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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

COTTONWOOD ENVIRONMENTAL LAW
CENTER, MONTANA RIVERS, AND
GALLATIN WILDLIFE
ASSOCIATION,

Plaintiff,

vs.

BIG SKY WATER AND SEWER
DISTRICT AND BOYNE RESORTS,

Defendant.

) Volume II of III
)
) Civil Docket
) No. CV-20-28-BU-BMM

Transcript of Trial with a Jury

Missouri River Federal Courthouse
125 Central Avenue West
Great Falls, MT 59404
Tuesday, April 26, 2022
8:47 a.m. to 5:00 p.m.

BEFORE THE HONORABLE BRIAN MORRIS
UNITED STATES CHIEF DISTRICT COURT JUDGE

Yvette Heinze, RPR, CSR
United States Court Reporter
Missouri River Federal Courthouse
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Proceedings recorded by machine shorthand
Transcript produced by computer-assisted transcription

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APPEARANCES

PRESENT ON BEHALF OF THE PLAINTIFFS:

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ALSO PRESENT:

Bill Bartlett
Ron Edwards

RON EDWARDS - DIRECT EXAMINATION BY MR. RAUCHWAY

1 (Complying.)

2 BY MR. RAUCHWAY:

3 Q. Let's talk about leakage from the district's storage
4 ponds. You were here yesterday when Mr. Aley was testifying,
5 weren't you?

6 A. I was.

7 Q. And you saw his water budget that concluded that the
8 storage ponds leaked 21 million gallons in 2020?

9 A. I did.

10 Q. Do you think there's any way that's right?

11 A. I do not.

12 Q. Okay. Why is that?

13 A. Well, the amount of leak loss he was claiming was
14 21 million gallons. That's bigger than my entire Pond 3
15 volume. That's 18 million and change. If we had that kind of
16 leak loss, we would see that. My operators would see that,
17 that something was wrong. And you couldn't have that much leak
18 loss without seeing it.

19 Q. Are you telling the jury that these ponds don't leak at
20 all, not even one drop?

21 A. No. They do and can leak, and that's recognized by the
22 department's rules that these ponds can leak some.

23 Q. Are you familiar with the master spreadsheet where the
24 district keeps all of its data, the all sewer flow spreadsheet?

25 A. I am.

RON EDWARDS - DIRECT EXAMINATION BY MR. RAUCHWAY

1 Q. Let's put up Exhibit 12, which is plaintiff's exhibit, the
2 spreadsheet Mr. Aley worked from. Let's also put up Mr. Aley's
3 table, and we'll see if we can correct his water balance.

4 (Complying.)

5 BY MR. RAUCHWAY:

6 Q. Let's start with line 1, sewage inflow. That's the
7 district's data; right?

8 A. Yes. Everybody agrees that's the number for 2020.

9 Q. Okay. So that number is correct. Let's keep that number
10 there.

11 Now, line 2 is annual precipitation. Do you recall
12 Mr. Aley's testimony that precipitation could vary somewhere in
13 the order of 20 percent from year to year?

14 A. Yes.

15 Q. And does that accord with your experience of working in
16 Big Sky for 26 years?

17 A. Absolutely. For example, this year, our snow pack has
18 been running 70 to 74 percent. This last few weeks, we're
19 seeing a little more precipitation, but it can vary easily that
20 much.

21 Q. Well, let's increase the number by just 15 percent. Do
22 you have a calculator up there with you?

23 A. I brought this. I did not bring my calculator. There's
24 one on the desk.

25 MR. RAUCHWAY: May I approach, Your Honor?

RON EDWARDS - DIRECT EXAMINATION BY MR. RAUCHWAY

1 THE COURT: Give it to the clerk, please.

2 (Handing calculator.)

3 THE WITNESS: So if we increase line 2 by 15 percent,
4 that's 11.18.

5 BY MR. RAUCHWAY:

6 Q. Okay. Let's fill that in?

7 And then line 3 is just 10 percent of line 2; right?

8 A. Right. So just move the decimal one spot to the left.

9 There you go.

10 Q. And if we do some simple addition to get all the water
11 inputs of lines 1 through 3, what do we get there?

12 A. 183.62.

13 Q. Okay. So that's all the water into the ponds. Let's talk
14 about the change in storage. That amount changes a lot in
15 December and January, doesn't it?

16 A. It does. And December is one of our biggest months, the
17 week of Christmas to New Year's, one of our biggest traffic
18 weeks of the year.

19 Q. So you could get a much different number there for that
20 change in storage just by using slightly different dates;
21 right?

22 A. Yes, correct.

23 Q. Now, Mr. Aley used December 9th of 2019 to December 2020.
24 And if we look at Exhibit 112, the Pond Depth Master Pivot
25 Table -- maybe you recall from Mr. Aley's testimony yesterday

RON EDWARDS - DIRECT EXAMINATION BY MR. RAUCHWAY

1 that we also have measurements from January 17th of 2020 and
2 January 15th of 2021?

3 A. Yes, he did show that.

4 Q. And if we actually use those dates instead of Mr. Aley's
5 dates, would that be more accurate?

6 A. I think it would be. So you are looking at -- I think
7 it's 364 days difference between those two. So it's closer to
8 a full calendar year, being 365. The dates he used I think was
9 362 days apart.

10 Q. Okay. So if everyone will bear with us for a moment here,
11 what was the measurement in feet as of January 17th of 2020 of
12 pond water?

13 A. 6.99.

14 Q. Okay.

15 A. And when you say, "feet," so that's a measurement of the
16 water that's in the ponds. My guys go out and take these
17 periodic measurements. So from the feet, we've got a model
18 that tells you what that volume of water is based on the depth
19 of the pond.

20 Q. The same model as Mr. Aley's?

21 A. Same model, yes.

22 Q. Okay. So that's January 17th, 2020. Let's look at
23 January 15th of 2021. And the measurement for that date?

24 A. 9.67.

25 Q. Let's switch over to the Pond 1 tab where we have the

RON EDWARDS - DIRECT EXAMINATION BY MR. RAUCHWAY

1 conversion model. And 9.67 feet, what does that convert to?

2 A. 16.12.

3 Q. We didn't quite run the -- it didn't update. 1.67 --

4 A. Is 23.64 million gallons.

5 Q. If we put 6.99 in there, what do we get?

6 A. 16.12.

7 Q. All right. And if we take the difference in those values,
8 just like Mr. Aley did, what do you get?

9 A. What was my first number there? I don't have any scratch
10 paper, so I didn't write down the first number.

11 Q. 23.64 and 16.12.

12 A. 7.52 million gallons.

13 Q. All right. And if we go back to Mr. Aley's chart there,
14 where does that number go?

15 A. That goes on line 5.

16 Q. All right. In place of the 12.34; right?

17 Okay. Let's move on to water outputs. Lines 9 and
18 10, I don't know if we agree on the allocation between those
19 loops, but the total amount there is a metered number; right?

20 A. Yes.

21 Q. Okay. So we can accept those numbers for this purpose.
22 And then line 11, that's the amount of water pumped
23 to Yellowstone and Spanish Peaks for -- should be for the
24 entire year; right?

25 A. It should be. That's just the irrigation season.

RON EDWARDS - DIRECT EXAMINATION BY MR. RAUCHWAY

1 Q. The number Mr. Aley has is just the irrigation season?

2 A. Yes.

3 Q. All right. So let's go back to the tab, YCSP flows.

4 Okay. Now, the Yellowstone Pump Station 1 column,
5 that shows the district's pumping from the storage ponds to
6 Yellowstone in 2020, before irrigation season started; right?

7 A. Yes.

8 Q. So mercifully, Excel will add this up for us if we
9 highlight it. So can you tell us what the total amount in
10 millions of gallons that were pumped from the storage ponds to
11 the Yellowstone Club in 2020, before irrigation season started?

12 A. It's 18.097. Right below the tab you can see the total
13 that's shown there.

14 Q. The sum there?

15 A. Yep.

16 Q. Okay. And if we go back to the top of the spreadsheet,
17 you'll see there's another column for Spanish Peaks Pump
18 Station 1. That shows the district pumping to Spanish Peaks
19 from its storage ponds after irrigation season ended in 2020;
20 right?

21 A. Yes.

22 Q. All right. So let's highlight that and see what we come
23 up with.

24 A. That total is 12.067.

25 Q. Okay. So if we add up 18.097 for Yellowstone, 12.067 for

RON EDWARDS - DIRECT EXAMINATION BY MR. RAUCHWAY

1 Spanish Peaks, and the 16.212 that Mr. Aley had for just the
2 irrigation season, what do we get?

3 A. 46.376 million gallons.

4 Q. Okay. Let's replace that in line 11.

5 Line 12, I think we can agree with that. And then,
6 line 13, this is Mr. Aley's assumption that the ponds are
7 leaking the maximum amount allowed by DEQ; right?

8 A. Right.

9 Q. Which he calculated to be 2.89 million gallons per year.
10 You think that's right?

11 A. No.

12 Q. Okay. And let's make sure we're communicating here. Do
13 you think it's correct that the ponds are leaking the maximum
14 amount that DEQ allows?

15 A. I don't think so, no.

16 Q. So what happens to this water budget if we take that
17 number out?

18 A. If you make the zero -- you'll get a true reflection of
19 the total leak loss in your water budget if you remove that.

20 Q. Let's do that.

21 Okay. Some more addition. What if we add up all of
22 the outputs now, lines 9 through 13? What do we get there.

23 A. 175.772.

24 Q. I got something a little different. Let's try that again.
25 So 9, 10, 11, and 12.

RON EDWARDS - DIRECT EXAMINATION BY MR. RAUCHWAY

1 A. 175.83.

2 Q. All right. Let's put that in there.

3 And then if we do this arithmetic on the water
4 budget, we take the inputs, we back out the change in storage
5 and subtract the outputs, what do we end up with?

6 A. .27.

7 Q. And that's the total; right? That's not in excess over
8 any allowed amount. That's the total amount of leakage?

9 A. Yes.

10 Q. If I'm doing my arithmetic right, that's less than
11 10 percent of Mr. Aley's calculation of what's allowed by DEQ,
12 the 2.89 million gallon number; right?

13 A. That's right.

14 Q. Does that number seem reasonable to you, .27, in light of
15 your experience running this facility?

16 A. It does.

17 Q. You've had over 35 years of experience running government
18 water treatment works, haven't you, Mr. Edwards?

19 A. Yes.

20 Q. Do you believe the Big Sky Water and Sewer District is
21 illegally discharging pollutants?

22 A. I do not.

23 MR. RAUCHWAY: No further questions, Your Honor.

24

25 THE COURT: Thank you.

RON EDWARDS - CROSS-EXAMINATION BY MR. MEYER

1 Mr. Meyer, cross-exam.

2 CROSS-EXAMINATION

3 BY MR. MEYER:

4 Q. Mr. Edwards, you said that the water in the holding ponds
5 is not treated sewage; is that right?

6 A. The water -- when you say, "holding ponds," which pond are
7 you referring to?

8 Q. All of them, I suppose.

9 A. Well, there's a difference. The aeration pond is
10 prefiltration. Pond 3 and Pond 1 are postfiltration
11 chlorination. So they are different.

12 Q. So Pond 2 is treated sewage?

13 A. Pond 2? There's Pond 1 --

14 Q. The aeration pond?

15 A. The aeration pond is water that's come from the SBR plant.
16 So it's gone through screening through the SBR process. It's
17 prefiltration water, but it's not untreated sewage.

18 Q. Can you put up Exhibit 103, please.

19 While we're waiting, Mr. Edwards -- there we go. Can
20 you scroll down, please. Next one. Next one. One more right
21 there.

22 (Complying.)

23 BY MR. RAUCHWAY:

24 Q. So would you drink that?

25 A. I would not drink that, no.

RON EDWARDS - CROSS-EXAMINATION BY MR. MEYER

1 Q. Okay. So it's possible --

2 A. That's the aeration pond.

3 Q. It's possible that's leaking into the Gallatin River?

4 A. Based on what I see, no, I don't think that is leaking.

5 We don't have underdrain under the aeration pond.

6 Q. Why is the underdrain put in place?

7 A. To divert groundwater through the area so we don't float
8 our liners. But the underdrain does not go under the aeration
9 pond.

10 Q. And how old is the aeration pond liner?

11 A. That was put in, in 2002, as part of the second phase
12 improvements. Pond 1, Pond 3 went in in '96, '7. We needed
13 the new SBR plant online before we could reline the aeration
14 pond. So this is actually a newer liner than what went in
15 under Pond 1 and Pond 3.

16 Q. So the newest liner is 20 years old?

17 A. 2004, so 16 years -- 18 years, the aeration pond liner.

18 Q. Oh, I thought you said 2002. So 16, 18 years. Those
19 liners can get worn and torn over 18 years; is that right?

20 A. Yes, liners can get tears in them over 18 years.

21 Q. And you just determined that there's .27 million gallons
22 of treated sewage -- or whatever you want to call it -- leaking
23 from these liners; is that right?

24 A. Based on the estimate we just went through on the water
25 budget, it's possible you could have .27 over the course of a

RON EDWARDS - CROSS-EXAMINATION BY MR. MEYER

1 year, which is still within DEQ standards on allowable leak
2 loss, yes.

3 Q. Well, the DEQ just said if the liners are ripped, they
4 need to be fixed; right?

5 A. And we do that. We intentionally inspect our liners.
6 We've done repairs on them over the years. My operators
7 visually look at those. We've hired liner crews in to fix
8 those repairs. We haven't not fixed any tears in the liners
9 since they were installed.

10 Q. So why are you leaking .27 million gallons of the stuff
11 per year?

12 A. That's based on the numbers in the data we see that we
13 just walked through, that it's possible there is some leak loss
14 that's going into the groundwater.

15 Q. Well, it's not just possible. It's definitely happening;
16 right? Because we put dye in the holding ponds and found it in
17 the river. So we want to be very clear here.

18 A. I'm not arguing there's no leak loss. The numbers we just
19 walked through support that.

20 Q. Okay.

21 A. Yeah.

22 Q. So we can have a quarter million gallons of this in the
23 Gallatin River?

24 A. Not necessarily in the Gallatin River.

25 Q. Where would it go?