Systems in Flow

Water Rights in Teton Valley

BY LIZ ONUFER

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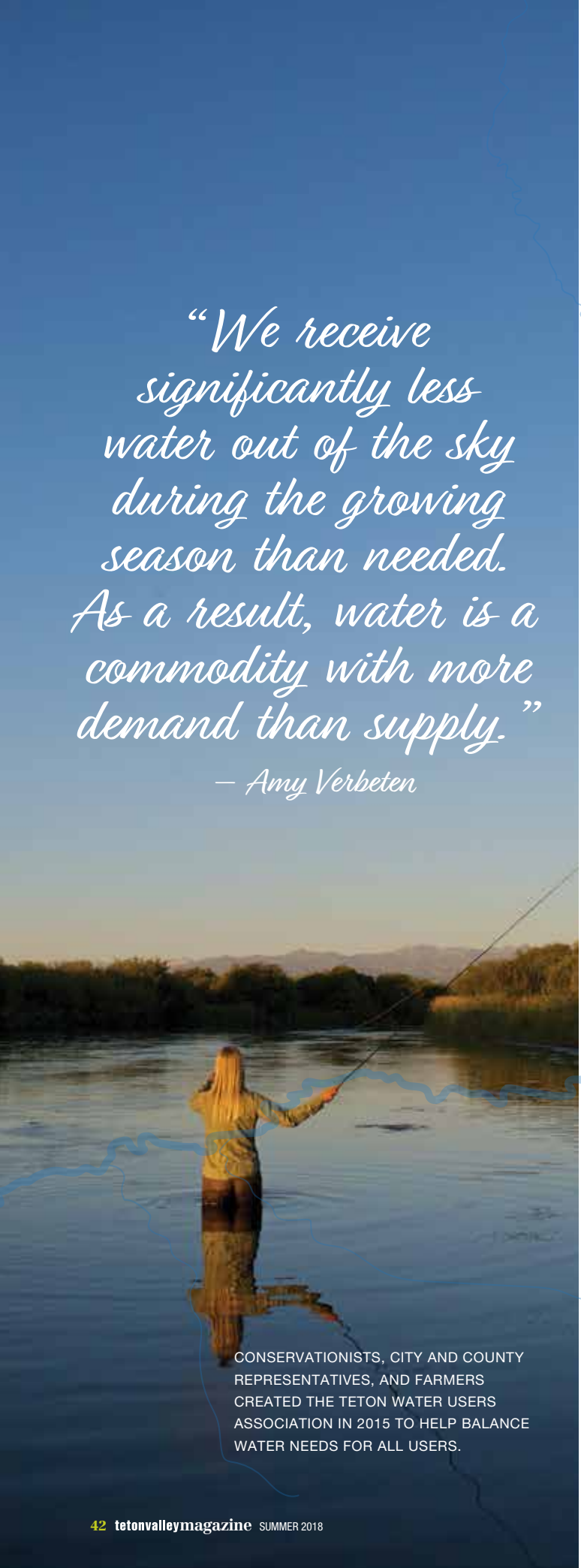

CONSERVATIONISTS, CITY AND COUNTY REPRESENTATIVES, AND FARMERS CREATED THE TETON WATER USERS ASSOCIATION IN 2015 TO HELP BALANCE WATER NEEDS FOR ALL USERS.

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.

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WATER RIGHTS WERE FIRST MADE A LAW IN 1890, PROVIDING A SYSTEM TO DIVVY UP WATER AMONG FARMERS.

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

How has the system changed?

The Progression of Legislation

In 1978, the Idaho Minimum Instream Flow Program expanded the definition of "beneficial use" from irrigation to include fisheries, hydropower, and recreation. This change in recognition has brought a number of new users to the table. Organizations like Friends of the Teton River are working on initiatives to support healthy streams and fisheries, while balancing the needs of agriculture. The hope is that, through recognizing and respecting water's impact on entire ecosystems, more informed decisions can be made about water use.

A more recent recognition in ecosystem health has been the intimate tie between surface and ground water. When technology advanced and drilling wells became an option, people were able to pull up ground water. Over time, this began to dry up streams, the surface water, in some places. For decades, ground and surface water sources were managed independently of one another. Only in 1994 did the Idaho Legislature legally recognize the connection between the two, leading the movement in conjunctive management. Today, the water is managed in such a way that recognizes the connection between ground and surface water. "Conjunctive management to provide sustainable flows makes a lot of sense," Bagley says.

"Idaho is ahead of the curve in conjunctive management," Verbeten adds.

To help ensure all water is used to the best benefit, the Idaho Department of Water Resources has been operating the Water Supply Bank since 1979. (Although the system of leasing and renting water had been around since the 1930s, it was formally recognized by the Idaho Legislature only in the late seventies.) The supply bank provides an opportunity for unused water rights to be rented to users (or uses) who do not have enough water to meet their needs. People who are using less than their allotment and enroll in the supply bank benefit in two ways: They receive lease payments for their unused water, and they are protected from forfeiting their rights for non-use. At the other end, people (or streams) who are short water have a rental pool to ensure their water needs are met.

How does this all play out today?

Water Rights in Teton Valley

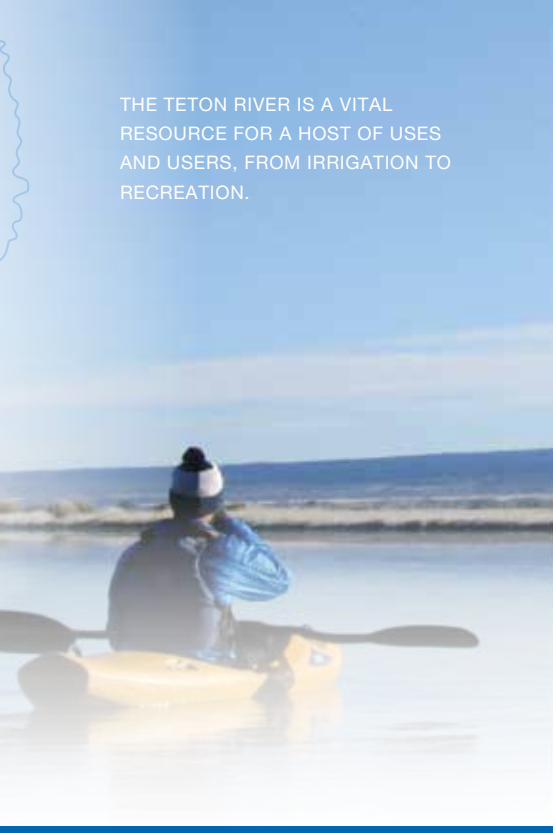
The concept that water is available for purchase or lease, and can be transferred from one place to another, is one that saves the livelihood of many farmers in Teton Valley. When water starts to get low and the senior water rights take precedence, some local farmers lease or purchase water from storage in Island Park Reservoir. The water from Island Park is diverted into the cross-cut canal that flows into the Teton River. This means senior rights holders down river are still receiving their full allotment, while farmers like Lynn Bagley, who get all their water upstream of the cross-cut, can continue to divert to their farms. "Otherwise, we need to turn our water off," Bagley says.

The futile call is another lifesaver for many Teton Valley farmers. In certain situations, junior rights holders may continue to divert water even when farmers downstream have the senior rights. Teton Valley irrigators who divert water above a losing reach of stream can make a futile call. This grants the junior rights to stay on, despite the senior rights downstream, when water does not flow on the surface due to streambed absorption. "A number of irrigators in Teton Valley live and die by the futile call," Verbeten says.

But it's not just the farmers and fishermen in Teton Valley seeking to use water. As land began to be developed, irrigation districts and canal companies, like the Trail Creek Sprinkler Irrigation Company in the southern end of the valley, have had to adapt. These companies were established to manage and deliver water rights for a collective group of shareholders who pay annual assessments to support operation and maintenance. The water is distributed through an incredible, but aging, infrastructure of gravity-fed underground pipelines and pressurized systems. While originally designed to support farmers, the system now distributes water to a patchwork of agricultural and residential properties.

Shareholders receiving water from these irrigation districts do not hold the water rights; rather, their annual assessment allots them a share of water, which is managed by the irrigation district. David Hudacsko, residential homeowner and Brookside Hollow HOA president (a subdivision in the Trail Creek Sprinkler Irrigation Company), appreciates being able to enjoy his green backyard with his family, and knows how important these shares of water are in helping his neighbors water lawns, trees, and gardens. But he also acknowledges the competing needs and the challenges of balancing demand versus supply. "When you really boil it down, ask yourself, 'Does your lawn need to be bright green while farmers' crops or livestock struggle?'" Hudacsko poses. "And at the same time, the homeowners deserve the right to preserve their investments in their property and maintain their preferred way of life. It's a constant question of perspective and situational assessment."

PHOTO: COURTESY OF FTR



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

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.

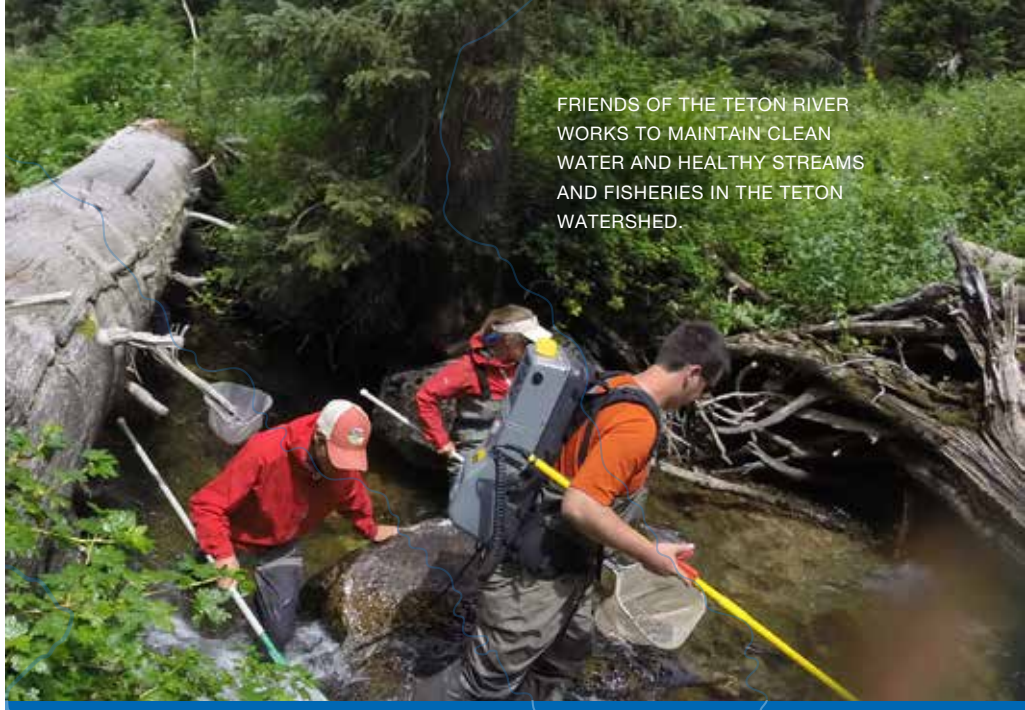
Futile call – When the water in the tributaries or streams will not make it to the senior rights holder due to a losing reach of stream, the junior rights holder can continue to divert water.

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 relegates 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.



FRIENDS OF THE TETON RIVER WORKS TO MAINTAIN CLEAN WATER AND HEALTHY STREAMS AND FISHERIES IN THE TETON WATERSHED.

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. tv

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