

# Dairy lawsuits can proceed to trial, federal judge rules

Ross Courtney, Yakima Herald Republic, June 22, 2013

A federal judge Friday decided environmental lawsuits against five Yakima Valley dairies for alleged groundwater pollution can go to trial.

In a 24-page ruling, U.S. District Judge Thomas Rice denied a motion by the dairies to dismiss lawsuits by a Granger-based environmental group accusing the dairies of allowing manure to contaminate drinking water.

“Thankfully, Judge Rice agreed with CARE on all major issues,” said Charlie Tebbutt, the Eugene, Ore., attorney representing the Community Association for the Restoration of the Environment, or CARE. “We look forward to proving our case on the facts. The facts undeniably show that not only these dairies but the other dairies in the Valley are causing a severe threat to human health and the environment.”

Lawyers in Yakima and Boise, Idaho, representing the dairies were not available by phone Friday. Their firms referred questions to Jay Gordon, executive director of the Washington State Dairy Federation.

Gordon said the dairies expected the judge to deny their motion to dismiss.

“We’re going to go forward,” he said. “It looks like he wants to hear some more.”

A trial date has not been set.

Legal heavy hitters from across the nation have rallied to the aid of both sides in the lawsuit, likely to set a precedent in rural America about whether manure is legally considered a solid waste in the production of milk or a useful product for fertilizing soil.

Rice’s ruling, which followed a June 7 hearing in Yakima’s federal courthouse, said that is an issue best decided by a trial.

“It would be premature at this stage of the proceedings to dismiss this case without any argument or evidence as to whether the manure was put to its intended use and/or used for beneficial purposes by defendants under the circumstances unique to this case,” Rice wrote in his denial.

In February, CARE filed federal lawsuits against five of the Lower Yakima Valley’s larger dairies alleging violations of solid waste laws by allowing nitrates from the manure to leach into groundwater, which thousands of rural residents rely on for drinking water.

Up to 20 percent of wells tested in the area have nitrates higher than federal standards. 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.

Supporting CARE is the Center for Food Safety, a Washington, D.C., nonprofit that promotes organic farming, and Public Justice, a coalition of public interest lawyers, also based in D.C. Siding with the dairies, the Idaho Dairymen's Association has promised to pay half the defense costs.

The case is really 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. All are located north of the Yakima River in the heart of the Lower Yakima Valley, one of the state's most fertile and productive farming regions known more for fruit than cows.

The cases were consolidated only for purposes of considering their dismissal.

The same five dairies were singled out last November by the U.S. Environmental Protection Agency as being a likely source for groundwater contamination. In 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 under federal drinking water laws.

Only the Haak family did not sign, instead quitting the business and auctioning off their cows late last month.

Debora Kristensen of the law firm Givens Pursley in Boise, who represents the dairies, argued that CARE's lawyers sued under federal solid waste laws without mentioning them in their required notices. Also, she said that the EPA consent decrees already give the environmentalists the relief they want and that a lawsuit based on solid waste laws duplicates the decrees.

CARE argued that solid waste laws address broader environmental issues than just drinking water. It wants more stringent testing and cleanup than the EPA mandates call for.