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Dairy Farmers Sue Power Firms Over Cows' Deaths

Complaint Blames Stray Voltage in Ground

By Stefanie Knapp

Mike and Linda Cherniske couldn't understand why their cows seemed to die so much more easily at their new dairy farm in Delta, Utah, than they had back East.

"It's like if you look at them wrong, they're going to lay down and die," Mike Cherniske says.

After much testing, the Cherniskes' claim that stray voltage released into the ground by the Intermountain Power Project is killing their cows. The couple and 50 other Delta dairy farmers are suing the power plant, which generates electricity that is transmitted to Los Angeles for consumption, and other power authorities, including the Los Angeles Department of Water and Power. The farmers want more than \$100 million in damages. *Kenneth Luth v. Department of Water and Power for the City of Los Angeles*, BC293683 (L.A. Super. Ct., filed April 9, 2003).

The Cherniskes and their four children moved to Delta in 1997 from their small dairy farm in Connecticut to continue their dream.

"The dream became a nightmare," Linda Cherniske says. "Now we can't get away from it."

In the last four years, the Cherniskes lost 500 cows.

The deaths reached a peak in December 2001. The family lost a cow a day and had between 50 and 60 cows – or nearly 10 percent of their 600 to 700 milking cows – in the hospital at any given time.

"I was running up vet bills [that] I couldn't afford," Mike Cherniske says.

In the last four years, the Cherniskes have had Veterinarian bills of \$300,000, according to attorney David Ringwood, partner at Howarth & Smith. Their farm, Gunn Hill Dairy Properties, is eight miles from the power plant.

The Cherniskes noticed soon after they moved to Delta that the cows wouldn't drink from the water trough. They would stand around it and lick it, but wouldn't drink, Mike Cherniske says. He cleaned and scrubbed the trough, but they wouldn't drink.

Experts eliminated a multitude of problems that were causing the cows to die or become sick. The Cherniskes were stumped, until one expert suggested that the couple test for stray voltage.

"Cows, in particular dairy cows, are very sensitive to electrical current," says Suzelle Smith, partner at Los Angeles' Howarth & Smith, who represents the plaintiffs.

The cows weren't drinking the water because, each time they tried, they received an electric shock, according to Smith. The Cherniskes switched to rubber water troughs and put down rubber mats, hoping that would stop the shocks and the cows could drink. It didn't.

"We just couldn't get rid of it," Mike Cherniske says.

Vincent Davitt of LeBoeuf, Lamb, Greene & McRae represents the major defendants, including the power plant and Los Angeles Department of Water and Power. Davitt did not return calls for comment.

The plaintiffs allege that the Southern California Public Power Authority owns the lines that transmit the electricity to California, according to Smith. They believe that the company should be held accountable, as well.

The Southern California Public Power Authority denies those charges and has filed a demurrer, according to its attorney Dorothy Wolpert of Bird, Marella, Boxer & Wolpert in Los Angeles.

"[Southern California Public Power Authority] neither owns nor operates this facility and I think [is] not properly named as a defendant," Wolpert says.

Smith, however, points to the authority's own Web site, which stated as of Aug. 6 that the authority holds "100 [percent] ownership" of the power line.

"It does not own those lines," Wolpert says. "[The] Web site says things that are confusing."

The authority has changed the Web site to read "Contribution-in-aid of construction was \$1.23 billion, in exchange for 100 [percent] entitlement to the capability of the line, but not ownership."

A hearing on the demurrer and other defendants' motion to dismiss is set for Tuesday before Los Angeles Superior Court Judge Elizabeth Grimes.

If the authority can show proof that it does not own the lines, Smith has no problem with dismissing them from the suit.

"We want the right defendants in this case," she says.

The Cherniske class action is not the first of its kind.

In June, the Supreme Court of Wisconsin upheld a decision finding a power company liable

for damages to a dairy herd because of stray voltage. The lower court awarded the dairy farm \$1.2 million in damages. *Hoffman v. Wisconsin Electric Power Co.*, 664 N.W.2d 55 (2003).

Smith hopes for similar results in her case.

There is a system of underground aquifers in Delta, according to Smith. As a result, the water acts as a conductor, and an electric grid has formed under ground.

"Cows are walking on charged ground," Smith says.

When the farmers first learned of the problem, the engineers from the power plant would come out to the farms to try and sort out the problem, but as the farmers conducted more testing, "the more reluctant they were to talk to us," Mike Cherniske says.

The summer of 2002 was the last time he had contact with the plant engineers, who now refuse to talk to him.

Not knowing what else to do, the farmers filed a lawsuit. Many of the farms have lost significant amounts of money, and some are close to bankruptcy, according to Smith.

"Everyone's affected, financially and emotionally," Linda Cherniske says.

The Cherniskes calculate their damages around \$6 million, which includes losses to their business and real estate.

"This makes our dairies worth nothing," Mike Cherniske says. It's like everything is hinging on this."