Water Rights in Teton Valley

BY LIZ ONUFER
Water has the reputation for being a contentious topic across the West. It’s the intersection of geography and climate and economics. It’s the overlapping needs of farmers, conservationists, recreationalists, and homeowners. Old timers, newcomers, and tourists alike want a healthy Teton River; they want agriculture and open spaces; they want green lawns and vibrant gardens. In essence, everyone wants water when they need it.

“We are no different in Teton Valley compared to other places in the West,” confirms Amy Verbeten, executive director of nonprofit Friends of the Teton River. “We receive significantly less water out of the sky during the growing season than needed. As a result, water is a commodity with more demand than supply.”

That economic equation—demand versus supply—brings a diverse group of users to the table to figure out who gets water and, more importantly, who doesn’t. The result? People with different priorities all trying to answer the same question: How do we get enough water to meet our needs? From drinking water to agriculture to ecosystem health, that answer varies.

Can cooperation work?

The Current Conversations

What has come to set Teton Valley apart from many areas in the West is the change in the conversation’s tone—from contentious to cooperative. In 2015, the Teton Water Users Association, an advisory committee of water users, was formed. The group includes conservationists, city and county representatives, and farmers who are working together to balance the water needs of multiple users. Lyle Swank, water master of Idaho District 1, sees the work of the group as “far-sighted.” The benefit, he explained, is that “it helps them understand other points of view.”

For farmer Lynn Bagley, president of Teton Water Users Association and Teton County Soil Conservation District, and a member of Trail Creek Irrigation Board and the Victor Planning and Zoning Board, the opportunity to sit down and talk with other water users has offered a new perspective. “Having come together with the group, the most important thing we realized is that we can work together,” Bagley says. “Water is important for different needs—for fish, for hay crops. We need to increase the aquifer here. That benefits everyone. And that’s what we are looking at with the Water Users Association.”

Alongside Bagley, Friends of the Teton River is advocating for its mission—maintaining clean water and healthy streams and fisheries in the Teton watershed. “We can work with landowners to keep land productive, streams healthy, and municipal water sources clean and affordable,” Verbeten says.
How did we get here?

The History of Water Rights

For folks from the East and Midwest, water rights can be a foreign concept. These areas have enough water from precipitation to meet the demands of crops and lawns, so water rights receive very little attention. But west of the 100th meridian—a line of longitude that extends from the North Pole to South Pole, cutting through the middle of North America—the geography and climate shift dramatically. Less precipitation falls during the growing season than is needed, Teton Valley included. A unique system of water rights, a result of the West’s climate and market demand, was developed as the solution for the timing and competition among farmers to secure enough water for their farms.

Historically, western water rights are based on the idea that farmers are trying to bridge the gap between when water is readily available—spring—and when the water is needed—late summer. The system of canals, and the rights to divert water into them, are a method to alter the timing and location of water delivery. In low water years, these rights are a way to protect agricultural users during times of shortage. In fact, it’s the only time they really come into play. “Some years it doesn’t matter,” Bagley says. “Like last year, [when streams] flowed all year.”

Water rights were first written into law in Idaho’s State Constitution in 1890. Over a hundred years ago, lawmakers created a system to divvy up the water among farmers that was based on priority dates and beneficial use (see the Water Rights Dictionary on page 45). The purpose was to protect farmers who spent the time and money to dig canals and divert the water to flood irrigate their farms. These farmers needed to be guaranteed that a farmer upstream wasn’t going to build a canal later and divert the water for his or her own use. This is a reason why water rights are established as real property rights and are not owned by the farmer.

The implications of that system and the priority dates flow through Teton Valley almost every summer. Because water rights are based on prior appropriation, known as “first in time, first in right,” the farms that were established earliest have senior rights to the water. This is virtually all the areas west and south of Teton Valley, leaving the local farmers with junior rights.

In the early years, establishing a right to water was as simple as posting a notice at the point where the farmer was diverting it from the stream, and then reporting it at the county recorder’s office, to establish the priority date. Today, securing water rights for surface water requires an application, permit, and license procedure. What started as a way to protect farmers’ investments, water rights are now a complex system of balancing needs and priorities. The fledgling Idaho Legislature could have never taken into account the many uses that would be competing for water over one hundred years later. Laws were established when there was a singular use for water: irrigation. Not to mention, the 1900 Idaho census reported a state population of just over 100,000. Population growth and a greater understanding of the environment have been the catalysts for changing water rights over the years.
"Having come together with the group, the most important thing we realized is that we can work together." – Lynn Bagley
The Teton River is a vital resource for a host of uses and users, from irrigation to recreation.

**THE TETON RIVER IS A VITAL RESOURCE FOR A HOST OF USES AND USERS, FROM IRRIGATION TO RECREATION.**

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**Water Rights Dictionary**

**Prior appropriation** – First in time, first in right. The water rights that were filed first are given priority for water.

**Conjunctive management** – Managing water uses with the recognition that ground and surface water are closely connected.

**Futile call** – When the water in the tributaries or streams will not make it to the senior rights holder due to a losing reach of stream, the junior rights holder can continue to divert water.

**Senior rights** – The older water right receives water first in times of low flow.

**Junior rights** – In times of low water, the younger water right relieves water to senior right holders.

**Beneficial use** – A water right can be used for irrigation, residential or municipal needs, fisheries, recreation, and hydropower.

**Losing reach of stream** – When a streambed loses water as it moves downstream due to absorption in the streambed.

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Do I have a water right or canal share?
From Friends of the Teton River

You may have acquired a valid water right along with your land if:
• Water was used on your property before you acquired it;
• The person you acquired the property from did not “reserve” the water right in the deed conveying the property to you; or
• The water right hasn’t been forfeited due to five or more years of non-use (for canal companies, this would be not paying assessment).

How to know if you have a water right/share:
• Realtor/title company;
• Deed should specify details of any rights/shares; or
• Idaho Department of Water Rights searchable database.
A change in ownership needs to be filed with the Idaho Department of Water Resources or the canal company.

Why is this all important?

Water is Life

From vibrant backyards and second cuts of hay to spawning cutthroat trout, the lifestyle, economy, and culture of Teton Valley are intimately tied to water and the rights to it. All stakeholders can agree on this.

Yet, the issues surrounding water rights and the competing uses are complex. Cooperation is certainly not ubiquitous, but a growing number of local leaders are recognizing the need to work together. “In the end, we all want a healthy environment and economy,” Bagley acknowledges. “It’s better to work out our differences than to work through a lawsuit.”

Farmer or fisherman, conservationist or homeowner, every user understands the importance of having a water supply when needed. In Teton Valley, this common ground has brought a number of different users to the same table. For the work of people like Bagley and Verbeten, this has created the opportunity to change the paradigm that water is for fighting over, and to set an example that cooperation is the new conversation.