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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT
GALLATIN COUNTY

COTTONWOOD)
ENVIRONMENTAL LAW CENTER;)
QUINN O'CONNOR; CRAIG)
MATHEWS; ISAAC CHEEK; STEVE)
ATENCIO)

Plaintiffs,)
vs.)

BIG SKY WATER & SEWER)
DISTRICT NO. 363; RON EDWARDS;)
THE STATE OF MONTANA by and)
through the MONTANA)
DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)

Defendants.)

- FILED -

12/12/2022

Sandy Erhardt

CLERK

Gallatin County District Court

STATE OF MONTANA

By: Sandy Erhardt

DV-16-2022-0001121-OC

Ohman, Peter B.

Case No. 21-DV-1121A

**AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

This case challenges Defendant Big Sky Water & Sewer District No. 363's continued acceptance of new sewer connections despite knowing its torn sewage pond liners are discharging nitrogen pollution into the groundwater at levels that exceed human toxicity standards. The Sewer District is also over irrigating the Meadow Village Golf Course with treated sewage that does not meet water quality standards. As a result of the torn liners and overirrigation of the golf course, the West Fork and main stem of the Gallatin are suffering significantly from an overloading of nutrients, thereby causing excessive algal growth and harming the aesthetic and aquatic environment. Defendant Montana Department of Environmental Quality has stood by and watched instead of completing the required investigations.

PARTIES

1. Plaintiff Cottonwood Environmental Law Center is a Bozeman-based community conservation organization dedicated to protecting the people, forests, water, and wildlife of southwest Montana. Plaintiff's members use and enjoy the Gallatin River and the West Fork of the Gallatin River on a continuing and ongoing basis. Defendants' discharge of pollutants harms the Plaintiffs' and public's aesthetic, recreational, conservation, and scientific interests. Plaintiffs' enjoyment of the West Fork and main stem of the Gallatin River has diminished because of the leaking holding ponds. Plaintiffs and the public have abstained from recreational

activities on the Gallatin River and the West Fork of the Gallatin because of Defendants' unlawful discharges. Cottonwood's mailing address is P.O. Box 412, Bozeman, MT 59771.

2. Plaintiff Cottonwood Environmental Law Center has devoted time, energy, and money to protect the water quality and fishery of the West Fork of the Gallatin River and the Gallatin itself. Plaintiffs have suffered and continue to suffer injuries-in-fact on account of Defendants' unlawful discharges. The injuries-in-fact are traceable to Defendants' failure to replace the holding pond liners and would be redressed by the relief Plaintiffs seek.
3. Plaintiff Quinn O'Connor is a resident of Montana and fishes on the section of the Gallatin River impacted by Defendants' unlawful discharges. O'Connor's address will be provided to the Court upon request.
4. Plaintiff Craig Mathews is a resident of Montana, the founder and former owner of Blue Ribbon Flies in West Yellowstone, Montana, a former trapper, and the former Police Chief of West Yellowstone. Mathew's address will be provided to the Court upon request.
5. Plaintiff Isaac Cheek is a resident of Montana and fishes on the section of the Gallatin River impacted by Defendants' unlawful discharges. Cheek's address will be provided to the Court upon request.

6. Plaintiff Steve Atencio is a resident of Montana and fishes on the section of the Gallatin River impacted by Defendants' unlawful discharges. Atencio's address will be provided to the Court upon request.
7. Defendant Big Sky Water & Sewer District No. 363 is a special purpose unit of government organized to regulate and operate the water and sewer systems in Big Sky, Montana. The Sewer District owns and operates the sewage holding ponds in question. The Sewer District also has the ability and responsibility to control the amount of treated sewage that is applied on the Meadow Village Golf Course pursuant to Montana DEQ Circular-2. The Sewer District is an appropriate Defendant under Montana Code Annotated § 75-5-103(24).
8. Defendant Ron Edwards is the manager of the Big Sky Water & Sewer District No. 363. In that capacity he operates the Sewer District's holding ponds and controls the volume of treated sewage that is sent to the Meadow Village Golf Course for disposal. Edwards is an appropriate Defendant under Montana Code Annotated § 75-5-103(24).
9. Defendant Montana DEQ is an agency of the state of Montana.

JURISDICTION AND VENUE

10. This Court has original jurisdiction over this action pursuant to Article II, Sections 8 and 16 and Article VII, Section 4 of the Montana Constitution and §§2-3-114 and 3-5-302, MCA.

11. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to MCA §§27-8-101, et seq. (declaratory relief); MCA §2-4-506 (declaratory relief); MCA §§27-19-101, et seq. (injunctions); MCA §27-30-103 (injunctions); MCA § 27-19-315; MCA §27-30-104 (damages); MCA § 45-8-112(1) (criminal nuisance).
12. Venue is proper pursuant to MCA §§25-2-126(1) and 25-2-117. Defendant Sewer District is located at 561 Little Coyote Road, Big Sky Montana, 59716 and Defendant Ron Edwards is a resident of Gallatin County.

FACTS

13. In 1993, the Montana Department of Health and Environmental Sciences placed a moratorium on new sewer connections at the Big Sky wastewater treatment plant because the treated sewage holding ponds were leaking in violation of the Montana Water Quality Act.
14. Plaintiffs in this case seek a similar moratorium because the treated sewage holding ponds are leaking in violation of the Montana Water Quality Act, Montana Constitution, and nuisance laws.
15. Defendant Big Sky Water & Sewer District No. 363 (“Sewer District”) and Defendant Ron Edwards are responsible for treating and disposing of sewage in Big Sky.
16. Defendants maintain and operate three treated sewage holding ponds at the Big Sky waste water treatment plant.

17. The holding ponds liners are ripped and discharging treated sewage into the groundwater. The polluted groundwater is then discharged out of a pipe directly into the West Fork of the Gallatin River.
18. The pollution from the leaking holding ponds contributes to the algae blooms in the West Fork and main stem of the Gallatin River. *Cottonwood Emtl. Law Center v. Edwards*, 2:20-cv-28-BMM (Trial Trans. Vol. I at 100: 11-15).
19. Defendants' unpermitted discharge of pollution into groundwater, the West Fork of the Gallatin River, and the main stem of the Gallatin River is a violation of the Montana Water Quality Act, the Montana Constitution, and public nuisance laws.
20. Defendant Sewer District's unlawful operation of the sewage holding ponds violates the same provision of the Montana Water Quality Act that was cited in the 1993 Moratorium. § 75-5-605, MCA.
21. Plaintiff Cottonwood Environmental Law Center ("Cottonwood") filed a complaint with the Montana Department of Environmental Quality ("DEQ") over one year ago about the leaking holding ponds.
22. The Montana DEQ sent a letter to Plaintiff Cottonwood dated April 22, 2022, that acknowledged concerns about "gross leakage" from the holding ponds.
23. A senior engineer with the Montana Department of Environmental Quality testified on April 25, 2002 before a federal jury during a Clean Water Act trial that if the Sewer District's sewage holding pond liners are ripped, they "certainly"

should be repaired. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 173-5 at 4:22-24).

24. Cottonwood placed a fluorescein tracer dye in the holding ponds during the summer of 2021. The Sewer District found the dye in the groundwater below the holding ponds 26.5 hours later. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 76-5, Ex. A).
25. The Sewer District has admitted the holding ponds are leaking into the groundwater. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 173-2 at 10).
26. Defendants refuse to repair their torn and leaking holding pond liners.
27. The Montana Constitution guarantees all Montanans the right to a “clean and healthful environment.” Art. II, Section 3; Article IX, Section 1.
28. The Montana Water Quality Act furthers that constitutional right by establishing a permit system governing “point source” groundwater discharges known as the “Montana Ground Water Pollution Control System.” *Clark Fork Coalition v. Mont. Dep't of Natural Res. & Conservation*, 2021 MT 44, ¶56, 403 Mont. 225, 481 P.3d 198.
29. The Montana Water Quality Act makes it unlawful to “discharge sewage, industrial wastes, or other wastes into any state waters without a permit.” § 75-5-605, Montana Code Annotated.

30. "Discharge' means the addition of *any* pollutant to waters of the state." Admin. R. Mont. 17.30.1001(3) (emphasis added).
31. "'Point source' means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged." Section 75-5-103(29), MCA; Admin. R. M. 17.30.1304(51).
32. A federal district court has already determined the leaking holding ponds at Big Sky Water & Sewer District No. 363 are a "point source." *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 141 at 14).
33. "All surface waters, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state[.]" Mont. Const. Article IX, Section 3(3).
34. The 1993 Moratorium order determined the groundwater below the holding ponds are waters of the state.
35. The Montana Water Quality Act rules expressly provide that the "owner or operator of any proposed source . . . which may discharge pollutants into state ground waters shall file a completed MGWPCS permit application" at least 180 days prior to the proposed operation. Admin. R. M. 17.30.1023(3).
36. The Sewer District is discharging pollutants into state waters without a ground water permit in violation of the Montana Water Quality Act. *E.g.*, § 75-5-605, MCA.

37. Defendant Ron Edwards testified before a federal jury the holding ponds leaked .27 million gallons of treated sewage into the West Fork in 2020. *Cottonwood Envtl. Law Center v. Edwards*, 2:20-cv-28-BMM (Trial Trans. Vol. II at 208: 6-9).
38. Plaintiffs' expert testified to the federal jury the holding ponds leaked 21.12 million gallons of treated sewage into the West Fork in 2020. *Cottonwood Envtl. Law Center v. Edwards*, 2:20-cv-28-BMM (Trial Trans. Vol. I at 91: 4-6).
39. When determining the volume of leakage from the holding ponds, both parties included the amount of treated sewage that was exported for use as irrigation at the Big Sky, Yellowstone Club, and Spanish Peaks golf courses during the summer months.
40. Defendant Edwards testified that the holding ponds leaked .27 million gallons, and not 21.12 million gallons as calculated by Cottonwood's expert, by claiming Cottonwood failed to account for the volume of waste water that was exported from the treatment plant during the non-irrigation season and by using different dates for the calendar year to determine leakage. *Cottonwood Envtl. Law Center v. Edwards*, 2:20-cv-28-BMM (Trial Trans. Vol. I at 129-132).
41. Defendant Edwards testified that he had only completed a water budget to determine the volume of leakage for the year 2020. *Cottonwood Envtl. Law Center v. Edwards*, 2:20-cv-28-BMM (Trial Trans. Vol. II at 213:18-21).
42. Applying Defendants' export equation to their sewage export data for the year 2015, there are 40.17 million gallons of treated sewage that are unaccounted for.

43. Applying Defendants' export equation to their sewage export data for the year 2016, there are 37.26 million gallons of treated sewage that are unaccounted for.
44. Applying Defendants' export equation to their sewage export data for the year 2017, there are 35.86 million gallons of treated sewage that are unaccounted for.
45. Applying Defendants' export equation to their sewage export data for the year 2018, there are 9.58 million gallons of treated sewage that are unaccounted for
46. Applying Defendants' export equation to their sewage export data for the year 2019, there are 23.97 million gallons of treated sewage are unaccounted.
47. The Sewer District's expert admitted during his deposition that he had not "evaluated" the quality of the Sewer District's data. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 76-1 at 34-35: 24-2).
48. Defendant Edwards provided false information to the federal jury about how much the holding ponds are leaking.
49. Cottonwood filed a complaint with the Montana DEQ and has continuously asked the agency to determine the volume of leakage from the holding ponds and take action to require the Defendants to repair the leaking sewer ponds.
50. The DEQ has violated the Montana Water Quality Act and Montana Constitution by failing to complete an investigation into whether the holding ponds are experiencing "gross leakage." § 75-6-636, MCA.
51. Plaintiff Cottonwood Environmental Law Center filed a Public Information Request that sought all internal DEQ communications regarding the leakage after

the agency refused to meet or investigate the claims of gross leakage for more than one year.

52. In response to the request, the Montana DEQ withheld responsive documents by asserting the “Attorney/Client” privilege. The agency did not provide any privilege log.

53. The DEQ is not a defendant or plaintiff in any action regarding the leaking holding ponds.

54. The Meadow Village Golf Course is located across the street from the Sewer District’s holding ponds.

55. Defendant Montana Department of Environmental Quality (“DEQ”) approved a Nutrient Management Plan that allows the Sewer District to dispose of its treated sewage in the form of irrigation on the Meadow Village Golf Course. *Cottonwood Env’tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 22-1 at 1).

56. The purpose of the Nutrient Management Plan is to prevent nitrogen from leaching into groundwater and reaching the West Fork due to over irrigation. *Cottonwood Env’tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 22-1 at 1).

57. The DEQ has instructed the Sewer District it is responsible for controlling the amount of effluent used to irrigate the Golf Course. *Cottonwood Env’tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 26-4 at 3).

58. Defendant Sewer District is an “owner or operator” because it owns, leases, operates, controls, or supervises a point source. §75-5-103(24).

59. DEQ Circular 7 requires the Sewer District to ensure control of irrigation on the golf course. *Cottonwood Emtl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 73-4 at 15).

60. The Sewer District entered into a lease agreement with Boyne, USA, Inc., property owner of the golf course, that states:

Boyne agrees that as long as the District complies with the terms of this Agreement that, subject to the uptake capacity of the subject real property, the District may dispose of any amount of treated wastewater it deems necessary on the subject real property[.]

The District after consulting with Boyne, shall devise a disposal schedule and determine the amount of wastewater to be disposed of each day.

[T]he District will determine and control the schedule for disposal of treated wastewater through spray irrigation or snow-making on the subject real property.

The parties agree that the District shall have the right to modify the irrigation system as it deems necessary to satisfy its wastewater disposal needs.

The District shall install and maintain such instruments and equipment as determined by the District for monitoring and measuring the disposal of wastewater including but not limited to lysimeters, monitoring wells, and flow meters. The District shall also be responsible for all tasks, such as analyzing samples and collecting data, as required for monitoring and measuring the disposal of wastewater on the subject real property.

Cottonwood Emtl. Law Center v. Edwards, 2:20-cv-28-BMM (Doc. 22-4 at 4-5).

61. Big Sky Water & Sewer District No. 363 has not been controlling the volume of treated sewage that is sprayed on the golf course. *Cottonwood Emtl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. Doc. 48-1 at 21:2-17).

62. Big Sky Water & Sewer District No. 363 does not limit the amount of treated sewage that the Meadow Village golf course personnel spray on the golf course as irrigation. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 48-1).
63. Golf course personnel do not know or consider the concentration of nitrogen in the treated sewage that is used for irrigation. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 48-1 at 21:2-17).
64. The Sewer District has admitted the golf course does not know whether it is over irrigating with treated sewage because it does not know the nitrogen concentration in the irrigation water. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 48-1 at 29:6-15).
65. In 2020, Big Sky Water & Sewer District No. 363 irrigated the Meadow Village Golf Course with 116 million gallons of treated sewage.
66. Spanish Peaks Mountain Resort recently agreed that irrigation of its nearby golf course with treated sewage should be limited to 33.6 million gallons of treated sewage. *Cottonwood Env'tl. Law Center v. Yellowstone Mountain Club, LLC, et al.*, 2:21-cv-93-BMM (Doc. 68, ¶7).
67. Spanish Peaks' golf course is larger than the Meadow Village golf course, but Meadow Village is irrigating with more than three times the amount of treated sewage as Spanish Peaks.
68. The Meadow Village golf course contains a pipe that discharges groundwater into the West Fork of the Gallatin River known as the "Chapel Springs" drain.

69. Big Sky Water & Sewer District No. 363 has admitted the Chapel Springs drain pipe on the golf course is a “point source.” *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Trial transcript-side bar-direct examination of Terry Campbell).
70. The “Chapel” drain pipe “directly” discharges approximately 40 gallons of groundwater/minute into the West Fork. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 48-2 at 23).
71. DEQ engineer Terry Campbell stated during a Clean Water Act trial that “the Water and Sewer District, as owner and operator of the plant,” needs to apply for a discharge permit if treated sewage is reaching the groundwater or surface water through over irrigation of the golf course.
72. The Meadow Village Golf Course was irrigated with treated sewage after the holding ponds were dyed. Dye was found being discharged from the Chapel Springs Drain.
73. Big Sky Water & Sewer District No. 363 is responsible for maintaining lysimeters on the Meadow Village Golf Course that are used to determine whether the Golf Course is being over irrigated. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 48-1 at 24-27).
74. Nitrogen has been found in the lysimeters, indicating the golf course is being over irrigated.

75. The West Fork has an average Nitrate + Nitrite as Nitrogen concentration of less than .2 mg/l before traveling through the Golf Course. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 48- 2 at 20).
76. The groundwater below the golf course contains Nitrogen at a concentration of 5.6 mg/l. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 48-2 at 23; 23-3 at 107).
77. Treated sewage produced by Big Sky Water & Sewer District No. 363 reaches the groundwater below the golf course through over-application as irrigation water. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 76-1 at 19: 1-5).
78. “[S]ome amount” of the nitrogen load in the West Fork may be attributed to fertilizer, grass clippings, atmospheric nitrogen fixed by other plants, and other nitrogen sources to the south of the *Golf Course*. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 48-2 at 21).
79. The Sewer District has responsibility for incorporating the amount of fertilizer and grass clippings into its agronomic uptake rate calculations. *Cottonwood Env'tl. Law Center v. Edwards*, 2:20-cv-28-BMM (Doc. 22-1 at 11).
80. The Sewer District does not incorporate fertilizer and grass clippings into its agronomic uptake rate calculations.
81. The Chapel Springs Drain is discharging nitrogen from the Chapel Springs drain as a result of over irrigation, over fertilization, and grass clippings.

82. Big Sky Water & Sewer District No. 363 does not have a permit to pollute the groundwater from the point source holding ponds, from the sprinklers on the golf course, or from the Chapel Springs drain.
83. Defendant Big Sky Water & Sewer District No. 363 has violated and continues to violate the Montana Constitution and the Montana Water Quality Act by discharging waste water pollution into groundwater. §75-5-605, Mont. Const. Art. IX, section 1; Article II, section 3.
84. Cottonwood filed a complaint with the Montana DEQ regarding over irrigation of the Meadow Village Golf Course in May 2022.
85. The Montana DEQ never completed an investigation into whether the Meadow Village Golf Course is being over irrigated.
86. The Montana DEQ violated the Montana Constitution by failing to complete an investigation and take enforcement actions.
87. The unlawful and unpermitted discharges have caused the West Fork and the main stem of the Gallatin River to suffer severe algae blooms for the last several years.
88. The algae blooms cause aesthetic harm, impair the functioning of the aquatic ecosystem, and impair or preclude Plaintiffs from fishing, swimming, boating, and rafting on West Fork and main stem of the Gallatin River.
89. The Montana DEQ has acknowledged the Sewer District's over irrigation of the golf course causes noxious smells.

90. Defendants' willful failure to replace the holding pond liners and its continued acceptance of new sewer connections means additional pollution is further exacerbating algae blooms in the West Fork and main stem of the Gallatin River. The algae blooms are visually disturbing to the senses and unlawfully obstruct Plaintiffs and the public from using the West Fork and the main stem for swimming, boating, rafting, and fishing.

CLAIMS FOR RELIEF

I. Violation of Montana Water Quality Act

91. Plaintiff realleges and incorporates by reference all preceding paragraphs.
92. Treated sewage in the Big Sky Sewer District's holding ponds is waste that is regulated under the Montana Water Quality Act.
93. The treated sewage holding ponds are a "point source" source under the Montana Water Quality Act.
94. The liner of at least one of the treated sewage holding ponds is torn or ripped.
95. Defendants are allowing waste to be discharged through at least one of the torn or ripped sewage holding pond liners into the groundwater below the holding ponds.
96. Defendants are actively increasing the amount of pollution being discharged into the groundwater by continuing to accept new sewer applications and connections.
97. The groundwater below the holding ponds is a water of the State of Montana.

98. After the holding ponds discharge waste through tears and rips in the liners, the polluted groundwater is discharged out of a pipe into the West Fork of the Gallatin River.
99. Defendant Sewer District and Ron Edwards have violated, and continue to violate the Montana Water Quality Act, 75-5-605(1)-(2), Montana Code Annotated, by discharging waste into state waters from the point source holding ponds without a groundwater pollution permit.
100. Defendant Montana DEQ has violated, and continues to violate the Montana Water Quality Act by failing to investigate into where there is “gross leakage” from the sewage ponds. §75-5-636, MCA.

II. Violation of Montana Constitution

101. Plaintiff realleges and incorporates by reference all preceding paragraphs.
102. Defendants Sewer District and Ron Edwards have violated and continue to violate the Montana Constitution, Article II, Section 3 and Article IX, Section 1 by discharging waste into state waters without a groundwater pollution permit.
103. Defendant Montana DEQ has violated the Plaintiffs’ Constitutional guarantee to adequate remedies by failing to investigate whether there is “gross leakage” from the sewage ponds. Mont. Const. Art. IX, section 1; Article 2, section 3.

III. Civil Nuisance

104. Plaintiff realleges and incorporates by reference all preceding paragraphs.
105. Montana Code Annotated § 27-30-101 defines a civil “nuisance” as:

Anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or that unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance.

106. Defendants' unpermitted and unlawful discharge of treated sewage into the groundwater and ultimately the West Fork and main stem of the Gallatin River through the ripped liners of the sewage holding ponds and over-irrigation of the golf course is a public nuisance in violation of MCA §27-30-101(1).
107. The unpermitted discharges violate MCA §27-30-101(1) because they are offensive to Plaintiff's members' senses and obstruct the free use of the West Fork and main stem of the Gallatin River so as to interfere with the comfortable enjoyment of life including, but not limited to, swimming, boating, rafting, and fishing.
108. The unpermitted discharge violates MCA §27-30-101(1) because it unlawfully obstructs the free and customary use of the West Fork and main stem of the Gallatin River for swimming, boating, rafting, and fishing and other activities.
109. The unlawful and unpermitted discharges are a "nuisance" in violation of § 27-30-101, MCA because the resulting green algae blooms are offensive to the senses.
110. The unlawful and unpermitted discharges are a "nuisance" in violation of §27-31-101, MCA because of the noxious smells.

111. The unlawful and unpermitted discharges are a “nuisance” because they obstruct the free and customary use of the West Fork and the main stem of the Gallatin River for swimming, boating, rafting, and fishing. §27-30-101, MCA.
112. The unlawful and unpermitted discharges are a “nuisance” in violation of § 27-30,101, MCA because the resulting green algae blooms obstruct the free use of the waterbodies for swimming, boating, rafting, and fishing in a way that interferes with the comfortable enjoyment of life and the waterbodies, including the West Fork and main stem of the Gallatin River.

1. Criminal Nuisance

113. Plaintiff realleges and incorporates by reference all preceding paragraphs.
114. Montana Code Annotated § 45-8-111(1)(a), MCA defines a criminal “public nuisance” as:
- (a) a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons.
115. Any resident of the State may bring an action in equity to enjoin a criminal public nuisance. Section 45-8-112(1), MCA.
116. Defendants’ unpermitted and unlawful discharges of treated sewage into the groundwater and ultimately the West Fork and main stem of the Gallatin River because of the leaking holding ponds and over-irrigation of the golf course are a criminal nuisance in violation of MCA §45-8-111.

117. The unpermitted discharges are a criminal nuisance because the resulting algae is offensive to the senses. MCA § 45-8-111(1)(a).
118. Defendants are maintaining a criminal nuisance in violation of MCA § 45-8-111(2) by refusing to replace or repair the leaking holding pond liners and allowing the Meadow Village golf course to be over-irrigated.
119. The Defendants continued acceptance of new sewer connections while knowing the holding ponds are leaking treated sewage into public waters is offensive to the senses in violation of MCA §45-8-111(1)(a).
120. The Defendants continued acceptance of new sewer connections while the golf course is being over irrigated in such a way that the treated sewage is entering into groundwater and public waters is offensive to the senses in violation of MCA §45-8-111(1)(a).
121. The unpermitted discharges are criminal because the resulting algae renders the West Fork and main stem of the Gallatin River dangerous for passage. MCA § 45-8-111(1)(c).
122. The unpermitted discharges are criminal because they obstruct the free use of the West Fork and main stem of the Gallatin River so as to interfere with the comfortable enjoyment of life. MCA §45-8-111(1)(a).

2. RIGHT TO KNOW

123. Plaintiff realleges and incorporates by reference all preceding paragraphs

124. Plaintiff's request for documents from DEQ was made pursuant to Montana's Constitutional Right to Know provision, which provides: "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure." Mont. Const. Art. II, § 9.
125. Section 2-6-1006(2)(a), MCA, implements this provision, by requiring that once an agency receives a public records request, it must respond in a timely manner by either providing the information or providing an estimate of time it will take to response and associated costs.
126. DEQ did not provided the documents requested, here. Instead, it asserted the attorney client privilege, and refused to provide the information, the redacted documents, or a privilege log.
127. Plaintiff is entitled to know, at a minimum, the basis for the attorney-client privilege assertion and its applicability to Plaintiffs' request.
128. To the extent that the requested information contains within it any information that the Court determines to be privileged, Plaintiff is entitled to any non-privileged information in the documents and to a privilege log of the information the Court determines was properly withheld.
129. DEQ has waived any privilege by refusing to provide a privilege log or redacted forms of documents, forcing Plaintiffs to file suit to determine whether the asserted privilege exists and has been asserted properly.
130. Plaintiffs are entitled to costs and attorney fees pursuant to § 2-6-1009(3), MCA.

VI. WRIT OF MANDAMUS

131. The preceding paragraphs are realleged as though set forth in full hereunder.
132. The DEQ HAS a clear legal duty, to:
- a. Provide the requested information for inspection or copying by Plaintiffs; and/or
 - b. Provide an estimate of the time it will take to fulfill the request; and/or
 - c. Provide Plaintiffs with the projected “actual cost directly incident to fulfilling the request in the most cost-efficient and timely manner possible.”
133. The DEQ failed their clear legal duty, as required by § 2-6-1006, MCA, and Article II, Section 9, to provide the requested documents, or the information on time and costs as required by the statute. Or at minimum the redacted information and a privilege log.
134. Plaintiffs have no other plain, speedy adequate remedy in the course of the law to force the State Defendants to comply with Plaintiff’s lawful document request. The requested documents are otherwise not available to petitioners.
135. Plaintiffs are entitled to alternative and peremptory writs of mandate requiring the State DEQ to provide the information sought.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. Declare, hold, and adjudge that Defendants Big Sky Water & Sewer District and Ron Edwards have violated and continue to violate the Montana Water Quality Act, § 75-5-605(1), (2), Montana Code Annotated.

- B. Declare, hold, and adjudge that Defendant Montana DEQ has violated the Montana Water Quality Act, §75-5-636, Montana Code Annotated.
- C. Declare, hold, and adjudge that Defendants have violated and continue to violate the Montana Constitution.
- D. Declare, hold, and adjudge that Defendants Big Sky Water and Sewer District and Ron Edwards have violated and continue to violate civil and criminal Nuisance laws, including but not limited to MCA §27-30-101 et. seq.; MCA § 45-8-111 et. seq.
- E. Order Defendants to abate the nuisance caused by the leaking holding ponds.
- F. Enjoin Defendants from accepting any new sewer connections until the holding ponds stop discharging waste into groundwater or Defendants obtain a groundwater permit.
- G. Enjoin Defendants from accepting or reviewing any new or pending sewer connection applications until the holding ponds stop discharging waste into groundwater or Defendants obtain a permit.
- H. Enjoin Defendants from irrigating the Meadow Village golf course with treated sewage in volumes that exceed the agronomic uptake rate.
- I. Order Defendants to consult with the Meadow Village Golf Course to ensure the volume of treated sewage used to irrigate does not exceed the agronomic uptake rate.
- J. Order Defendants to pay damages. MCA, §27-30-103.

- K. Order Defendants to pay \$500/day for maintaining the public nuisance for the five years preceding the filing of this suit, or longer if relevant statutory law allows.
- L. Award Plaintiffs their reasonable litigation costs and expenses, including attorney and expert fees, incurred in bringing this action.
- M. An order requiring DEQ to produce the requested documents.
- N. Alternative and Peremptory writs of mandamus directing DEQ to expeditiously comply with Plaintiffs' public information request or to provide the redacted documents and a privilege log.
- O. Grant such further and additional relief as the Court deems just and proper in order to remedy the violations of law alleged herein and to protect the interests of the Plaintiffs and the public.

Respectfully submitted this 12th day of December, 2022.

/s/ John Meyer
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