

RECENT LEGAL CASES AFFECTING DAIRY FARMERS

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One court decision in Florida and one case under appeal in New York State carry implications for Florida dairy farmers. Following are the generalized highlights of the two cases rather than a judicial review. Land and dairy farm owners need to understand how these two cases can impact one's current and future operation.

Kissimmee River Valley Sportsman's Association vs. Roger MacNamara

A recent court decision in Florida has dramatically changed the property line of land bordering navigable streams.

The case originated over a dispute at the head of the Kissimmee River Canal where a spoil island, dug in the 70's, had become a favorite hangout for campers and boaters. The landowner fenced off the island because of the trash left by visitors. He was taken to court by the Kissimmee River Valley Sportsman's Association. Arguing for the Sportsman's group was the Sierra Club legal defense fund who saw it as an issue of the public's right of access. The Sportsman's Association won the case which was then appealed to the second district court of appeals in Lakeland which ruled also in favor of the Sportsman's Association. The case was subsequently appealed to the Florida Supreme Court which refused to hear the case leaving it standing. It is not going to be appealed to the United States Supreme Court therefor the impact of the case stands.

The significant point of the case is that it changes what has been called the ordinary high water line. This has historically been the visible line marked on the bank by the visible presence and action of water most of the year. However, in this case, the court has moved that line up to an invisible elevation line representing "the normal reach of water during the high water season of each year." These are areas which have historically been categorized as "swamp and overflowed" lands. It has been estimated by the Sierra Club lawyer that this could affect at least 100 miles of fences around the state and at least a half a million acres of land claimed by private property owners.

Concerned Area Residents for the Environmental (CARE) vs. Southview Farm and Richard H. Popp

A New York State legal case between a dairy and its neighbors could have national significance.

Richard Popp, owner of Southview Farm, was accused by his neighbors of causing degradation of area streams by runoff from his dairy. Actually it was not from his milking operation but from crop fields adjacent to the dairy where he was land spreading manure from the dairy. The case goes back to the Federal Clean Water Act that was passed in the early 70's, which defined confined animal feeding operations as pollution point sources requiring national Pollution Discharge Elimination System (NPDES) permits. These terms may not be familiar to many Florida dairy farmers because Florida has its own regulations in regard to dairy farms that allowed our state to take delegation for everything but the NPDES aspect from the federal authorities. Florida is now currently making changes in order to also accept delegation of the NPDES program.

In a seesaw action and change of action, the court has ruled in favor of the neighbors and then a reversal by appeal in favor of the landowner as it has moved its way through the courts and is now on its way to the United States Supreme Court. At one point the manure spreader--which would also apply to a pivot gun irrigation system--was defined as a point source IF the material was so grossly overapplied that it flowed off-site. This is also one of the few cases where citizens have been the prime movers in enforcement action.

The important point of the case, regardless of how it comes out, is that all dairy farms need to be paying attention to the manner in which manure or effluent is applied to their land and that it is applied at "agronomic rates" meaning that the amount of nutrients is such that they will be taken up by the crop to which they are applied whether that crop is pasture grass or row crops.

It is for this above reason that Florida dairy farms on limited land areas need to make provision for the off-site utilization of excess manure or effluent.