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Legal rights to irrigation water

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PUMPING FROM WELLS

Can you pump water from a well without liability to neighboring landowners? No, but the neighbors will have to prove in court that you pumped an "unreasonable amount" which indeed directly damaged them.

Even if you pump groundwater like crazy for your crops, your complaining neighbors will have to show you damaged them by this pumping. That is a tall order when crops all around are likely showing drought stress whether they are next to the irrigator's land or farther down the road. There must be a causal connection between the pumping and the "damage."

This lack of certainty scares off some would-be crop irrigators, but its the same legal approach to "water rights" that most midwestern and eastern states use. It's known as the Riparian Water Rights System. Disputes are settled case-by-case, which means legal costs and delays. Apparently, the courts would balance the relative benefits of the water to the competing users (See the 1971 Missouri case of Higday v. Nickolaus, 469 S.W2d 859, K.C. Mo. App.). But the complaining neighbor will have to show that damages were caused due to his neighbor's irrigation.

Most farmers in Missouri who irrigate whom I know locate their wells a fair distance from their neighbors' property to minimize siphoning down neighbors' shallower wells. This goes a long ways towards avoiding hot tempers and lawsuits.

PUMPING FROM STREAMS

Missouri case law (known as Common Law) basically says landowners whose land borders a stream can pump a "reasonable amount" of stream water. But the cases also add that downstream landowners have the right to the stream's "natural flow." Legal analysts point out the Missouri courts use a "balancing" approach when faced with a streamflow battle between riparian landowners (that is, persons owning land abutting the watercourse). The main factors balanced are the amount of water available and the water uses made by other riparians. Again, a case-by-case approach is required, so irrigators are always open to challenge.

Pumping directly from watercourses is subject to federal restrictions administered by the Corps of Engineers. These primarily require permit application and specify how the intake pipe may be inserted into the stream/river. Contact directly the Corps for details.

REGISTERING PUMPING WITH THE STATE

In 1983, the Missouri Legislature enacted Chapter 256.400 et seq. requiring persons with pumping equipment and water sources capable of withdrawing 100,000 gallons or more per day from a stream, river, lake, well, spring or other water source to register such potential use with the Missouri Department of Natural Resources.

This is an annual report to be filed. Exceptions (no filing needed) are farm ponds/lakes collecting surface water and located on the farmer's land.

The purpose of such water usage reporting is to gather information as to where and how much water is being used throughout Missouri.

FARM PONDS AND LAKES

Landowners have the most control over farm ponds and lakes collecting "diffused surface water," that is, rainwater not yet in a "watercourse." You can control and pretty much do as you please with pond water. Neighbors have no legal right to object to you impounding diffused surface water, even though it would otherwise drain down to their land. This is the Law of Capture, a legal doctrine adopted in Missouri.

It may require a legal opinion whether your "pond" is capturing diffused surface water or, instead, riparian water in a "watercourse." Missouri court cases define a watercourse to be a stream with definite banks, a defined channel, and a fairly continuous water flow.

SUMMING UP THE KEY POINTS

1. Well pumping is legally permissible as long as it does not cause damages to neighboring landowners. Then the court must balance the relative harm and benefit.
2. Pumping from streams is subject to the same balance of competing interests court test. Complainers must be able to prove the irrigator is causing them damages.
3. Farm ponds/lakes are a "safe harbor" from the uncertainty faced when pumping from wells or streams. Pond water is generally "free to the capturer." The only exception is where the impounded water is from a "watercourse."

Suggestion: Why not pump into reservoirs from streams and wells during times when ample water exists so that neighbors would be less likely to suffer real or perceived damages?