

Opinion No. 22-3575

September 7, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. John G. Koogler, County Agent, Reserve, New Mexico.

Sinking of Wells Resulting in Draining Other Water Courses, etc., Not Illegal or Objectionable.

OPINION

{*176} Replying to your letter of the 29th ultimo, asking if the digging of wells for irrigation purposes adjacent to lands along the Tularosa and Apache Creeks, which might drain the creeks and to some {*177} degree reduce the water in ditches which had water rights from the above mentioned streams, would be illegal by reason of such reduction of the water under said water rights, I wish to advise:

The rule adopted by American courts is that where the rights of land owners are similar and their enjoyment of water depends on the action of other land owners, their rights must be correlative and subjected to the maxim that one must so use his own as not to injure another, so that each land owner is restricted to a reasonable exercise of his own rights and a reasonable use of his own property, in view of the similar rights of others.

Under the rule as above expressed, it has been held by the courts that it is not unreasonable that the owner of land dig wells and take therefrom all the water that he needs in order that he may fully enjoy the usefulness of his land as land, either for purposes of pleasure, abode, productiveness of soil, trade, manufacture, or for whatever use the land as land, may serve. He may consume it but must not discharge it to the injury of others.

It has also been held that percolating waters may be taken for use on land other than that where found if it can be done without injury to adjoining owners or prior appropriators.

I am, therefore, of the opinion that the sinking of wells as mentioned in your letter will not be illegal although it may result in reducing the quantity of water that is now being received by certain owners adjacent to ditches, the waters of which are taken from the streams mentioned.