

The Committee to Save Bloody Run

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Judge Orders DNR to Redo Supreme Beef NMP

The Iowa Department of Natural Resources made numerous errors when approving a plan for the handling of manure from an 11,600-head cattle operation in the headwaters of Clayton County's Bloody Run Creek, according to a ruling Friday by Polk County District Judge Scott Rosenberg. In response to a challenge by the Iowa Chapter of the Sierra Club and the Iowa State Council of Trout Unlimited (TU,) the judge ordered the DNR to reconsider the nutrient management plan (NMP) for Supreme Beef LLC.

"Sierra Club is pleased that Judge Rosenberg gave this case the thorough review that it deserved," said Wally Taylor, attorney for the Sierra Club. "We hope that the DNR got the message that its discretion is not unlimited and that it must follow its own rules."

Bloody Run Creek is a popular trout stream, sustaining naturally reproducing brown trout. It also has been designated an "Outstanding Iowa Water" by the DNR.

Rosenberg agreed with Sierra Club in his April 28 ruling, which reversed DNR's approval of the nutrient management plan. The judge determined that DNR's approval of the nutrient management plan was illogical in several ways:

- allowing a manure sample from a completely different kind of operation to be used in calculating the amount of nutrients that would be in the Supreme Beef manure;
- using that manure sample in conjunction with a table value that had no relationship to the sample;
- failing to properly consider all types of soil erosion from the crop fields where the Supreme Beef manure would be applied;
- and in allowing Supreme Beef to avoid describing in the nutrient management plan how the storage basin would be adequate to hold all of the manure produced.

In addition, Judge Rosenberg held that the Supreme Beef storage basin could not be constructed in a floodway. But he said he had no jurisdiction in this case, while reviewing the nutrient management plan, to determine that the basin is, in fact, in a floodway.

Supreme Beef co-owners Jared, Dean, and Mike Walz submitted the NMP in 2020. After several revisions, and a discussion between DNR director Kayla Lyon and state senator Dan Zumbach, who is the father-in-law of Jared Walz, the DNR approved the NMP in February 2021. Cattle were moved into the facility later that year.

The livestock operation has been controversial since construction started in March of 2017. There were conflicts over the need for a stormwater construction permit, and the DNR assessed several fines against the operation. The DNR staff asked to turn the case over to the Iowa Attorney General's office for further legal action, but the Iowa Environmental Protection Commission declined to take that action.

This case brings to light several points. Supreme Beef, and perhaps other livestock facilities, have operations that do not come within the scope of Iowa's rules. DNR is willing to ignore or misapply the rules to accommodate the non-complying feeding operations such as Supreme Beef. And the rules themselves are often vague and confusing, which may be by design.

The language of judge's ruling demonstrates how complicated and confusing the state laws and administrative rules are. Rosenberg used the terms, "strange," "odd," and illogical when describing the DNR's approach to approving the NMP. ". . . the NMP in question is overwhelming marked with illogical interpretations and applications," Rosenberg concluded.

Taylor, the Sierra Club attorney, said it's uncertain what the next action will be. "The judge ruled in our favor on some of our claims but not others," he said. "DNR and/or Supreme Beef can move for reconsideration, appeal to the Iowa Supreme Court, or go back and do the NMP over."