



# Dairy Cares Report

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## Fresno court makes right call; rejects demand for excessive attorney fees

Three years ago, San Joaquin Valley air quality officials adopted landmark regulations for dairies. Since then, dairy operators have cooperated to carry out the regulations, resulting in a nearly 30 percent decrease in emissions, just one of many recent valley efforts resulting in overall improved air quality.

Unfortunately, long before the new dairy rules were given a chance to work, anti-dairy activists sued the San Joaquin Valley Air Pollution Control District. Their amazing claim was that the most stringent dairy rules in the United States didn't go far enough. Calling themselves the Association of Irrigated Residents (AIR) and represented by San Francisco-based attorneys from the Center on Race, Poverty and the Environment, the activists claimed the air district actually broke the law by adopting the rule.

In fact, AIR made nine separate claims in legal filings against the district. Most of the claims were completely baseless, some close to unbelievable. For example, AIR actually charged that the regulations, known collectively as Rule 4570, were "arbitrary and capricious" and failed to reduce emissions. Nothing could be further from the truth. The air district:

- Held dozens of public meetings and workshops over the course of over a year to gather scientific evidence for the regulations;
- Partnered with the California Air Resources Board to conduct additional scientific research to better understand dairy emissions and how to reduce those emissions; and
- Formed a special stakeholder advisory group including scientists, environmentalists and dairy industry representatives to review the information and prepare a report to advise the district.

Ultimately, all nine claims made by AIR and CRPE were rejected by the court. However, a state appellate court reversed the lower court on one of those nine claims – essentially a procedural violation. While finding no fault with Rule 4570 itself, the court found that the air district failed to write a report on the health benefits of the rule.

To correct this, the air district completed the necessary report. That report concluded that Rule 4570 reduced emissions from dairies, improving air quality and contributing to better public health.

After dragging the air district through this expensive and ultimately pointless legal battle, which resulted in nothing more than a report confirming something everyone already knew, AIR then demanded that the court order the air district to pay the legal fees generated by its San Francisco-based attorneys over the course of a nearly three-year legal battle. **The staggering bill: \$483,627!**

Worse: because the air district is a government agency, this demand was ultimately about sending nearly half a million taxpayer dollars directly into the pockets of San Francisco lawyers.

Thankfully, the court saw through this unfair demand. Said Judge Tyler Tharpe:

***“The court is convinced that that an overwhelming number of those hours were spent on entirely unsuccessful labor intensive claims ...”***

The judge also chided the supposedly San Joaquin Valley-based AIR because “no effort was made to retain local counsel. Accordingly, the court refuses to compensate at San Francisco hourly rates.”

In the end, because AIR did prevail on one of the nine claims, the judge ordered the air district to compensate some of the legal fees. But the amount awarded was just \$45,750, or less than 10 percent of what was requested.

Former Supreme Court Justice Lewis Powell famously remarked that America has become “the most litigious society in the history of mankind.” Cases such as this one lift the veil on how the court process can be abused by activist lawyers supposedly acting in the interests of San Joaquin Valley residents, while actually embarking on a fund-raising crusade that ultimately wastes the time and resources of the air district, the courts and taxpayers, all of whom have better things to do with their time and resources.

Thankfully, at least this once, they were not richly rewarded.

*Dairy Cares is a statewide coalition supporting economic and environmental sustainability for California's dairy industry. Our members include the Alliance of Western Milk Producers, Bank of the West, Bar 20 Dairy Farms, California Dairies Inc., California Dairy Campaign, California Farm Bureau Federation, Dairy Farmers of America-California, Dairy Institute of California, Hilmar Cheese Co., HP Hood, Joseph Gallo Farms, Land O' Lakes, Milk Producers Council, Turlock Dairy & Refrigeration, Western United Dairymen, and others. For information about Dairy Cares, visit our web site at [www.dairycares.com](http://www.dairycares.com), write [dairycares@aol.com](mailto:dairycares@aol.com) or call 916-441-3318.*