

EXHIBIT 9

From: John Meyer <john@cottonwoodlaw.org>
Sent: Monday, September 20, 2021 8:03 PM
To: Jost, Richard <RJost@mt.gov>; Anderson, Chad <chada@mt.gov>; Pettis, Aaron <APettis@mt.gov>
Subject: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer District

Hi Chad, Rich, and Aaron,

I hope this finds you well.

I am emailing about any enforcement updates regarding the Big Sky Water and Sewer District.

Cottonwood has officially filed a complaint seeking enforcement.

I have attached an expert technical memo that was prepared for Big Sky that states (Page 3) over irrigation of the golf course is the largest source of nitrogen into the West Fork.

Chad asked me to direct communications to Aaron and when I spoke with Aaron he didn't seem to know he was on point for enforcement.

Any update you can give is most appreciated.

Thank you,

John

John Meyer
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(406) 546-0149

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Pettis, Aaron
RE: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer District
To: John Meyer

October 5, 2021 at 4:59 PM



Siri Found a Contact
Aaron Pettis
apettis@mt.gov

Add

Hi John,

I've been up to my eyeballs with deadlines recently, so I'm sorry about the delay in getting back to you. Our enforcement folks are taking a look at the complaint and the information you provided. Depending on what they find out, I may be reaching out to you for additional clarification or information. Since you're an attorney and there is ongoing litigation, I'd appreciate it if you kept directing your comments toward me (which is why I've removed Chad and Rich from this email chain).

Thanks,

Aaron

Aaron Pettis
Attorney, DEQ
APettis@mt.gov
444-1422



Pettis, Aaron
Re: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer District
To: John Meyer

November 2, 2021 at 3:54 PM

Hi John,

Our enforcement folks have taken a look at the information you provided with your complaint but need to review further data. Could you please provide us with the full sampling and analysis plan, the full final report, chain of custody documents for the samples collected, full sample analysis results, and copies of all field notes and photographs taken? We would appreciate it if you could get us that information by the end of the month.

Please let me know if you have any questions.

Thanks,

Aaron



John Meyer

Re: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer District
To: Pettis, Aaron

November 2, 2021 at 4:37 PM

Hi Aaron,

I have attached the reports from our expert that provide the methodology, analysis, and results. The Plaintiffs have alleged there are two point sources: the holding ponds and the golf course.

Holding ponds

All parties agree the holding ponds are leaking. The Big Sky Water and Sewer District retained a lab separate from the Plaintiffs that confirmed the holding ponds are leaking. The results are attached as Des' testing.

There is disagreement as to how much the holding ponds are leaking. Plaintiffs' expert determined they are leaking 21.12 million gallons per year (76-2 at page 5-6). Defendants' expert determined the amount of leakage was "de minimis." (Big Sky expert report). The law is clear that there is no "de minimis" exception for point source—all point sources require a permit. Plaintiffs expert was deposed and explained why Defendant's methodology for calculating leakage cannot be used—let me know if you need that info.

Golf Course Irrigation

The Meadow Village Golf Course is irrigated using treated effluent. There is a drain on the golf course called Chapel Springs. Big Sky's expert report indicates the Chapel Springs drain discharges 40 gallons/minute to the West Fork. (ECF P. 26). The report also states nitrogen is only found in the Chapel Springs discharge during times of irrigation (Figure 13). The Water and Sewer District has tried to claim the nitrogen contained within the discharge comes from a leaking septic at Firelight Meadows. If true, we should see nitrogen in the discharge year round, not only during the months when the golf course is irrigated.

Samples were collected by MSU students under the supervision of Clint Nagel, a retired hydrological technician for the U.S.G.S.

Please let me know if there is anything else you need.

John



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John Meyer

Cottonwood v. Big Sky Water & Sewer
To: Pettis, Aaron

December 16, 2021 at 11:39 AM

Hey Aaron,

I hope you are well.

Has the DEQ looked into the Water and Sewer District's Clean Water Act violations?

The Gallatin County Commissioners are still approving new development in Big Sky that will connect to the Water and Sewer District, the Water and Sewer District has admitted the holding ponds are leaking, a researcher unrelated to any party has published a technical report detailing the pounds of nitrogen being over applied to the golf course, and the West Fork is 303(d) listed because of nitrogen pollution—meaning they cannot apply for a permit.

The DEQ received a copy of our 60 Day Notice of Intent to Sue over a year ago and we filed a complaint and sent supporting documentation the DEQ several months ago.

Something has to give...

Thanks,

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Pettis, Aaron

RE: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
To: John Meyer

December 16, 2021 at 6:46 PM



Hi John,

I know that enforcement has been looking into your complaint, but I don't know the status of it today. I will touch base with them. I also was recently looking at your last email but was unable to open the links to the supporting documents. Would you mind resending those to me, preferably as PDFs if possible?

Thanks,

Aaron



John Meyer

Re: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
To: Pettis, Aaron

December 18, 2021 at 11:04 PM



Hi Aaron,

I have attached the SJ order that Judge Morris issued Friday afternoon.

The Big Sky Water and Sewer District has taken the position that the DEQ allows leakage from the holding ponds (see page 14 SJ Order). Has the DEQ published legal documents or taken the position that the Water and Sewer District holding ponds are allowed to leak into the West Fork without a MPDES permit? The Supreme Court has held that any addition of any pollutant from any point source requires a NPDES permit. Big Sky is discharging from a pipe into the West Fork without a permit and is claiming it is permissible under state law. Is that true? Judge Morris has asked where the DEQ is on all of this.

Are you available to talk this upcoming week of December 20th?

Thank you,

John



SJ Order.pdf
239 KB

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John Meyer

Re: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
To: Pettis, Aaron

December 16, 2021 at 8:24 PM



Hi Aaron,

I have attached our Expert Report that determined the holding ponds are leaking by placing flourescein dye in the holding ponds and finding it in the West Fork 26 hours later. I have also attached a technical Report from a third party that says the golf course is being over irrigated and 1,900 pounds of nitrogen may be reaching the West Fork.

Please let me know what else you need.

John



Expert Rebuttal
.pdf
1.4 MB



Exhibit 9
(Techni...m).pdf
2.7 MB

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Pettis, Aaron

Re: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
To: John Meyer

December 22, 2021 at 12:53 AM

Hi John,

Thanks for sending that stuff over. We'll take a look at it. I'm not available this week, but let me check with some of my colleagues, who are better versed in Clean Water issues, about their availability next week.

Thanks,

Aaron



Pettis, Aaron

messed call
To: John Meyer

January 12, 2022 at 1:05 AM



Hi John,

I got a notification that you left a message but haven't been able to listen to it. I'll be in and out all day Wednesday but should be around on Thursday or Friday. Are you around later this week?

Thanks,

Aaron

★  **John Meyer**
Re: missed call
To: Pettis, Aaron

January 12, 2022 at 1:16 PM

Hi Aaron,

I am around Friday. When is a good time for us to talk?

Here is what I need for us to discuss:

What is the status of the complaint that was filed last year against the Big Sky Water and Sewer District? I was just reviewing the 30(b)(6) deposition with Terry Campbell and he said the leakage allowance in question comes from 1998 and reflects the “limits of detection” at the time it was written. ECF No. 76-6 at 72: 10-15 (attached). The limits of detection have changed, as evidenced by our testing.

The Ninth Circuit and Supreme Court have both said there is no de minimis exception to the CWA. The Ninth Circuit has previously rejected another CWA exception from Montana as violating the Supremacy Clause of the U.S. Constitution. *Northern Plains Resource Council v. Fidelity*, 325 F.3d 1155, 1164-65 (9th Cir. 2003) (“Montana has no authority to create a permit exemption from the CWA for discharges that would otherwise be subject to NPDES permitting process.”)

Most importantly, we believe the leakage from the underdrain pipe below the Big Sky holding ponds far exceeds the outdated standard. Has the DEQ completed a water balance that Mr. Campbell indicated would provide more definite numbers (ECF No. 76-6 at 136:20-25)? If not, can you tell me when that will happen?

Thank you,



76-6 (DEQ Depo).pdf
1 MB

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AP  **Pettis, Aaron**
Re: [EXTERNAL] Re: missed call
To: John Meyer

January 14, 2022 at 12:17 AM



Hi John,

I had a personal issue come up and will likely be out of the office tomorrow. I also want to touch base with my folks concerning your questions below. What does your next week look like?

Thanks,

Aaron

★  **John Meyer**
Re: [EXTERNAL] missed call
To: Pettis, Aaron

January 14, 2022 at 5:03 AM

I hope you are able to get things taken care of.

I am free next week. Please provide some times for a call.

Thank you.

John

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★  **John Meyer**
Re: [EXTERNAL] missed call
To: Pettis, Aaron

January 18, 2022 at 11:28 AM

Hi Aaron,

I wanted to follow up regarding the holding ponds at Big Sky. The plaintiffs and defendant agree that a mass balance can be used to determine whether the holding ponds are leaking. Plaintiffs' expert completed that analysis and determined the holding ponds are leaking 21.12 million gallons of treated waste water per year. The Defendants never completed a mass balance analysis.

Several new developments have been approved, which will exacerbate the problem. When will the DEQ address the Plaintiffs' complaint or communicate what it is being done?

Thank you,

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Pettis, Aaron
Re: [EXTERNAL] missed call
To: John Meyer

January 26, 2022 at 6:48 AM

Hi John,

My availability has been poor the last couple of weeks, but I'll be around Friday afternoon if that works for you.

Thanks,

Aaron



John Meyer
Re: [EXTERNAL] missed call
To: Pettis, Aaron

January 26, 2022 at 12:52 PM

Hi Aaron,

I'll be in the field Friday.

What is your scheduling looking like for next week?

Thank you.

John

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[See More from Pettis, Aaron](#)



John Meyer
Re: [EXTERNAL] missed call
To: Pettis, Aaron

January 29, 2022 at 7:34 AM



Hi Aaron,

The Big Sky Water and Sewer District informed me yesterday that they are speaking directly with Terry Cunningham. This is inappropriate considering you have directed me to only communicate to the DEQ through you. Please direct Terry Cunningham and anyone else with the Montana DEQ to stop communicating with the Big Sky Water and Sewer District unless it is through you.

Thank you.

John

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[See More from Pettis, Aaron](#)



Pettis, Aaron
RE: [EXTERNAL] missed call
To: John Meyer

January 31, 2022 at 6:28 PM


Hi John,

I think you might have sent the email below to the wrong person. Isn't Terry Cunningham the Deputy Mayor of Bozeman? I don't know who his attorney is.

I also asked my folks about the information you sent me back in December. They have taken a preliminary look at it but indicated that they still need a copy of the methodology, analysis, and results. It might be because we were unable to access the file transfer documents. If you have those, please send them as PDFs.

Thanks,

Aaron

★  **John Meyer**
Re: [EXTERNAL] missed call
To: Pettis, Aaron

January 31, 2022 at 10:17 PM

Hi Aaron,

You are correct. I meant Terry Campbell. I have attached the discovery disclosure from Big Sky Water and Sewer.

Again, it is inappropriate for Big Sky to be speaking with him when I have been instructed not to discuss the case with anyone from enforcement besides you.

The appendices contain our expert's resume, the dye analysis results, procedures and methodology. The water balance analysis that Mr. Campbell referenced during his deposition is contained on pages 11 and 13 of the Final Aley Report.

When can we discuss?

Thank you.

John

★  **John Meyer**
Re: [EXTERNAL] missed call
To: Pettis, Aaron

January 31, 2022 at 10:51 PM

Hi Aaron,

I have sent you a link to a dropbox folder that contains the files you requested (email was too large).

The appendices contain our expert's resume, the dye analysis results, procedures and methodology. The water balance analysis that Mr. Campbell referenced during his deposition is contained on pages 11 and 13 of the Final Aley Report.

You are correct regarding Terry Cunningham—I meant Terry Campbell. The Dropbox folder contains the discovery disclosure from Big Sky Water and Sewer that indicates it seems to be talking with him. Again, it is inappropriate for Big Sky to be speaking with Mr. Campbell when I have been instructed not to discuss the case with anyone from enforcement besides you.

When can we discuss?

Thank you.

John

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★  **John Meyer**
Re: [EXTERNAL] missed call
To: Pettis, Aaron

February 4, 2022 at 3:07 PM




Hi Aaron,

I wanted to reach out again and see if you have asked enforcement personnel from DEQ not to speak with the Big Sky Water and Sewer District?

I have been asking the DEQ to take action for months on Cottonwood's complaint and it has not done anything. The DEQ is neglecting its responsibilities.

John

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 **Pettis, Aaron**
Re: [EXTERNAL] missed call
To: John Meyer

February 8, 2022 at 12:27 AM



John,

I'll be around Thursday from 11:30 to 3 and Friday after 12:30 if you want to chat.

Thanks,

Aaron

★  **John Meyer**
Re: [EXTERNAL] missed call
To: Pettis, Aaron

February 9, 2022 at 11:47 PM



Friday afternoon works well. What time?

Thanks,

John

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Pettis, Aaron
 Re: [EXTERNAL] missed call
 To: John Meyer

February 11, 2022 at 10:37 AM

Hi John,

How's 3:30? I'm out of the office today, so it would be easier for me to call you. Is the number in your signature block the number I should use?

Thanks,

Aaron



John Meyer
 Re: [EXTERNAL] missed call
 To: Pettis, Aaron

February 11, 2022 at 3:31 PM



Hi Aaron. Yes, please call me (406) 546-0149.

Thank you.

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John Meyer
 Cottonwood v. Big Sky Water & Sewer
 To: Aaron Pettis

February 12, 2022 at 12:03 AM



Hi Aaron,

I have attached Big Sky's supplemental Rule 26 Disclosure, which references communications between Mr. Campbell and the Water & Sewer District.

I look forward to chatting next week about the results of the DEQ's water balance analysis.

Have a good weekend.

John



2022 0128 Big
 Sky W...res.pdf

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Pettis, Aaron
 RE: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
 To: John Meyer

February 18, 2022 at 7:17 PM



John,

I can't speak for Jon Rauchway, but everything else in that disclosure looks like he is just listing all the same things that he listed in the 30(b)(6) notice, which is why he phrases it as "communications . . . and any other topics addressed in Mr. Campbell's deposition." It looks to me like he's referring to communications about which you already have deposed Mr. Campbell. Even if that's not the case, I disagree with your assessment that any communications between DEQ staff and Big Sky would be untoward. DEQ staff carrying out their responsibilities as a regulatory agency by communicating with a regulated entity is fundamentally different from an attorney having ex parte communications with staff who are represented by counsel while there is ongoing litigation.

As for a water balance study, your recollection of Mr. Campbell's testimony differs from my own. I have, however, forwarded your concerns to my clients. They had other responsibilities this week that precluded them from getting to it, but I hope to touch base with them next week.

Aaron



John Meyer

Re: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
To: Pettis, Aaron

February 18, 2022 at 7:29 PM

Thanks Aaron. We filed a complaint several months ago. It would be great if the MT DEQ could find some time to look into the issue.

I'll check back next week.

Have a good weekend,

John

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John Meyer

Re: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
To: Pettis, Aaron

February 23, 2022 at 11:28 AM

Hi Aaron,

I hope you are well.

I am circling back on our many requests for information regarding Big Sky Water & Sewer District's leaking holding ponds. We filed a complaint several months ago. When will the DEQ perform the Water balance analysis?

Thank you,

John

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Pettis, Aaron

RE: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
To: John Meyer

February 23, 2022 at 5:23 PM

Hi John,

I've forwarded your concerns to my clients and will let you know as soon as I find out.

Thanks,

Aaron



John Meyer

Re: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
To: Pettis, Aaron

March 13, 2022 at 9:11 PM

Hi Aaron,

The federal court has scheduled a Clean Water Act trial against the Big Sky Water and Sewer District on April 25th. Mr. Terry Campbell will be called as a witness. During Mr. Campbell's deposition, he indicated that a water balance would determine the amount of leakage from the holding ponds.

Cottonwood's expert, Mr. Tom Aley, completed the water balance analysis described by Mr. Campbell and determined the holding ponds are leaking 58,000 gallons per day (Attached).

We filed a complaint with the DEQ months ago and it has been total radio silence. Has the DEQ completed the water balance that Mr. Campbell described in his deposition? If the answer is no, when will that happen?

Thank you,

John



76-2 (Aley Rebuttal).pdf.pdf
1.4 MB

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Pettis, Aaron

RE: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
To: John Meyer

March 20, 2022 at 4:34 PM

John,

I again disagree with your assessment of Mr. Campbell's testimony. Nevertheless, thank you for sending Mr. Aley's report, which I have forwarded to my folks to review. My understanding is that a decision is forthcoming shortly.

Aaron

From: John Meyer john@cottonwoodlaw.org
Subject: Re: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
Date: March 24, 2022 at 10:45 PM
To: Pettis, Aaron APettis@mt.gov



Hi Aaron,

I have attached a screenshot of Mr. Campbell's testimony. I read his testimony to say a water balance analysis can determine whether the holding ponds are leaking. Do you disagree with that characterization?

Can you tell me a date of when the DEQ is going to respond to our complaint? This should not be difficult math, but has taken months.

Thank you,

John

4 **Q. (By Mr. Meyer) Okay. Does the DEQ have a**
5 **way of estimating whether the holding ponds are**
6 **leaking?**

7 A. We do. And again, it's mainly a
8 mathematical evaluation of a holding pond that
9 typically results in that conclusion for us.

10 We have not had indication to this date that the
11 Big Sky ponds, for example, needed to be evaluated
12 from a leakage perspective, but we've had other ponds
13 around the state where we've had complaints where
14 we've had obvious, you know, discharge from a lagoon
15 that, as a result, because of a failed liner and
16 leakage, testing has been, has been dictated as
17 something that needs to be done to verify how much
18 leakage is ongoing and whether improvements need to be
19 made.

20 It's really a water-balance analysis. So you're
21 looking at inputs, you're looking at rainfall,
22 precipitation, snow coming into the pond, and you're
23 looking at evaporation as an outtake, and then you're

24 looking at any discharge that takes place during the
25 time frame that you're evaluating, you know, the

Page 136

Cottonwood, et al. vs. Edwards/BSWSD

Terry Campbell
30(b)(6)

August 24, 2021

1 balance of the pond. And if you see substantial
2 differences in that, in that balance allowance, then
3 you, you have to associated that with leakage.
4 Is that clear? Does that make sense?

20 It's really a water-balance analysis. So you're
21 looking at inputs, you're looking at rainfall,
22 precipitation, snow coming into the pond, and you're
23 looking at evaporation as an outtake, and then you're
24 looking at any discharge that takes place during the
25 time frame that you're evaluating, you know, the


Page 136

Cottonwood, et al. vs. Edwards/BSWSD

Terry Campbell
30(b)(6)

August 24, 2021

1 balance of the pond. And if you see substantial
2 differences in that, in that balance allowance, then
3 you, you have to associated that with leakage.
4 Is that clear? Does that make sense?

★  **John Meyer**
Cottonwood v. Big Sky Water & Sewer
To: Pettis, Aaron

April 14, 2022 at 7:53 AM



Hi Aaron,

I hope this email finds you well.

You sent me an email a few weeks ago stating the DEQ would be responding to the complaint re: leaking storage lagoons soon.

Has the DEQ made any determinations re: the complaint/leakage?

Thank you,

John

 **Pettis, Aaron**
RE: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
To: John Meyer

April 15, 2022 at 6:08 PM



John,

My understanding was that they were close to making a decision, but I haven't heard from them recently. I'll have to touch base with them next week to see where they are.

Aaron

[See More from John Meyer](#)

 **Pettis, Aaron**
RE: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer
To: John Meyer

April 17, 2022 at 11:06 PM



John,

I thought I had responded to this email, but I just found it in my draft folder, so I don't know if this is a duplicate or not. You're right that it has been a while and that I thought we'd have an answer a couple weeks ago, but I haven't talked to the enforcement folks recently. I'll touch base with them this week and see where they are.

Aaron



John Meyer

Cottonwood v. Big Sky Water & Sewer (2:20-cv-00028)

To: Pettis, Aaron, Jon Rauchway, Andrea Bronson, Jacqueline R. Papez (jpapez@doneylaw.com) <jpapez@doneylaw.com>

April 3, 2022 at 10:02 PM

Hi Aaron,

I wanted to let you know the district court has set a jury trial date for April 25th in the above-referenced Clean Water Act case. The first phase of the trial is expected to take two or three days. Both sides have listed Terry Campbell as a witness that will be called. I anticipate calling Mr. Campbell to testify on April 26th. We'll have a better idea of scheduling after Tuesday's pretrial conference and I'll follow up with you then.

The District Court recently issued the attached summary judgment order that speaks to DEQ Circular 2.

John



121 SJ Order
(3:30:22).pdf

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John Meyer

Re: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer (2:20-cv-00028)

To: Pettis, Aaron, Cc: Jon Rauchway, Andrea Bronson, jpapez@doneylaw.com

April 22, 2022 at 3:37 PM

[Details](#)

Thanks Aaron.

The Plaintiffs have been waiting approximately six months for a response regarding the formal complaint we filed. Any idea if that will be finished before trial?

Thank you,

John

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John Meyer

Big Sky Leakage Enforcement

To: Susan Bawden, Cc: Clint Nagel, Pat Simmons, William A. Bartlett, Helena Dore, Bella Butler, Aaron Pettis

April 28, 2022 at 12:07 PM

[Details](#)

Hi Susan,

Mr. Campbell from the Montana DEQ testified under oath during a jury trial this week that the Big Sky Sewer District needs to repair ripped liners. Mr. Campbell also testified there is no six inch leakage exception. The Big Sky Sewer District has admitted the liners are ripped.

I have attached recent leakage calculations, which acknowledge a previous miscalculation from 2020 and then use the same equation employed by the District to calculate the holding ponds leaked 16.891 million gallons in 2018 and 18.031 million gallons in 2019.

Are you available to discuss enforcement next week?

Thank you,

John



bigsky-
sewag...et1.pdf
1.1 MB

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John Meyer

Re: Big Sky Leakage Enforcement

To: Susan Bawden, Cc: Clint Nagel, Pat Simmons, William A. Bartlett, Aaron Pettis

May 2, 2022 at 12:04 PM

[Details](#)



Hi Aaron and Susan,

I received a phone call from the head of DEQ's legal last week (Angela Colamaria?) about meeting to discuss the torn liners and the amount of leakage. She said she could not set a date because Aaron was on vacation.

What day are you available this week?

Thank you.

John



John Meyer

Re: Big Sky Leakage Enforcement

To: Susan Bawden, Cc: Clint Nagel, Pat Simmons, William A. Bartlett, Aaron Pettis, Helena Dore, Bella Butler, laura seitz

May 3, 2022 at 10:48 AM

[Details](#)



Hi Aaron and Susan,

The DEQ called me last week and said we would meet this week to discuss the leaking sewage lagoons at Big Sky. DEQ employee Terry Campbell testified under oath at trial last week (see attached) that there is no six inch leakage exception and that the liners need to be repaired if they are leaking. Dye testing shows the liners are leaking.

What day is the DEQ available this week to discuss the situation? Will the meeting be open to the public?

Thank you.

John



Final Leakage Calculations.pdf
1.1 MB



04-26-2022-Testim...ell.pdf
186 KB



Pettis, Aaron

RE: [EXTERNAL] Re: Big Sky Leakage Enforcement

To: John Meyer, Cc: Clint Nagel, Pat Simmons, William A. Bartlett, hdore@dailychronicle.com, Bella Butler, laura seitz

May 3, 2022 at 5:35 PM

[Details](#)

John,

I have been out of the office for the last several days and am getting caught up on my messages. I have not had a chance to talk with my folks about your new information.

In the meantime, I need to clarify a few things. First, as I have requested before, please make sure that all of your communications go through me rather than through DEQ employees directly, including Mr. Campbell and Ms. Bawden. Second, while I appreciate you attaching the transcript, you misunderstand Mr. Campbell's testimony, and I disagree with your characterization of it and the conclusions you have drawn from it. Finally, DEQ has committed only to responding to you once I was back in the office.

Once we have a chance to discuss this internally, I will provide you a more comprehensive response that details why you have misunderstood Mr. Campbell's testimony and whether DEQ believes your new information warrants reopening the enforcement complaint. We can discuss at that time whether a meeting may be productive.

Thanks,

Aaron

Aaron Pettis | *Legal counsel*
Montana Department of Environmental Quality
Office: 406-444-1422



John Meyer

Re: [EXTERNAL] Re: Big Sky Leakage Enforcement

To: Pettis, Aaron, Cc: Clint Nagel, Pat Simmons, William A. Bartlett, Helena Dore, Bella Butler, laura seitz

May 3, 2022 at 7:27 PM

[Details](#)

Hi Aaron,

It strikes me as pretty bold to say I misunderstand Mr. Campbell's testimony. What part of this sworn testimony do I not understand:

Q: The last thing you said is that the leakage standard applies when the facility is brand-new. Is that right?

A: Correct.

Q: It doesn't apply 20 years out?

A: It does not.

Q: And if there are tears and rips in the liner, should those be repaired 20 years out?

A: They certainly should be, yes.

The DEQ contacted me while you were on vacation and said we would meet this week. Will you please put me in touch with the head of DEQ legal so that we can set a time to discuss?

Thank you,

John

John Meyer
Executive Director & General Counsel
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John@Cottonwoodlaw.org
(406) 546-0149

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John Meyer

Re: [EXTERNAL] Big Sky Leakage Enforcement

To: Pettis, Aaron, Cc: Clint Nagel, Pat Simmons, William A. Bartlett, Helena Dore, Bella Butler, laura seitz

May 5, 2022 at 3:33 PM

[Details](#)

Hi Aaron,

I wanted to follow up again regarding the leaking liners of the Big Sky sewage lagoons.

A large volume of treated sewage is polluting the groundwater, West Fork, and the Gallatin. Your lack of communication is exacerbating the problem.

Should we start filing actions in state court? Please respond immediately with directions on how to proceed.

Thank you,

John

John Meyer
Executive Director & General Counsel
Cottonwood Environmental Law Center
P.O. Box 412 Bozeman, MT 59771
John@Cottonwoodlaw.org
(406) 546-0149



Pettis, Aaron

RE: [EXTERNAL] Big Sky Leakage Enforcement

To: John Meyer, Cc: Clint Nagel, Pat Simmons, William A. Bartlett, hdore@dailychronicle.com, Bella Butler, laura seitz

May 5, 2022 at 4:00 PM

[Details](#)

John,

Please see my earlier e-mail from May 3. I will provide a response to your questions once we follow our normal processes and review the new information that you provided us.

Aaron

Aaron Pettis | *Legal counsel*
Montana Department of Environmental Quality
Office: 406-444-1422



John Meyer

Re: [EXTERNAL] Big Sky Leakage Enforcement

To: Pettis, Aaron, Cc: Clint Nagel, Pat Simmons, William A. Bartlett, hdore@dailychronicle.com, Bella Butler, laura seitz, Susan Bawden, Corey Hockett & 4 more

May 12, 2022 at 4:29 PM

[Details](#)

Hi Aaron,

I hope this finds you well.

I wanted to check in on the leaking Big Sky Sewage Lagoons and also over irrigation of the Meadow Village Golf Course.

1.) The DEQ called me a few weeks ago and said we would meet to discuss the leaking holding ponds. We're still hoping to meet but haven't heard from you. DEQ employee Terry Campbell testified during trial that if there are tears and rips in the liners of the holding ponds, they "certainly" should be repaired. (Page 29). The treated sewage lagoons are leaking—dye was placed in the lagoons and found in a pipe being discharged into the West Fork 26.5 hours later (Crawford Labs). When will the liners be repaired?

We also provided information that the tears and leakage is not minor. A water budget was recently prepared that indicates the holding ponds leaked 16 million gallons of treated effluent in 2018 and 18 million gallons in 2019.

2. On page 18 of the attached trial testimony, Mr. Campbell and I had the following exchange:

Q: So if you were shown evidence that the golf course is being over-irrigated in such a way that nitrogen is reaching the surface water, would you be concerned?

A. I would be, but I've not been shown that evidence to date, John.

Q. Okay. Would you say that maybe the water and sewer district, as the owner and operator of the plant, needs to apply for a permit because of that?

A. If they're discharging, I would agree. That's correct.

There is ample evidence that shows the Meadow Village Golf Course is being over irrigated and discharging.

The Meadow Village Golf Course used the dyed wastewater to irrigate the golf course. Crawford labs (Big Sky's expert) found dye in the "Chapel Springs drain" on the golf course. The Chapel Springs drain flows into the West Fork. Chris Allen, a PhD scientist that analyzed irrigation of the Meadow Village golf course as part of a "Technical Memorandum," identified the Chapel Springs drain as a "known point source." (p. 37).

Page 21 of the Technical Memorandum states:

The application of municipal wastewater represents one of the largest anthropogenic source of nitrogen, estimated to be approximately 12,000 lbs N per year irrigating three golf courses: Meadow View, Yellowstone Club and Spanish Peaks.

The Technical Memorandum estimated over irrigation at the Meadow Village Golf Course could be responsible for 1,900 pounds of nitrogen pollution reaching the groundwater every year.

We have other information that shows the Meadow Village golf course is being over irrigated we'd like to share with you.


Will the DEQ meet with our community groups and the public to discuss these important water issues? We'd like transparency.

Thank you,

John



Crawford
Labs.pdf
295 KB

From: Pettis, Aaron APettis@mt.gov 
Subject: RE: [EXTERNAL] Big Sky Leakage Enforcement
Date: May 13, 2022 at 4:43 PM
To: John Meyer john@cottonwoodlaw.org
Cc: Clint Nagel clint_nagel@yahoo.com, Pat Simmons psimmons100@gmail.com, William A. Bartlett billbartlett46@gmail.com, hdore@dailychronicle.com, bella@theoutlawpartners.com, laura seitz lseitz99@yahoo.com, Corey Hockett corey@outsidebozeman.com, Nick Gevock nickgevock@gmail.com, TAWilk@aol.com

Hi John,

Please see my earlier e-mails from May 3 and May 5. DEQ will provide you a response once we have a chance to look at your new information using our normal processes. In the meantime, let me again reiterate that DEQ disagrees with your misunderstanding of Mr. Campbell's testimony and that DEQ has not made a determination that repair of the holding pond liners is required at this time. DEQ will evaluate your new information using our normal processes and will provide you a response once it has done so.

Aaron

Aaron Pettis | *Legal counsel*
Montana Department of Environmental Quality
Office: 406-444-1422



[How did we do? >>](#)



From: John Meyer <john@cottonwoodlaw.org>
Sent: Thursday, May 12, 2022 4:29 PM
To: Pettis, Aaron <APettis@mt.gov>
Cc: Clint Nagel <clint_nagel@yahoo.com>; Pat Simmons <psimmons100@gmail.com>; William A. Bartlett <billbartlett46@gmail.com>; hdore@dailychronicle.com; bella@theoutlawpartners.com; laura seitz <lseitz99@yahoo.com>; Bawden, Susan <SBawden@mt.gov>; Corey Hockett <corey@outsidebozeman.com>; Nick Gevock <nickgevock@gmail.com>; TAWilk@aol.com
Subject: Re: [EXTERNAL] Big Sky Leakage Enforcement

Hi Aaron,

I hope this finds you well.

I wanted to check in on the leaking Big Sky Sewage Lagoons and also over irrigation of the Meadow Village Golf Course.

1.) The DEQ called me a few weeks ago and said we would meet to discuss the leaking holding ponds. We're still hoping to meet but haven't heard from you. DEQ employee Terry Campbell testified during trial that if there are tears and rips in the liners of the holding ponds, they "certainly" should be repaired. (Page 79) The treated sewage lagoons are leaking—dye was

From: Pettis, Aaron APettis@mt.gov  
Subject: Mischaracterizations of testimony in Cottonwood v. Big Sky WSD
Date: May 20, 2022 at 1:40 PM
To: john@cottonwoodlaw.org
Cc: Colamaria, Angie Angela.Colamaria@mt.gov

John,

You have made a large number of allegations and assertions in the last three weeks. As I have mentioned in three previous e-mails, DEQ is reviewing the enforcement issues using its normal processes and will provide a response once it has done so.

The sole purpose of this e-mail is to correct your mischaracterizations of statements made by a state employee who was compelled to testify at a trial to which the state was not a party. This e-mail will not respond point-by-point to each assertion you have made, and my silence on any particular issue does not mean that I agree with you on that point.

Please remember that Mr. Campbell is a review engineer with the State Revolving Fund program who was subpoenaed to testify at trial under Rule 45 in his individual capacity and can't speak for DEQ's Enforcement Program or other programs in the agency. (E-mail from Aaron Pettis to John Meyer, April 18, 2022 (9:02 PM); Campbell Trial Test. 8:18–22, 19:13–16).

Leakage

Since trial, you have asserted repeatedly that Mr. Campbell “testified that there is no six inch leakage exception” after a pond has been approved. (*E.g.*, E-mail from John Meyer to Susan Bawden, April 28, 2022 (12:07 PM)). This assertion mischaracterizes Mr. Campbell's actual testimony and has no basis in law or logic.

DEQ reviews new ponds under Department Circular DEQ-2. ARM 17.38.101(20)(b). Under those design standards, new ponds are considered watertight if leakage is less than six inches per year. Standard 93.422, Department Circular DEQ-2. This six-inch allowance is a reflection of the limits in construction and testing methods, (Campbell Dep. Test. 71:20–15, 72:19–15), and is the accepted national standard for liner construction, (*see id.* 131:19–20).

Mr. Campbell testified clearly and consistently on this issue. (*E.g.*, Campbell Trial Test. 6:18–25). Nowhere did he testify that existing ponds should be held to zero leakage—that is a conclusion that you erroneously jumped to that disregards the whole of his testimony.

Instead, Mr. Campbell's testimony clearly indicated that issues regarding leakage of old ponds depend on a case-by-case analysis of site-specific circumstances and conditions. (*See, e.g., id.* 6:2–6 (noting that different circumstances may lead to different regulatory requirements); *id.* 6:7–12 (noting that water quality violations would have to be considered in evaluating a leakage complaint); *id.* 7:3 (noting that it is “potentially possible”—but not certain—that leakage might require a discharge permit)).

Your assertion also doesn't make logical sense: a liner cannot be approved for six inches of leakage at the time of design and construction but be held to a more stringent standard after it was installed.

Liner repair

The second issue that you have mischaracterized is this exchange at trial regarding repair of the

Q. And if there are tears and rips in the liner, should those be repaired 20 years out?
A. They certainly should be, yes.

You have repeatedly asserted that Mr. Campbell testified that Big Sky's liners must be repaired, and you have demanded to know "when the holding ponds will be repaired." (E.g., E-mail from John Meyer to Angie Colamaria, May 14, 2022 (1:12 PM)).

Your assertion mischaracterizes Mr. Campbell's response and ignores all of his earlier testimony. (See, e.g., Campbell Trial Test. 7:17–8:22). Mr. Campbell's response to the question about tears and rips was unambiguously and unequivocally a response to a hypothetical question about best practices for operating a wastewater system. Mr. Campbell merely made the observation that it is good practice for any system—not just Big Sky—to repair a torn liner if it were indeed torn. No reasonable person could interpret that testimony any other way.

To reiterate again, DEQ has not made any determination that repair of the holding ponds is necessary or required at this time.

All the same comments I have made above apply equally to the Op-Ed from Cottonwood and your co-plaintiffs published on Wednesday, see generally Pat Simmons, Clint Nagel & Bill Bartlett, Guest Opinion, *Montana DEQ needs to hold Big Sky accountable*, Bozeman Daily Chronicle (May 18, 2022), and I need not repeat myself here.

I will not continue to parse Mr. Campbell's testimony with you after this e-mail, and I ask that you stop mischaracterizing Mr. Campbell's testimony or inducing others to do so.

Sincerely,

Aaron

Aaron Pettis | *Legal counsel*
Montana Department of Environmental Quality
Office: 406-444-1422



John Meyer

Re: Mischaracterizations of testimony in Cottonwood v. Big Sky WSD
To: Pettis, Aaron, Cc: Colamaria, Angie

May 20, 2022 at 8:30 PM

[Details](#)

Hi Aaron & Angie,

I hope this finds you well.

Thank you for the email. I have forwarded it to my clients.

As you may know, the Plaintiffs in the case are entering into court-facilitated mediation with Boyne, the Yellowstone Club, and Spanish Peaks regarding over irrigation of their golf courses. We asked the Court and Defendants to involve DEQ in the mediation processes. Perhaps unsurprisingly, the Defendants do not want the DEQ to be involved. We do not want to get to the point where we go to trial and Defendants then tell the jury that the DEQ has not taken enforcement action, which is exactly what they did during the last trial.

The attached 2 page mediation brief underscores why the DEQ should get involved.

The Big Sky Water and Sewer District has applied for costs in the holding pond case. My clients are small nonprofits that are concerned about their financial solvency. Can you tell me when the DEQ's normal processes will be complete?

Thank you,

John



Filed Brf Iso
Motion.pdf

John Meyer
Executive Director & General Counsel
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P.O. Box 412 Bozeman, MT 59771
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(406) 546-0149



John Meyer

Cottonwood v. Boyne (2:20-28) (Mediation)

To: Aaron Pettis, Angie Colamaria, Cc: Susan Bawden, William A. Bartlett, Pat Simmons, Clint Nagel, Nancy Schultz, Nancy Ostlie, Glenn Monahan & 8 more

May 26, 2022 at 2:29 PM

[Details](#)

Hi Angie & Aaron,

I hope you are well.

I have attached a letter asking that the DEQ participate in a court-facilitated mediation to explore settlement regarding Clean Water Act violations stemming from over irrigation of the Meadow Village Golf Course in Big Sky.

Magistrate Judge Johnston explicitly stated the DEQ can participate and said if the agency wants to participate, it will need to send a confidential 10 page brochure that outlines the agency's position. The attached letter contains a copy of the mediation order.

As you know, the Big Sky Water and Sewer District recently told a jury the DEQ is not taking enforcement action on the leaking holding ponds in Big Sky as a rationale for why it is not violating the Clean Water Act. We all know the DEQ is now investigating the Big Sky Water and Sewer District. We do not want to replay the same scenario where Boyne tells a jury it is not violating the Clean Water Act because the Montana DEQ is not taking enforcement action.

For that reason and many others outlined in the attached letter, we ask that the DEQ participate in the June 29, 2022 settlement conference.

Please respond at your earliest convenience.

Thank you,

John



DEQ
Mediation.pdf

John Meyer
Executive Director & General Counsel
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John@Cottonwoodlaw.org
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Pettis, Aaron

RE: [EXTERNAL] Cottonwood v. Boyne (2:20-28) (Mediation)

To: John Meyer, Cc: Colamaria, Angie, imcintosh@crowleyfleck.com, nwestesen@crowleyfleck.com

May 26, 2022 at 4:52 PM

[Details](#)

John,

I will not continue these e-mail chains in which you have copied people who are not the relevant attorneys of record in this case. To that end, I have copied Ian and Neil.

I have reviewed the order you attached, but nothing in it mentions DEQ. I also don't see any minute entries that mention DEQ. Before I can advise my clients, I need a much better understanding of what role you think DEQ would play in a mediation here. DEQ is not a party to this case: what is there for DEQ to mediate? what is there for DEQ to settle? Also be aware that I am most likely unavailable for the date you listed, and I don't know about the availability of any of my clients.

I am not going to get into the weeds with you again about DEQ's enforcement actions regarding Big Sky Water and Sewer District, which I have discussed to exhaustion in previous emails, but I do not agree with any connotations or implications that "DEQ is now investigating the Big Sky Water and Sewer District." DEQ is evaluating the new information you submitted as part of your complaint to determine if the allegations are supported, which is DEQ's normal process when a complaint is filed with the agency. As you know, DEQ determined that the previous information you submitted did not support evidence of a violation. DEQ will review your new information under its normal processes.

Thanks,

Aaron

Aaron Pettis | *Legal counsel*
Montana Department of Environmental Quality
Office: 406-444-1422



John Meyer

Re: [EXTERNAL] Cottonwood v. Boyne (2:20-28) (Mediation)

To: Pettis, Aaron, Cc: Colamaria, Angie, imcintosh@crowleyfleck.com, nwestesen@crowleyfleck.com

May 26, 2022 at 6:42 PM

[Details](#)

Hi Aaron,

Neil was on the call with Magistrate Johnston today and can attest to the fact that he said the DEQ can join the mediation.

In terms of cc'ing community groups and reporters onto emails to the DEQ, I'd direct you to the DEQ website, which states:

At DEQ, we believe Montana communities and businesses thrive when environmental protections are implemented effectively in a consistent and transparent way.

I hope you can appreciate the Community Groups' frustration when the DEQ sits on a complaint for months until the Friday night before a trial. Is that the DEQ's idea of transparency? As you noted, another complaint has been filed. The DEQ has also received a 60 Day NOI from several months ago. We want to hear from you before the night before next trial. The DEQ owes it to Montana citizens and our water.

The Nutrient Management Plan says it is a living document that needs to be updated when new information becomes available. Our 60 Day NOI and letter provides the DEQ with information that we are asking you to consider during mediation. As the letter and email state, there is well-founded concern the DEQ will not show up after being invited to participate and Boyne then points to the agency's lack of enforcement for a rationale why there has been no violation of the CWA.

DEQ engineer Terry Campbell testified at the last trial. I don't understand why he would not join the mediation and provide an objective viewpoint that the magistrate would undoubtedly appreciate. I also don't understand why the regulated community does not want the regulator involved?

John

John Meyer
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(406) 546-0149



John Meyer

Cottonwood v. Big Sky Water & Sewer (2:20-cv-28-BMM)
To: Aaron Pettis, Angie Colamaria

June 21, 2022 at 1:24 PM

Hi Aaron & Angie,

I hope you are well.

Can you tell me the status of the DEQ's scrutiny regarding "gross leakage" from the Big Sky holding ponds?

Also, the District Court has changed the date for mediation to August 2nd. The Yellowstone Club and Spanish Peaks will also be mediating. Will the DEQ participate?

I spoke with several folks from the EPA a few weeks ago and they asked if the DEQ was going to attend the mediation. I expressed concern that the agency was not and that the Defendants will again point to the fact that the DEQ is not taking enforcement actions to prove they are not violating the Clean Water Act.

Can you provide any updates?

Thank you,

John

John Meyer
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P.O. Box 412 Bozeman, MT 59771
John@Cottonwoodlaw.org
(406) 546-0149



Pettis, Aaron

RE: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer (2:20-cv-28-BMM)
To: John Meyer, Cc: Colamaria, Angie

June 27, 2022 at 5:26 PM

[Details](#)

Hi John,

I talked to my folks about where they are in the process. Due to a high workload and other obligations, they do not anticipate making any decisions before the end of July.

As for mediation, I still do not understand what role DEQ would play in the matter, as DEQ is not a party to the lawsuit.

Thanks,

Aaron

Aaron Pettis | *Legal counsel*
Montana Department of Environmental Quality
Office: 406-444-1422



John Meyer

Re: [EXTERNAL] Cottonwood v. Big Sky Water & Sewer (2:20-cv-28-BMM)
To: Pettis, Aaron, Cc: Colamaria, Angie

July 5, 2022 at 2:09 PM

[Details](#)



Hi Aaron,

It sounds like the Gallatin is headed towards a 303(d) listing, which will require examining why the River is water quality impaired for nitrogen. My limited understanding is that the agency will need to complete water quality testing and monitoring. The Plaintiffs believe those costs should be borne by the polluters—the Big Sky Water and Sewer District, Boyne, Yellowstone Club, and Spanish Peaks—not the public. That can be accomplished in the August 2nd mediation.

An independent third party hydrology expert issued a report stating Meadow Village, Yellowstone Club, and Spanish Peaks golf courses are all being over-irrigated with treated effluent and stated the amounts of nitrogen entering the Gallatin's tributaries because of the over-irrigation. I would have thought the DEQ would be jumping on this information, or the Plaintiffs' water testing, that verified the independent report, but that does not seem to be the case.

Judge Morris explicitly asked me during a hearing why the DEQ has not gotten involved. The evidence of direct and indirect pollution is overwhelming. Will the DEQ please step up and participate in the August 2nd mediation?

John

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John Meyer

Cottonwood v. Big Sky (2:20-cv-28)
To: Pettis, Aaron, Colamaria, Angie, Suzanne Bohan

August 16, 2022 at 11:11 AM

Hi Aaron, Angie, and Suzanne,

I hope this finds you well.

I'm emailing to see what the DEQ has found/decided regarding the leaking holding ponds at Big Sky and over-irrigation of the Meadow Village Golf Course?

Thank you,

John

John Meyer
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From: John Meyer <john@cottonwoodlaw.org>
Sent: Friday, August 26, 2022 1:17 PM
To: Pettis, Aaron <APettis@mt.gov>; Colamaria, Angie <Angela.Colamaria@mt.gov>; Suzanne Bohan <bohan.suzanne@epa.gov>
Subject: [EXTERNAL] Re: Cottonwood v. Big Sky (2:20-cv-28)

Hi Aaron, Angie, and Suzanne,

I'm writing to follow up and ask that DEQ respond to my several previous unanswered emails. What has the DEQ found/decided regarding the leaking holding ponds at Big Sky and over-irrigation of the Meadow Village Golf Course?

As you may know, Spanish Peaks has agreed to replace its holding pond liner as part of the settlement agreement. DEQ employee Terry Campbell testified that Big Sky Water and Sewer District has to replace its liners if they are ripped. Plaintiffs dye tests proved they are ripped. Is the DEQ going to take enforcement action? Has the DEQ looked at the water balance analysis regarding gross leakage of the Big Sky Water & Sewer District's holding ponds? What did the agency find? When is the DEQ available to discuss?

Also, Spanish Peaks will be limiting the irrigation of its golf course to 31 Million Gallons/Year. Boyne irrigated with 116 Million Gallons in 2020. Plaintiffs found dye being discharged from a pipe on the golf course after placing the tracer dye in the holding ponds. Independent hydrology experts have stated the biggest reduction in nitrogen pollution in the West Fork will come from reductions in irrigation practices of the golf course.

When is the DEQ available to discuss?

Thank you,

John

John Meyer
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Cottonwood Environmental Law Center
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Pettis, Aaron

Re: [EXTERNAL] Re: Cottonwood v. Big Sky (2:20-cv-28)
To: John Meyer, Colamaria, Angie, Suzanne Bohan

August 30, 2022 at 4:20 PM



Siri Found a Contact
Aaron Pettis
apettis@mt.gov

Add X

Hi John,

DEQ Enforcement has not had a chance to finalize a determination because of their ongoing workload this summer. You will be copied on that determination when they are able to complete it. Because DEQ has not made any determination yet, I don't think it would be productive to discuss at this time.

As for Spanish Peaks, I am aware that you are pursuing lawsuits against them and the Yellowstone Club, but I am not familiar with the details of those matters or any settlements you have agreed to with them.

Finally, as I've asked several times before, please stop mischaracterizing Mr. Campbell's testimony, which I have discussed with you at length in prior emails.

Thanks,

Aaron

Aaron Pettis | *Legal counsel*
Montana Department of Environmental Quality
Office: 406-444-1422



John Meyer

Re: [EXTERNAL] Cottonwood v. Big Sky (2:20-cv-28)
To: Pettis, Aaron, Cc: Colamaria, Angie, Suzanne Bohan, KC Becker

August 31, 2022 at 11:18 PM



[Details](#)

Hi Aaron,

We filed a formal complaint with the MT DEQ in September 2021 regarding the leaking holding ponds in Big Sky. Nearly one year has passed and the agency still hasn't made a final determination. In the meantime, the Gallatin River is still green. If the DEQ does not have the resources to do its job, perhaps EPA enforcement could/should help?

We'd like to meet before a final determination is made to ensure the agency understands what we are saying regarding the data we provided. Is the DEQ willing to meet with us before a final determination is made? I assume DEQ is communicating with Big Sky.

You have asked me to stop mischaracterizing DEQ employee Terry Campbell's trial testimony. I have attached the testimony. This is what he said during trial:

Q: The last thing you said is that the leakage standard applies when the facility is brand-new. Is that right?

A. Correct.

Q. Is doesn't apply 20 years out?

A. It does not.

Q. And if there are tears and rips in the liner, should those be repaired 20 years out?

A. They certainly should be, yes.

The Gallatin River would appreciate it if the DEQ stood up for its engineer of 29 years and required the Big Sky Water & Sewer District to replace the torn liners of the holding ponds.

Thank you,

John



Campbell
Testimony.pdf



John Meyer
Big Sky Complaint

To: Pettis, Aaron, Colamaria, Angie, Suzanne Bohan, KC Becker

September 9, 2022 at 3:32 AM

Hi Aaron,

I am emailing about the complaint that was filed with the Montana DEQ more than one year ago regarding the leaking holding ponds and over-irrigation of the golf course at Big Sky, Montana. Cottonwood provided the DEQ with the mass balance calculations for the leaking holding ponds months ago. We have shown that the Big Sky Water and Sewer District provided the Montana DEQ with false reporting. The Montana DEQ's lack of enforcement action and communication is unacceptable.

DEQ engineer Terry Campbell testified before a jury in federal court that if the holding ponds are leaking, the liners need to be replaced. Big Sky's experts all agree the liners of the holding ponds are torn. The DEQ's failure to take enforcement action means the Big Sky Water and Sewer District continues to accept new sewer connections and sewage into leaking holding ponds. How much treated sewage is reaching the West Fork of the Gallatin River every day because the DEQ has refused to require the Sewer District to replace the liners in the holding ponds? The DEQ is violating the public's trust by knowingly allowing an identified pollution source to increase without taking any action. The Gallatin River deserves better.

When will the Montana DEQ enforcement stop screwing around and meet with us to discuss this issue?

John

John Meyer
Executive Director & General Counsel
Cottonwood Environmental Law Center
P.O. Box 412 Bozeman, MT 59771
John@Cottonwoodlaw.org
(406) 546-0149



Pettis, Aaron
RE: [EXTERNAL] Big Sky Complaint

To: John Meyer, Colamaria, Angie, Suzanne Bohan, KC Becker

September 16, 2022 at 5:20 PM

Hi John,

I apologize in the delay in getting back to you this week. I've had ongoing litigation deadlines. I don't have an update for you right now since the last time we talked, but I will let you know as soon as I do.

Thanks,

Aaron

Aaron Pettis | *Legal counsel*
Montana Department of Environmental Quality
Office: 406-444-1422



[How did we do? >>](#)



John Meyer
Re: [EXTERNAL] Big Sky Complaint

To: Pettis, Aaron, Cc: Colamaria, Angie, Suzanne Bohan, KC Becker, Boeglin, Michael

September 16, 2022 at 6:02 PM

[Details](#)

Thank you, Aaron.

Cottonwood filed the attached proposed consent decree today in a Clean Water Act lawsuit against Spanish Peaks. The ski and golf resort has agreed to replace their sewage holding pond liner by December 31, 2022 and limit irrigation of their golf course to 33.6 million gallons/year.

In contrast, Big Sky Water and Sewer District refuses to replace the torn liners of their holding ponds and Boyne Resorts irrigates its golf course with 116 million gallons of treated sewage/year. The Middle Fork/West Fork of the Gallatin River is the receiving water for the Big Sky Water & Sewer District holding ponds, Big Sky's golf course, Spanish Peaks' golf course and holding pond.

I hope this agreement provides some leverage for the necessary enforcement actions.

Have a good weekend,

John



Proposed
Conse...ree.pdf

John Meyer
Executive Director & General Counsel
Cottonwood Environmental Law Center
P.O. Box 412 Bozeman, MT 59771
John@Cottonwoodlaw.org
(406) 546-0149



John Meyer

Big Sky Water & Sewer Update

To: Pettis, Aaron, Colamaria, Angie, Suzanne Bohan

September 30, 2022 at 3:46 PM



Hi Aaron,

Can you provide me with the status of the complaint that was filed more than one year ago regarding leakage at Big Sky Water & Sewer?

Thank you,

John

John Meyer
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John Meyer

Re: Big Sky Water & Sewer Update

To: Pettis, Aaron, Colamaria, Angie, Suzanne Bohan

October 9, 2022 at 9:21 PM



Hi Aaron,

I wanted to follow up with you again regarding the status of the complaint that we filed more than one year ago.

When will the DEQ take enforcement action to address noncompliance? Big Sky Water and Sewer District has admitted the sewage pond liners are ripped and leaking. When will the DEQ stop the Sewer District from connecting new sewers?

John



Pettis, Aaron

RE: [EXTERNAL] Re: Big Sky Water & Sewer Update

To: John Meyer, Colamaria, Angie, Suzanne Bohan

October 11, 2022 at 9:58 PM



Hi John,

Thank you for checking in. For clarification, DEQ closed the complaint you submitted a year ago in April. DEQ is still reviewing the information you provided after that date according to its ordinary processes and subject to the agency's very high workload. I will let you know as soon as I have any updates.

Thanks,

Aaron

Aaron Pettis | *Legal counsel*
Montana Department of Environmental Quality
Office: 406-444-1422



John Meyer

Re: [EXTERNAL] Re: Big Sky Water & Sewer Update

To: Pettis, Aaron, KC Becker, Cc: Colamaria, Angie, Suzanne Bohan

October 11, 2022 at 10:57 PM



[Details](#)



Aaron,

The DEQ has been blowing off the issue of the Big Sky's leaking holding ponds for too long. The DEQ's senior engineer testified during trial that the holding ponds liners need to be replaced if they are torn (see attached). The Sewer District has admitted the ponds are leaking. When is the DEQ going to take enforcement action against the Sewer District for providing false information regarding the volume of leakage? How long does it really take to run the numbers? We've asked the agency to meet with our expert to walk through the numbers several times. We continue to be blown off.


Will the DEQ meet with us to discuss the numbers?

John Meyer

[See More from Pettis, Aaron](#)



Campbell
Testimony.pdf

☆  **John Meyer**
Big Sky Issues
To: Pettis, Aaron, Colamaria, Angie

December 1, 2022 at 3:47 PM



Hi Aaron & Angie,

Will the DEQ meet with Cottonwood's expert and the U.S. EPA to complete the water budget calculations regarding leakage at Big Sky Water & Sewer District's holding ponds? We've asked several times and never got a straight answer.

Also, we filed a Public Information Request a few months ago asking for all of DEQ's internal communications regarding the Big Sky Water and Sewer District. We have paid the fee but now the DEQ will not release the documents. We were told the legal review would be complete weeks ago. Do we need to file a lawsuit to get the information?

Thank you,

John

John Meyer
Executive Director & General Counsel
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P.O. Box 412 Bozeman, MT 59771
John@Cottonwoodlaw.org
(406) 546-0149

 **Pettis, Aaron**
RE: [EXTERNAL] Big Sky Issues
To: John Meyer, Cc: Colamaria, Angie

December 2, 2022 at 5:28 PM

[Details](#)

Hi John,

I'm not sure I understand your request. Are you expert's calculations not complete? I also don't understand why EPA would be involved with water budget calculations, since EPA is not involved with wastewater engineering or DEQ design standards under DEQ-2.


As for the records request, I believe that all responsive, nonprivileged materials were released today.

Thanks,

Aaron

Aaron Pettis | *Legal counsel*
Montana Department of Environmental Quality
Office: 406-444-1422



☆  **John Meyer**
Re: [EXTERNAL] Big Sky Issues
To: Pettis, Aaron, Cc: Colamaria, Angie

December 2, 2022 at 7:39 PM

[Details](#)

I have been asking the DEQ to meet for months to review the water budget. You have continuously evaded my requests and the DEQ will not complete the water balance. The DEQ has avoided doing its job for too long.


The DEQ has never had an attorney/client privilege to withhold the documents we requested in our Public Information Request because the DEQ was not being sued over the Water and Sewer District's leaking holding ponds.

Please do your job.

John Meyer
Executive Director & General Counsel
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 **Montana DEQ Public Records Exchange System**
[Records Center] Public Records Request :: R002558-090722
To: John Meyer

Inbox - john@cottonwoodlaw.org December 2, 2022 at 9:4



--- Please respond above this line ---

RE: PUBLIC RECORDS REQUEST of September 07, 2022, Reference # R002558-090722

Dear John Meyer,

As per our discussion over the phone; this message is meant to serve as an official record of the fact that seven documents associated with this request were held back due to attorney/client privilege.

Best,

Daisy Dyrdaht-Roberts
DIRECTOR'S OFFICE (DIR)
MT Department of Environmental Quality

To monitor the progress or update this request please log into the [Montana DEQ Public Records Center](#)

