

Water Works votes to sue 3 counties over nitrates



Timothy Meinch, tmeinch@dmreg.com 9:02 a.m. CST January 9, 2015

Iowans speakout on Water Works lawsuit.



(Photo: Timothy Meinch/The Register)

The debate over how to improve the water quality of Iowa's rivers and streams took center stage inside Des Moines Water Works' headquarters Thursday afternoon.

Dozens of people debated the utility's plan to [sue three northwestern Iowa counties](#) ([/story/news/2015/01/06/des-moines-water-works-nitrate-lawsuit/21365355/](#)) over high nitrate levels in the Raccoon River.

In the end, the waterworks moved forward with its plans to sue the supervisors in Sac, Buena Vista and Calhoun counties.

"We don't need more rules and regulations. We need cooperation," said Bill Couser, a cattle farmer from Nevada. He was one of more than 20 people who addressed the board during a public comment session.

Only a few objected to the lawsuit. Several speakers from Iowa Citizens for Community Improvement applauded the move.

"Farmers who pollute need to pay for the cleanup. Not the 500,000 people in this community or other communities," said Barbara Lang, a lifelong Iowan and CCI member.

The lawsuit targets several drainage districts feeding into the North Raccoon River that are managed by the three counties. Weekly samples taken from the river in Sac County since March have shown high concentrations of nitrates, according to officials with the Des Moines utility.

Those nitrates have triggered costly treatment operations downstream at the Des Moines Water Works facility, officials say. But the end goal of the lawsuit extends far beyond the targeted counties.

"We're not out there to seek damages," said Graham Gillette, chairman of the waterworks board. "We're really out there to seek this permitting and regulatory process. This isn't about us recouping losses or protecting our individual asset. It's about protecting Iowa waterways."

More than 3,000 similar drainage districts exist across Iowa, many of them implemented more than 100 years ago as a drainage solution for farming on flat land, according to John Torbert, executive director of the Iowa Drainage District Association.

The Des Moines Water Works lawsuit would be filed in federal court under the U.S. Clean Water Act, which grants regulatory exemptions to nonpoint source discharges, including field tile systems on individual farms.

Waterworks officials say organized drainage districts shouldn't be exempt from regulations.

"What we would want to see is the state and federal government consciously regulating those programs," said Bill Stowe, CEO of Des Moines Water Works.

The U.S. Environmental Protection Agency (<http://water.epa.gov/drink/contaminants/basicinformation/nitrate.cfm>) mandates that water suppliers monitor drinking water and limit nitrates to no more than 10 milligrams per liter. Recent samples from Sac County waterways were five times higher than that maximum level, according to Stowe.

Water Works has been running a specialized denitrification facility since early December — at a cost of roughly \$4,000 a day — to combat historic highs in nitrate concentrations for this time of year, Stowe said.

Nitrates occur naturally in the soil, but can spike in water when manure and other fertilizers drain into waterways. Untreated high levels of nitrates in drinking water have been linked to blue baby syndrome, when a baby's blood can't carry sufficient oxygen, as well as to various cancers and miscarriages, according to the EPA.

In a statement, Iowa Secretary of Agriculture Bill Northey called the waterworks' threat of litigation "the wrong approach to address the important issue of improving water quality."

"It continues the negative, antagonistic and unproductive approach by the current leadership at Des Moines Water Works," Northey wrote. "Working with farmers and investing in additional conservation practices are what is needed."

Neil Hamilton, director of the Agricultural Law Center at Drake University, told the Register that he's unaware of any precedent for this type of dispute, but he said the issue has merit.

"They have some legitimate concerns," Hamilton said.

"They're doing it because they have a responsibility to their water customers and there's a serious water issue. In that regard, Water Works has played a valuable role in trying to increase the attention and understanding of this issue."

Roger Wolf, director of environmental programs with the Iowa Soybean Association, said the state's voluntary nutrient reduction program put in place less than two years ago has already improved water quality and needs more time.

"I worry about the message litigation sends," Wolf said.

Officials with the targeted counties declined to comment. An attorney representing Sac County supervisors said he would speak after seeing the lawsuit.

Torbert, with the Iowa Drainage District Association, said he was not surprised by the action. He has heard rumors of a lawsuit for two years. "Regulation is always an option; it's not an option that we support."

He said regulations on drainage districts would likely mean measures like cover crops, installed wetlands or buffer strips.

"These are not difficult processes, but they're expensive processes," Torbert said.

He and others also called the waterworks' action hypocritical, pointing out how the utility dumps the very nitrates it removes from drinking water back into the Raccoon and Des Moines rivers.

A Des Moines Register report in June documented [how the waterworks discharged about 13,500 pounds of nitrates into the river in 2013 alone](#) ([/story/news/2014/06/15/cities-often-send-nitrates-downstream-treatment/10544605/%20](#)).

Des Moines Water Works officials said Thursday that the practice continues because state authorities have not permitted anything else.

"We're still doing it today, but we're operating under a state permit that not only allows us to do it, but insists that we do it," Stowe said. "They believe the alternative, which is land apply or (placing it in) a lagoon, is an unpermitted land discharge.

"We have no alternative but to discharge it back into the river."

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