

Lower Valley dairies challenging EPA study blaming them for groundwater pollution

Phil Ferolito, Yakima Herald Republic, September 13, 2020

A dispute between Lower Valley dairies and the Environmental Protection Agency over groundwater contamination is making its way through the federal court system.

Late last month, the Court of Appeals for the Ninth Circuit rejected the EPA's motion to dismiss the case on grounds that statute of limitations had expired.

At issue is a 2012 EPA study that linked a handful of dairies near Granger and Sunnyside to groundwater pollution in the Lower Valley. The study led to those dairies entering a federal consent decree with EPA and the local environmental group CARE.

The decree required those dairies to install double synthetic liners in manure storage ponds and reduce the amount of manure applied to fields as fertilizer.

Now the dairy industry is fighting back, saying EPA's study was flawed. Earlier this year, the Washington State Dairy Federation and the impacted dairies filed a federal lawsuit challenging the study.

Affected dairy operators and the federation say the study didn't receive a full peer review, and that it was rewritten by policy enforcers — not scientists — when it was updated in 2013, said Dan Wood, executive director of the dairy federation.

“They misrepresented and changed the level of science and the certainty of information,” he said. “So, basically they lied to and bullied the farmers into a settlement based on false information.”

EPA officials declined to comment, citing ongoing litigation.

Attorney Charlie Tebbutt, who represents CARE and other local environmental groups, said there's scientific data beyond EPA's report linking large dairies to groundwater pollution.

“Instead of attacking an old study and fighting to maintain early 20th century management practices that have been proven to pollute drinking water, the dairy federation should get its members to synthetically line their leaking lagoons and stop overproducing and overapplying manure,” he said.

This issue stems from high nitrate levels in Lower Valley drinking water. Nitrates naturally occur in soil, but heavy use of fertilizers, including animal manure, and leaky septic tanks drastically increase nitrate concentrations.

High nitrates pose health risk for infants and pregnant women, according the Centers for Disease

Control.

The EPA's study pointed to a group of dairies, known as the "dairy cluster," as source of the high nitrates in nearby domestic wells.

Wood contends that federal law requires a full peer review of any study that is used to influence policy or that impacts the private sector.

U.S. Rep. Dan Newhouse, R-Sunnyside, last year asked the EPA for a full peer review, calling the study flawed and saying it unfairly burdens dairy operators.

Meanwhile, two other environmental groups, Friends of Toppenish Creek and Center for Food Safety, have joined CARE in the effort and sued other dairies, forcing them into similar settlement talks.

Sunnyside Dairy LLC last month agreed to a settlement calling for the installation of synthetic liners and other safeguards.

Opening briefs in the case are due Oct. 5, with EPA's response due Nov. 4. Wood said he doesn't expect a hearing on the matter until early 2021.