

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

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

Plaintiffs,

vs.

BIG SKY WATER AND SEWER
DISTRICT, BOYNE USA, INC.,

Defendants.

2:20-cv-00028-BU-BMM

ORDER

Cottonwood Environmental Law Center, Montana Rivers, and Gallatin Wildlife Association (“Plaintiffs”) have filed a motion for a new trial. (Doc. 172.) Plaintiffs cite three reasons for a new trial: that the Big Sky Water and Sewer District presented false evidence; that the Court erred in determining that the underdrain pipe was not a point source; and that the verdict was contrary to the clear weight of the evidence. (Doc. 173.)

Plaintiffs claim that Big Sky District's methodology for interpreting the amount of leakage from the holding ponds was "grossly inaccurate." (Doc. 173 at 6.) Plaintiffs had the opportunity to present their methodologies and interpretation of the evidence to the jury. The jury found Big Sky District's methodology to be the more accurate interpretation. The Court will not order a new trial because the jury performed its duty in weighing the evidence presented to it and came out against Plaintiffs. The Court notes that Plaintiffs' expert admitted to misinterpreting the leakage data and thereby miscalculating the results as presented in his expert reports during the trial.

The Court has addressed Plaintiffs' argument that the underdrain pipe constitutes a point source under the Clean Water Act numerous times. (Docs. 35 at 11-12; 89 at 13; 121 at 5-6.) Plaintiffs may appeal the Court's legal determination, but the Court will not address the argument again here. The jury instructions correspond with the Court's understanding of the Clean Water Act.

Lastly, Plaintiffs argue that the jury's verdict was contrary to the clear weight of the evidence. Plaintiffs cite the fact that Big Sky District's experts collectively testified that the holding ponds contain a pollutant and that the water leaked from those ponds reaches the West Fork of the Gallatin River, a navigable waterway. As the Court has discussed previously, those facts alone are insufficient to prove a Clean Water Act violation under an indirect discharge theory. (Docs. 89 at 13-14; 121 at

6-7.) The jury's verdict was reasonable in light of the evidence presented.

ORDER

Accordingly, **IT IS ORDERED** that:

- Plaintiffs' Motion for a New Trial (Doc. 172) is **DENIED**.

Dated the 6th day of September, 2022.

A handwritten signature in blue ink, reading "Brian Morris".

Brian Morris, Chief District Judge
United States District Court