

Water Use Legislation

2004 Irrigation Meetings

Note to presenters: Handout materials are available at
<http://www.kbs.msu.edu/mgsp>

Copies of PA 177 and PA 148 are available at
<http://www.michiganlegislature.org>

Mike Gaber MDEQ, Mike Gregg MDA, Lyndon Kelley MSUE

Water Use Legislation

2004 Irrigation Meetings

Two new water use laws will come into effect in 2004.

Irrigator and other major water users will need to be prepared to meet the new water use requirement in 2004.

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Water Use Legislation

**Log on to the
Michigan Legislature
Homepage
At**

<http://www.michiganlegislature.org>

Query for Water Use or Natural Resources

Issues pushing water use legislation:

- MICHIGAN'S ABILITY TO SAY NO TO DIVERSIONS.
(Great Lakes Charter & Great Lakes Charter Annex)
- Great Lake State Requests
- Nova Group
- Perrier Plant
- In-State Water Use Conflicts
- Irrigation in Saginaw County.
- Quarry in Monroe County

• Consumptive Use
• Reduce base flow -
impaired fisheries

SB 289 – PA. 148 Water Use Reporting

- P.A. 148 of 2003 approved Aug. 2003
- Amends part 327 NREPA - DEQ administers
- All water withdrawals over 100,000 gpd over 30 day period required to report annually
- \$100 reporting fee to DEQ
- Agriculture option to report to MDA at no cost

Enrolled Senate Bill 289

Purposed agriculture requirements no longer in
PA.148

Fees - \$100 annually

- Certificate (permit) ,
 - ability to say no to new wells or site
 - ability to review and halt water use
 - public input to water use hearing
 - requiring neighbors permission if potentially affected
 - costly hydrology studies
- Large well / small well conflict resolution measures (tie-bar to House Bill 4087)

Senate Bill 289 – PA. 148

Agriculture Benefits:

- Great lake Charter Compliance
- Water Resources Mapping
- Advisory Council

Agriculture Requirements

- Water Reporting

Senate Bill 289 – PA. 148

Agriculture requirements:

Annual water use reporting – “Water use Conservation plan”.

- Amount on monthly basis (gals or acre inches)
- Acreage of each irrigated crop.
- Source/s of water water supply
- Water intended use if not irrigation
- Static water level of the aquifer
- Amount of consumptive use (MDA/MSU est.)

* MDA will prepare a report on agriculture water use on a Township basis for the State.

SB 289 – PA. 148 Water Use Reporting

- Agriculture reports a “conservation plan”
- MDA makes a water use report on a township basis and sends to DEQ
- DEQ compiles data and statewide inventory within 2 yrs.
- Creates a 13 member Groundwater Conservation Advisory Council

SB 289 – PA. 148 Water Use Reporting

Advisory Council

- evaluates progress on Annex compliance
- studies sustainability and whether additional regulatory control is necessary
- studies the implementation of the dispute resolution program under Part 317
- issues report in 2 1/2 yrs to legislature

Questions

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GROUNDWATER WITHDRAWAL DISPUTES

Addresses:



Water well failure or malfunction due to lowering of groundwater by a nearby high capacity well

Mike Gaber MDEQ, Mike Gregg MDA, Lyndon Kelley MSUE

ACT 177 PA 2003

(EFFECTIVE AUGUST 29, 2003)

Amends Act 451
PA 1994 (NREPA)

Establishes part PART
317:

Aquifer Protection and Dispute
Resolution

House Bill 4087



Act 177, PA 2003

AFFECTIVE IMMEDIATELY

I. SAGINAW COUNTY:

> *Fremont Township*

> *Richland Township*

> *Lakefield Township*

> *Jonesfield Township*

II. MONROE COUNTY

Effective statewide on July 1, 2004

Act 177 allows owner of a “small quantity well” to file a complaint with MDEQ (or MDA) if well:

- Fails to furnish normal water supply
- Fails to provide potable water

Complainant must have a credible reason to believe that the problem is caused by a HIGH CAPACITY WELL

What is a HIGH CAPACITY WELL?

1 or more wells associated with industrial or processing facilities, irrigation facilities, farms, or public water supply systems that are capable of pumping 100,000 gallons of groundwater per day (GPD)

(70 gallons per minute (GPM) or more).

What is a small quantity well



1 or more water wells of a person at the same location that, in the aggregate from all sources and by all methods, have the capability of withdrawing:

< 100,000 GPD (< 70 GPM)

SMALL
QUANTITY
WELL

HIGH
CAPACITY
WELL

Based on pump capacity.....

NOT

Well capacity or
Volume of water pumped

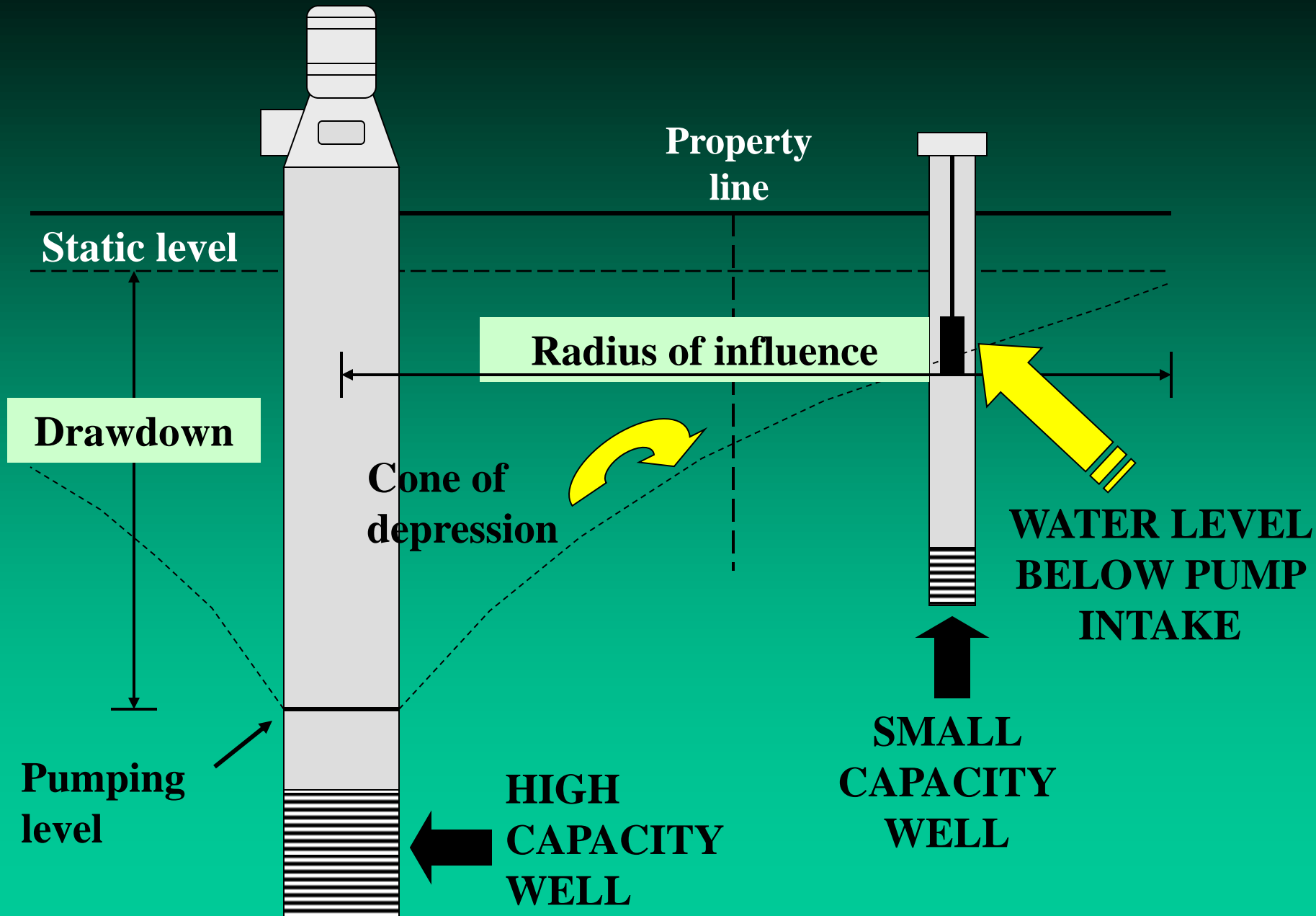
< 100,000 GPD (< 70 GPM)



Does NOT allow high CAPACITY well owner to file complaint:

- against another high CAPACITY well owner
- against group of small quantity wells

PUMPING WELL DIAGRAM



Well interference depends on:



**AQUIFER
CHARACTERISTICS**

**DEPTHS OF
PUMP
INTAKES
WITHIN THE
WELLS**

**DISTANCE
BETWEEN
WELLS**

**WELL
DEPTHS**

**RATE AND
DURATION OF
WELL PUMPING**

**AQUIFER
RECHARGE
PATTERNS**



How is a complaint filed?

Groundwater Withdrawal Hotline: Toll Free: **1-866-709-0019**

Toll Free Fax: **1-866-709-0039**

Complaint forms can be faxed, delivered, or sent via certified mail to:

MICHIGAN
DEPT. OF
ENVIRONMENTAL
QUALITY
(MDEQ)

OR

MICHIGAN
DEPT. OF
AGRICULTURE
(MDA)

Penalty for Unverified Complaint

Complainant may be ordered to pay state investigative costs for 3rd and subsequent unverified complaints

Unverified complaint: Director determines there is not reasonable evidence to declare a groundwater dispute

MDEQ or MDA may refuse to accept “unreasonable” complaints

WELL DRILLER ASSESSMENT OF SMALL QUANTITY WELL

PURPOSE: WRITTEN STATEMENT THAT COMPLAINANT'S WELL FAILURES WERE NOT DUE TO MECHNICAL FAILURES OF WELL OR PUMP

- May be requested by MDEQ or MDA
- Static water level measurement required
- Use MDEQ assessment form
- Must be completed by registered well driller



COMPLAINT RESPONSE

MDEQ or MDA shall:

CONTACT
COMPLAINANT

&

BEGIN
INVESTIGATION

WITHIN 2 WORK DAYS

Conduct on-site evaluation within 5 work days

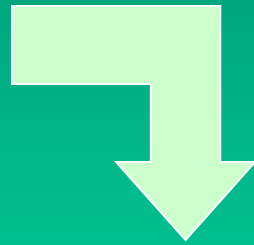
If complaint is in close proximity to other complaints
on-site investigation may not be performed



AGRICULTURAL HIGH CAPACITY WELLS

MDA is responsible for:
investigating agricultural
high capacity well
complaints

If unable to resolve
within 14 days....



Refer to MDEQ for
resolution



DEQ/MDA INVESTIGATION

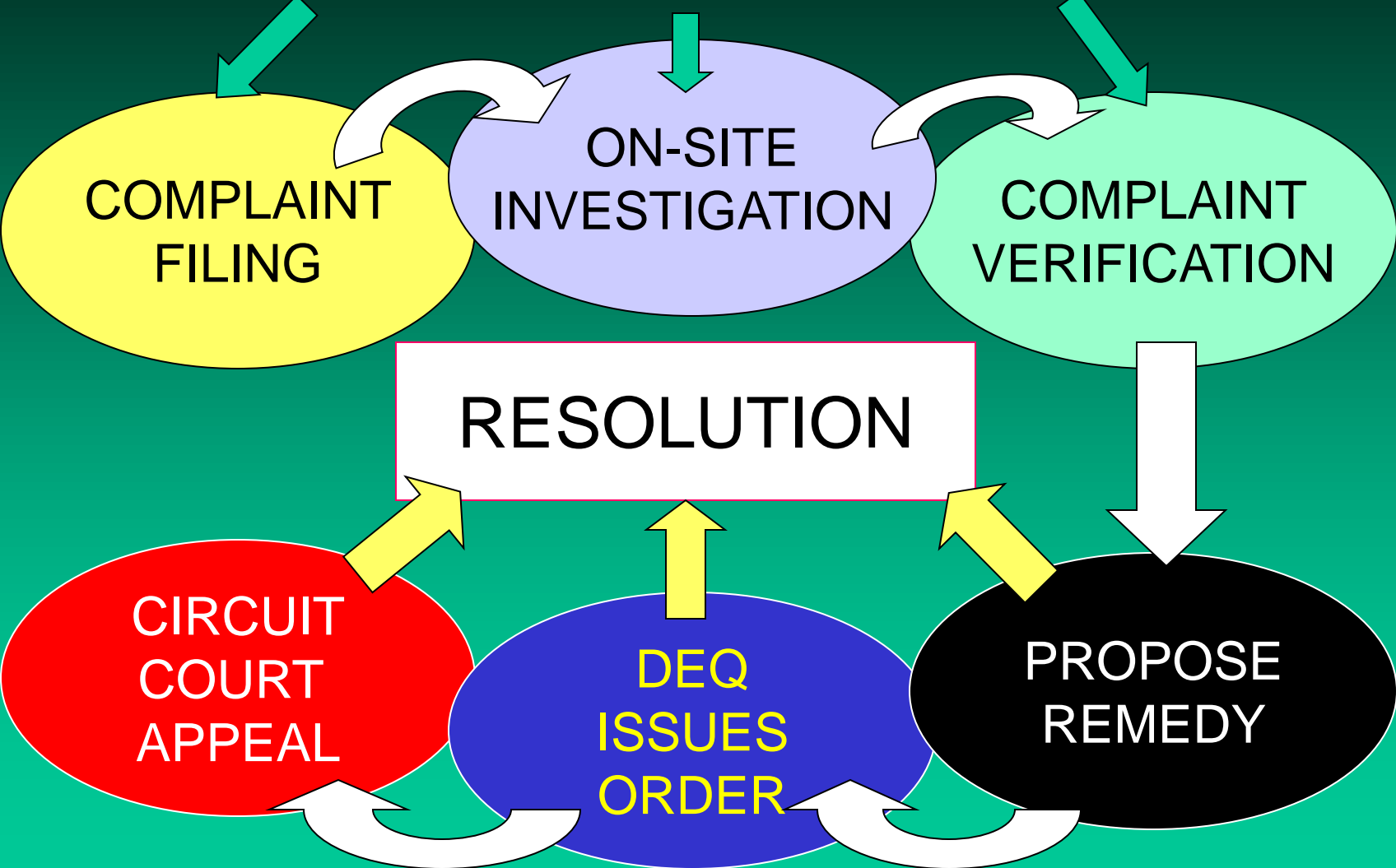
Objective:



Determine if there is scientifically-based evidence showing cause-and-effect between pumping of high capacity well and failure of small quantity well

GW DISPUTE RESOLUTION PROCESS

WELL DRILLERS ASSESSMENT



GROUNDWATER DISPUTE ORDER

1. Require immediate adequate water supply at point of use
2. Restrict amount of water withdrawn from high capacity well if:

IMMEDIATE
WATER SUPPLY
HAS NOT BEEN
PROVIDED
BY HC WELL
OWNER

OR

CONTINUED
GW WITHDRAWAL
WILL EXCEED
RECHARGE



High capacity well owners are responsible for reimbursing state for costs incurred

(Up to \$75,000)

(if a GW dispute order is issued by DEQ)

The background of the slide is a collage of US dollar bills. In the upper portion, there are several \$100 bills and one \$10,000 bill. The \$10,000 bill is prominently displayed in the center, with its serial number WB 536862151 visible. Below this, there are \$50 bills and \$20 bills. The text is overlaid on this background.

Civil fines of \$1,000 per day for violation of GW dispute order

(Not to exceed \$50,000)

In summary

Act 177, P.A. 2003



- Provides relief for well owners impacted by high capacity groundwater withdrawals
- Helps prevent groundwater disputes by discouraging high capacity well operation in a manner that adversely impacts neighboring well owners

Water Rights Prior to P.A. 177

Legal aspects of groundwater use



- Well water for irrigation – fewer legal restrictions
- Groundwater use is considered absolute by English common law
- Little case law exists
- **Public** benefit has been held superior to **private** rights

Except for cost, well water is the preferred water source for irrigation.

A well owner may not diminish the use of well water of his neighbors

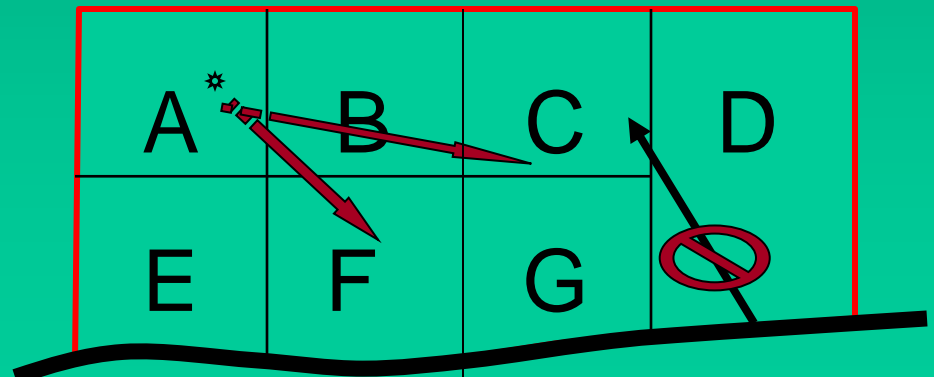
If a neighbor's well use is impaired you legally must rectify the situation if responsible.



Legal aspects – groundwater use

Good irrigator response to neighbor's well problems:

- Hire a licensed well driller to identify source of small well problem.
- Offer to deepen or correct affected small well
- pump from another location –
(There is no restriction on transport or use from other locations from wells).



Proactive Options for Agricultural

Consider Using Surface Water

ACT 177, P.A. 2003 only affect well water use

Riparian Doctrine –Surface Water

-Reasonable use rule- allowing diminished flow for extraordinary use such as recreational, municipal, industrial or agriculture use, as long as other riparian owner Natural Uses where not impaired

-Extraordinary uses have been considered equal.

Learn your rights and motivate government to protect them.

Proactive Options for Agricultural

Legal Aspects of groundwater use have not changed

- There are no restrictions on transport or use at other locations.

Establish well pumping locations that are unlikely to affect neighbors.

Pump from locations that are unlikely to affect neighbors to problem areas.

Proactive Options for Agricultural

Legal aspects of groundwater use have not changed – A well owner may not diminish the use of well water of his neighbors

A prudent response to a neighbors substantiated complaint of being negatively effect by an irrigation well is to offer to deepen their well and consider it an irrigation cost

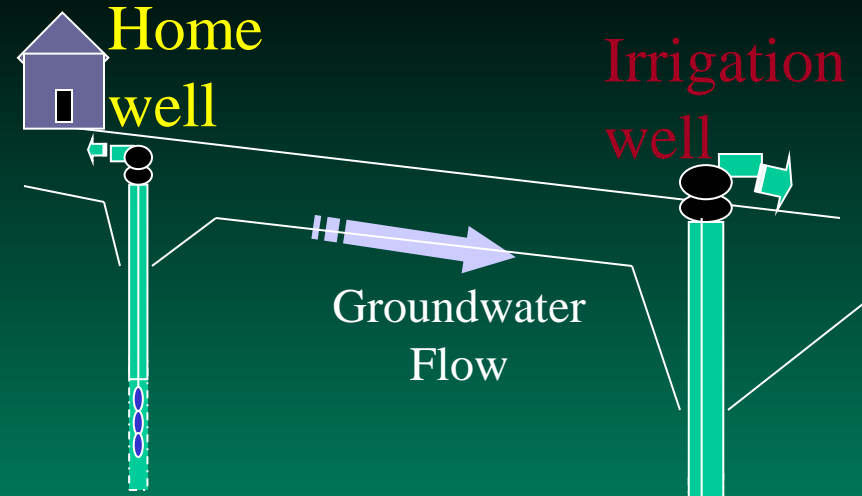
Identify the neighbor you may affect and layout a plan of action to prevent or provide remediation of the problem if it occurs.

Proactive Options for Agricultural

Identify the neighbor you may affect and layout a plan of action for remediation of the problem if it occurs.

- You can get scanned well logs off of the internet (1999 and older) by Township and section at:
 - www.deq.state.mi.us/well-logs
- Well logs that are 2000 and newer are available on WELLOGIC at:
 - <http://dwrp.deq.state.mi.us/wellogic>
 - You need a username and password for wellogic, (issued to registered well drillers and agencies)

Does your well affect neighbors?



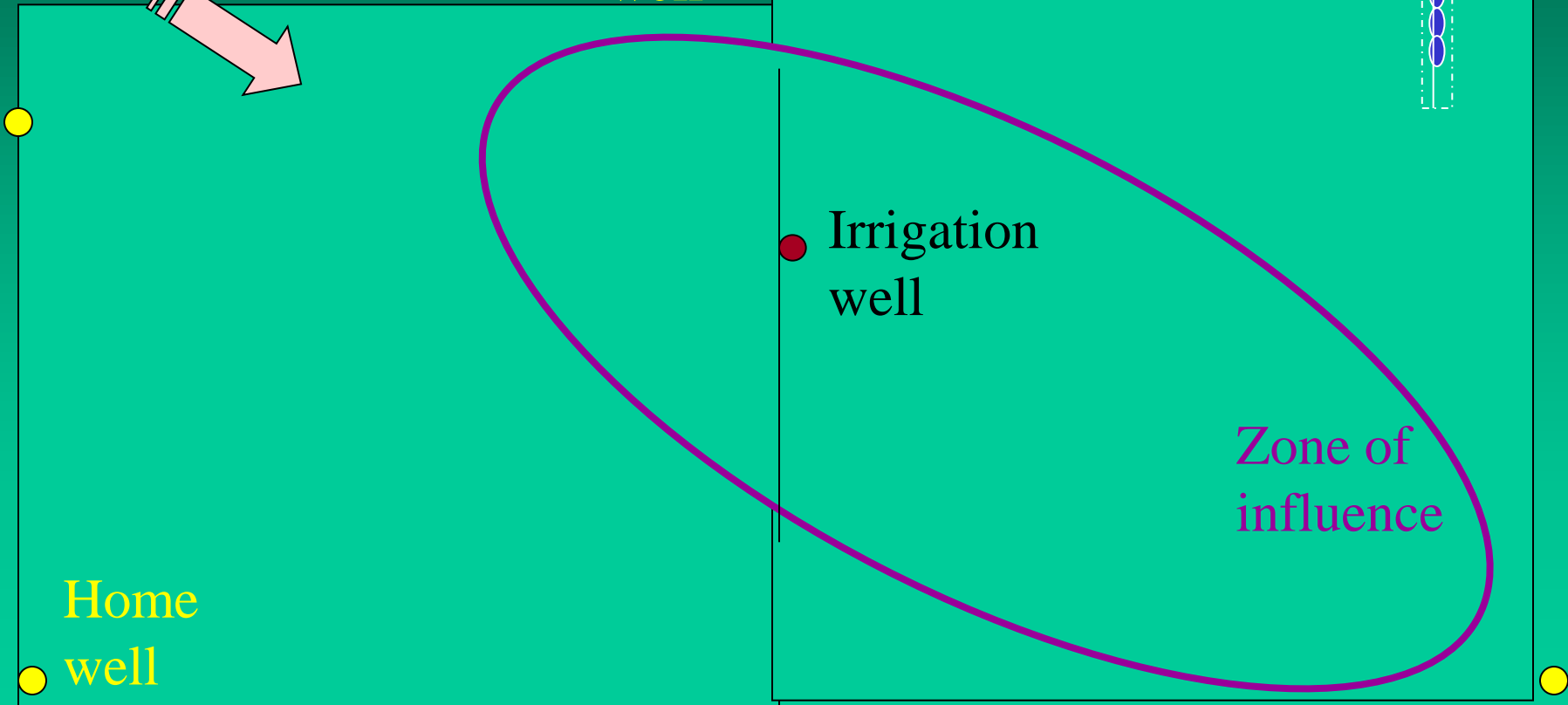
Groundwater flow direction

Home well ●

Irrigation well ●

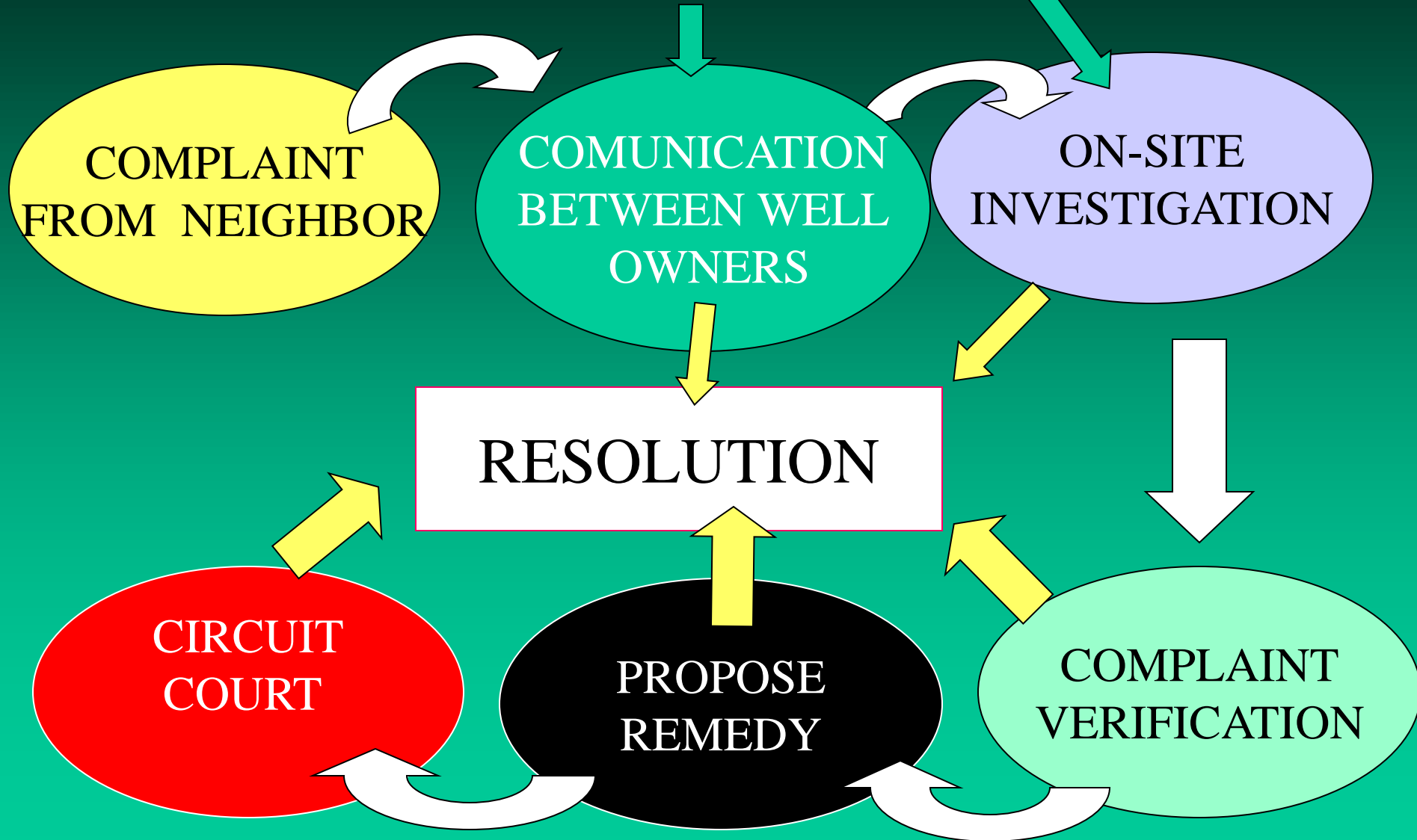
Zone of influence

Home well ●



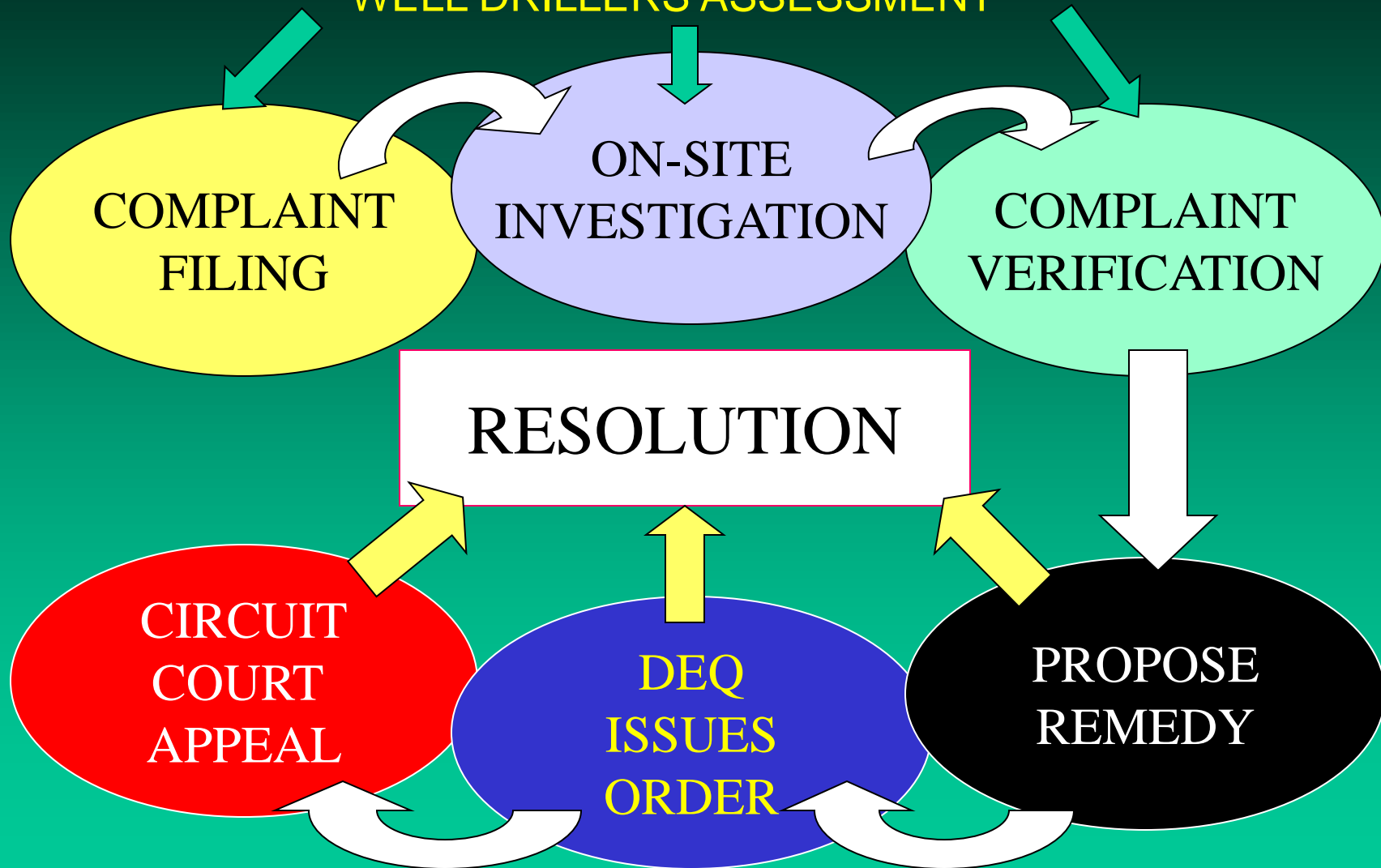
Ground Water Dispute Resolution Prior to PA. 177

WELL DRILLERS ASSESSMENT



GW DISPUTE RESOLUTION PROCESS: PA. 177

WELL DRILLERS ASSESSMENT



PROACTIVE GROUNDWATER DISPUTE RESOLUTION

Identify neighbor your Well may effect

Devise a plan for them to contact you if Well problems arise

If a well problem arises

Contact well driller for assessment of well

Well driller proposes remedy

Large well user pays
RESOLUTION

Circuit court avoided

Farmer is a neighborhood hero

Formal complaint filing avoided

New legislation unveiled by the Governor's office.

- Senator Liz Brater and Rep. Chris Kolb
- Permit for well 2 million gallon/day or greater
- Permit for well 100,000 gallon/day or greater by 2010
- Five year water management plan by 2009

**Michigan Legislature Homepage At
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Query for Water Use or Natural Resources

Any Questions ?

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