

Judge expands list of potential pollutants in dairy suit

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YAKIMA, Wash. — A federal judge has agreed that pharmaceuticals, phosphorus and hard metals, not just nitrates, can be included as potential pollutants in a contentious environmental lawsuit against five Yakima Valley dairies.

U.S. District Judge Thomas O. Rice issued the decision Jan. 31 and it was publicized by an attorney for the plaintiffs Thursday.

“This decision is important because the Court will accept the data that manure contains pollutants, including antibiotics and hormones, other than just the dangerous levels of nitrates that make their way into the groundwater used by people as drinking water and into streams and rivers that fish and wildlife are dependent upon,” Charlie Tebbutt, the Eugene, Ore., attorney representing the environmentalists, said in an email statement Thursday.

The dairies’ attorney, Debora Kristensen of Boise, Idaho, agreed the decision broadens the scope of the case.

“It’s really attacking modern agricultural practices,” she said. “It’s not just manure.”

The case has attracted national attention and both sides have recruited heavy-hitting legal help because it has the potential to set a precedent for how society views and handles manure.

Granger-based Community Association for the Restoration of the Environment, or CARE, first sued in February 2013, accusing the dairies of violating the U.S. Resource Conservation and Recovery Act, the federal solid waste disposal law by allowing cow manure to contaminate groundwater through overapplication and by letting storage lagoons leak.

CARE is represented by Tebbutt and the Center for Food Safety, a Washington, D.C., nonprofit advocacy group.

The dairies argued that manure is not waste but a useful byproduct they turn into fertilizer and bedding. The Idaho Dairymen’s Association agreed to pay for half the dairies’ legal fees.

The trial is scheduled for sometime in September, Tebbutt said.

At the case’s first hearing last June, the dairies argued that CARE did not mention either surface water contamination or contaminants other than nitrates when they filed notices of intent to sue, which precede federal lawsuits to give defendants a chance to settle.

CARE’s attorneys issued new notices to the dairies roughly two weeks later and amended their lawsuit in December.

Pharmaceuticals include antibiotics and hormones commonly given to dairy cows.

The case technically is five separate lawsuits against Cow Palace of Granger, George DeRuyter and Son Dairy of

Outlook, D&A Dairy of Outlook, Liberty-Bosma Dairies of Zillah and R&M Haak and Sons Dairy of Sunnyside.

A November 2012 report by the U.S. Environmental Protection Agency named the same five dairies as a likely source for contamination that has left up to 20 percent of tested private wells with nitrate levels that exceed federal drinking water standards. Such wells provide drinking water to 24,000 Lower Valley residents, many of them poor.

Excessive nitrates can harm infants and those with compromised immune systems.

The presence of nitrates, which can come from a variety of sources, can be an indicator of other contaminants, such as bacteria and pesticides.

Last March, four of the five dairies signed legally binding agreements with the EPA to monitor nitrate levels in groundwater and provide clean drinking water to neighbors over an eight-year period.

Only Rick and Marlene Haak did not sign the agreements, instead quitting the business, said Jay Gordon, executive director of the Washington State Dairy Federation.

Rice issued identical rulings Jan. 31 against all of them except the Haaks.