

Understanding Landowners' Water Rights

Q: Who has the right to withdraw and use water from an aquifer, lake or stream?

A: Any person may withdraw water from an aquifer beneath the surface of land it owns or leases. A landowner or lessee also may take water from a stream or lake adjoining its land.

Q: Does the water have to be used on the property at which it is collected, or may a municipality, county, water company or other landowner transport the water to other locations for use or sale?

A: Historically, a landowner could use the water only on its own property. In Ohio, however, a landowner may transport water to other locations for use or sale if this water withdrawal does not deprive other landowners of access to adequate amounts of water.

Q: Let's say a water company, factory, dairy, municipality, or county is planning to drill a new well to supply its operations with water. If the new well dries up a neighbor's well, is the owner of the new well liable for the damage?

A: The new user is liable if its use of the water is unreasonable. Ohio's law on water usage provides a balancing test of nine criteria to assist the courts in deciding whether someone's water use is unreasonable. These criteria compare the value of the neighbors' competing uses, quantify the extent to which one person's water usage harms other persons, and evaluate the practicality of adjusting one person's water use to accommodate other persons' usage.

Q: Can I stop my neighbor from pumping water out of a stream or lake that is next to my property?

A: Your neighbor can be stopped if his or her use of water is unreasonable under the same principles that apply to the use of groundwater from wells.

Q: If I was using the groundwater first, can I prevent my neighbor from drilling a new well that dries up my well?

A: Sometimes, but not always. If your neighbor uses an unreasonable amount of water, you may be able to file suit to protect your water supply. However, the law seeks to accommodate as much water use as possible, so that everyone can enjoy this resource. Therefore, if you have a shallow well or use the water inefficiently, you may have to drill a deeper well or make changes in how you use the water so that other persons can also use the aquifer. In addition, if you waste water or use it for frivolous purposes, a later claim on the water with a more valuable use will take precedence. The same principles apply to using water from a lake or stream.

Q: Can the government stop my neighbor from taking too much water and drying up my well, lake, or stream?

A: No. Government agencies have no authority to regulate the amount of water pumped from an aquifer, lake or stream. However, Ohio law does authorize a landowner to file a lawsuit to protect the landowner's own water supply.

Q: What are my remedies if a neighbor's unreasonable water usage damages my well, lake or stream?

A: Typically, a court will require the neighbor to pay for deepening your well, reduce water usage, or, in extreme cases, stop using the water. The neighbor may also have to pay damages to compensate you for your loss and expenses.

Q: Do I have any recourse if my neighbor pollutes the aquifer, lake or stream I am using as a water supply?

A: The pollution of a person's water supply may be an unreasonable use of water, nuisance, or trespass that can be addressed through a lawsuit. In some cases, pollution may also violate the government's pollution control laws, and you can submit a complaint to the government requesting action to address the pollution.

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This "Law You Can Use" consumer legal information column was provided by the Ohio State Bar Association (OSBA). It was prepared by attorney Jack Van Kley, a member of the Columbus firm of Van Kley & Walker, LLC.

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