked closely with our members and partner organizations on a broad range of bills either to support or oppose. AGAI is currently tracking 74 water rights related bills in the Legislature. AGAI’s positions on the introduced bills are outlined below.

SB 13 – Revise DNRC Adjudication Benchmarks. SB 13 is a bill that 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 has passed the Senate and been referred to House Natural Resources

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 aims to provide guidance on what types of entities must be included on a river basin council and how they are used. This bill has passed the Senate and been referred to House Natural Resources

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 has passed the Senate and been referred to House Natural Resources

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 our 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 Senate and have been referred to the House Local Government Committee.

AGAI Position: Watch to retain amendments

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 passed the Senate and has been referred to House Natural Resources.

AGAI Position: Support

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.

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. The bill passed the Senate as amended and has been referred to House Natural Resources.

AGAI Position: Watch to retain amendments

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 has passed

the Senate and been referred to House Business and Labor.

AGAI Position: Watch to retain amendments

SB 302 – Extend Authorization on Deadline for Use of Navigable Riverbed. AGAI 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 passed the Senate and has been transferred to the House.

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. AGAI had concerns with the property rights questions related to the bill and potential McCarran Amendment Act violations.

AGAI Position: Watch

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.

AGAI Position: Support

SB 338 – Revise Civil Liability Laws. SB 328 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 was heard in the Senate Judiciary Committee and has passed the full Senate.

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 passed the Senate and has been referred to House Natural Resources.

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.

AGAI Position: Support

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 supports 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

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 52 – 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

Participation in the 2021 Legislative Session

The hybrid model for participation continue to work reasonably well with most members of the public and many lobbyists exercising that option for offering testimony. Each committee meeting is staffed with an individual solely devoted to assisting the Chair with identifying and managing testimony. A number of legislators also continue to participate remotely, including engaging in floor session debate and voting.

There are no restrictions on in-person involvement, however the number of seats in hearing rooms are limited to maintain social distancing. The public is also subject to any Lewis and Clark County health directives regarding crowd size.

To offer testimony remotely those interested in testifying must register by noon the day before the hearing. Written testimony can be uploaded at that time and will be shared with committee member, especially important for those participating remotely. Once signed up, you’ll receive a link to testify during the bill hearing. This is available for any bill that is scheduled for hearing.

For more information, go to the Montana Legislature's Homepage leg.mt.gov for links to:

- more information on remote participation
- the form to request to testify or upload your documents
- the web messaging form
- Bill Search, Legislator Search, Session Information, and Revenue and Budget Information
- where to click to Watch/Listen to all meetings

Tips for Contacting Legislators

Not everyone wants to testify via Zoom. There are still several options for getting information to your legislator via email, a phone message, or a letter.

Regular office hours for the Legislative Information Desk during the session are 7:30 a.m. to 5 p.m. weekdays and 8 a.m. to adjournment on Saturdays. Callers may leave messages for legislators or acquire general legislative information by calling the Information Desk at (406) 444- 4800. Callers may leave messages for up to 5 individual legislators or 1 legislative committee per call.

A well-written letter is one of the best ways to let your legislator know your thoughts and opinions about a particular issue. Here are some tips for getting your message across effectively:

- **Be brief.** Legislators have many demands on their time. They appreciate letters that are short and to the point.
- **Put the message in your own words.** Form letters and petitions don't have the same impact as personal, informed opinions and many times are disregarded. Personal letters carry a great amount of weight.
- **Address your letter to a specific legislator or legislators.** Depending on your message, you may want to write to the sponsor of a bill, certain members of a committee, or your own legislators. Don't address your letter to the entire Legislature.
- **Identify bills** by their number, title, and sponsor.
- **Explain your position on the bill** and ask for the legislator's support or opposition.
- **Give any sources** of information that you use to make your point.
- **Include your name, address, and a little about who you are** (for example, where you work or what ditch you irrigate out of)

Address letters to:
Senator XXXX
Montana Senate
PO Box 200500
Helena, MT 59620-0500

or

Rep. XXXX
Montana House of Representatives
PO Box 200400
Helena, MT 59620-0400

Email: You can also email your legislator or a legislative committee during session by using the Montana Legislature’s online message form. <https://leg.mt.gov/web-messaging/>

Standing Committee Members for 2021 Legislative Session

The 2021 House and Senate Standing Committees lists are online at:

<https://leg.mt.gov/committees/session-committees/>

Members and other information are subject to change. Check the website for the most up-to-date lists.

Legislative Bill Draft Requests

If you would like to see what bills have been drafted and introduced, that information can be found on the legislative site (leg.mt.gov) and searching for All Introduced and Unintroduced Bills

The “Bill Look-Up” portion of the site also has information about upcoming hearings both the House and Senate.