

“My Pond Won’t Stay Full!”

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I visited with an acreage owner last spring about his pond and decided it would be good to share the experience in this issue of THE NEBLINE since it is a common problem; the owner was wondering about sealing his pond with bentonite clay because he couldn't keep his pond full during the summer months and thought he had excessive seepage losses.

After probing for more information, I learned the surface area of the pond was about 2/3 acre. It was situated below a very limited watershed area consisting of perhaps an acre. The watershed area did add runoff water to the pond during heavy rainfall events, but there was no flowing spring. His main source of water for the pond was groundwater that first circulated through the heat exchanger in his geothermal heat pump. He could direct the water coming from the heat pump either to his pond or to a recharge well by switching a valve. He was told by the installer the pump was supplying 7.8 gallons of water per minute to the heat pump (when the heat pump was operating).

Before recommending bentonite to seal the bottom of the pond, my first thought was to calculate the water balance (water in versus water out) in this pond, including estimated evaporation losses.

Average summertime evaporation from the surface of a pond is in the range of 1/3 of an inch per day. An acre-inch of water (the volume of water to cover an acre one-inch deep) is 27,154 gallons. The surface area of this pond was 2/3 acre. It would, therefore, take 27,154

gallons/acre-inch x 0.67 acre = 18,193 gallons to raise/lower the water level of the water an inch. Since 1/3 inch is evaporating each day, we can assume evaporation losses of $18,193/3 = 6,064$ gallons of water per day from this 2/3 acre pond.

If we assume the heat pump operates 1/4 of the time during the summer months, how much water is moving through the cooling system and on to the pond each day and will that be enough to balance the water lost to evaporation?

The heat pump is assumed to operate $24/4 = 6$ hours or 360 minutes per day and, therefore, water is flowing through the heat exchanger for 360 minutes per day. The water inflow to the pond is 360 minutes per day x 7.8 gallons per minute = 2,808 gallons per day. Since we calculated average daily evaporation at 6,064 gallons per day, the water balance (water in versus water out) is a negative 3,256 gallons per day. This would result in a water level drop of 3,256 gallons/18,193 gallons per inch = 0.18 inch per day on average.

Assuming an extended dry spell, how many hours would the water pump supplying the water to the geothermal heat pump need to operate to meet the average evaporation demand of this small pond? Evaporation was calculated as 6,064 gallons per day. The water pump would need to operate 6,064 gallons per day with 7.8 gallons per minute at 60 minutes per hour = 13 hours per day. This is over twice the estimated operation time of the heat pump.

We concluded there was no need to seal the pond because evaporation, not seepage, was the reason the pond was not staying full.

“Ponds” is August Rural Living Clinic

The University of Nebraska Cooperative Extension is presenting a series of seminars entitled “Acreage Insights — Rural Living Clinics” to help acreage owners manage their rural living environment. “Ponds” is the eight in the series, to be held Aug. 21 from 9 to 11 a.m. at the Lancaster Extension Education Center, 444 Cherrycreek Road.

Ponds are aesthetically pleasing, draw our natural wildlife into the landscape and have become a very popular landscape feature. Participants will learn how to design, construct and maintain ponds on the acreage that enhances both the environment and property value.

Pre-registration is \$10 per person and must be received three working-days before the program. Late registration is \$15 per person. For more information, visit the Acreage & Small Farm Insights Web site at acreage.unl.edu or contact Skipton at (402) 472-3662.

Upcoming Clinics:

“Windbreak Design/Management,” Sept. 25, 9–11 a.m.
“Grapes,” Oct. 23, 9–11 a.m.

Terminating Farm Leases

Generally, the turnover rate for rental land is very small in Nebraska, averaging about eight percent. Leases usually run an average of 15 years. This reflects the high level of communication between landowners and tenants, the high regard most landowners have for the ability of their tenant to produce top yields while being a careful steward of the land and the fact many farm leases are between family members. Usually, changes occur because producers downsize or expand. Only in a few cases does a landlord terminate a lease because of poor management practices.

Oral vs. Written Leases

Oral (unwritten) leases are legally presumed to be year-to-year leases. A year-to-year lease has no fixed time period and is automatically renewed for another year until proper notice of termination has been given to the tenant by the landowner (or vice versa).

Written leases are in effect only for the period specified in the lease itself, which may be one year, five years, etc. For written leases, no notice is required from the landlord to the tenant that the lease will not be extended unless the lease specifically states that notice of non-renewal is required. Unless it contains a renewal clause, the written lease automatically terminates at the end of the lease period. The tenant generally has no right to have a written lease renewed unless the lease contains a renewal clause.

If a tenant “holds over” by not leaving after a written lease has ended, the tenant is legally considered to be a trespasser whom the landlord may remove by going to court. If the landowner does not remove the tenant, however, a year-to-year lease is automatically established by implication. If a holdover tenant begins to work and incurs

expenses for the next year's crop, the courts generally have ruled the landowner has agreed by implication to the tenant's holding over.

The most common legal issue associated with verbal farm leases is how a lease may legally be terminated. For year-to-year leases and holdover leases, six months advance notice must be given to legally terminate the lease. However, the lease date (the date from which the six months is counted) is different.

Oral Year-to-Year Lease Termination

For year-to-year leases, the Nebraska Supreme Court has ruled the lease year begins on March 1. Notice to a tenant to vacate under an oral year-to-year lease on cropland (legally referred to as a “notice to quit”) must be given six months in advance of the end of the lease, or no later than August 31.

Holdover Lease Termination

On holdover leases, the lease date is established when the lease began in the original written lease rather than automatically being March 1. For example, if the original written lease began January 1, the notice to quit from the landlord to the holdover tenant would have to be given at least six months in advance of the end of the lease, or no later than June 30.

Pasture Leases

Pasture Leases are a bit different. Oral pasture leases are assumed to begin when sufficient growth has occurred in the spring, usually not sooner than May 1 on cool-season pastures and June 1 to June 15 on warm-season pastures. Most cool-season pasture leases run for a period of five to six months and most warm-season pasture leases run for a period of four to five months. Start and end date

can vary in different parts of the state or as agreed upon by the parties involved. The six-month advance notice to terminate a year-to-year lease does not apply to pasture leases, because the lease is not a 12-month lease. If a pasture lease were for a year at a time, however, the lease is a year-to-year lease and the tenant would be entitled to six months notice of lease termination.

Tips

To make a lease termination process go smoothly, David Aiken, J.D., water and agricultural law specialist at UNL recommends following these tips:

- Usually a tenant will know about the termination of a rental contract before the deadline, but notification still needs to be done formally and legally. The landlord needs to prove he or she has sent the tenant a notice of termination. This notice should be a registered letter written by an attorney. Be sure the notice arrives by August 31 and have proof it was sent.
- An attorney should be involved in all stages of the termination process. It's easy to make a mistake and something done wrong won't stand up in court if a disagreement occurs.
- A tenant should never let a rental agreement reach termination due to poor management practices. Keep the line of communication open and visit with the landlord regularly.
- If the tenant disagrees with the termination, he or she should visit with the landlord to see what can be done or for the reason of the termination.

For more information, refer to NebFact (NF91) “Farm Lease Termination” available at any extension office in Nebraska or found on the Web at ianrpubs.unl.edu/farmmgt/nf42.htm. (TD)

Put Farm Leases in Writing for Legal Protection

Most attorneys and farm managers recommend written leases for agricultural land. David Aiken, UNL water and agricultural law specialist, states “A written farm lease allows for adjustments and, in most cases, provides better legal protection than relying on an oral agreement.” Many landowners and operators are reluctant to sign a written lease because they think it implies a lack of trust in each other. However, written leases are more complete, can specify a definite lease term and remind the parties about agreement specifics. Signing a written document allows the parties to closely consider each provision and allows for adjustments if unanticipated conditions arise.

“It's best to have an attorney help draft a farm lease. It should be signed by both parties and include a legal description of the leased land, the lease term length and the date the lease begins. A written lease terminates when it expires and there is no automatic right of renewal

unless included in the lease,” Aiken said.

In Nebraska, the tenant has the right to select the crops to be grown and farming methods used, such as tillage and weed control, unless the lease specifies otherwise. If the tenant fails to perform a required farming operation, the lease should give the landlord the right to enter the property to perform the work and terminate the lease, if appropriate.

The lease also can specify the tenant will comply with governmental regulations regarding soil, water and agricultural chemical use. According to Nebraska law, tenants must return land in the same condition they received it, subject to normal wear and tear, whether or not the lease requires this. The lease may require the landlord's permission before improvements are made. A method should be included for specifying either the landlord's share or how the tenant will be reimbursed for the improve-

ments when the lease is up.

The lease must specify each party's share of expenses for maintenance, chemicals, repairs, utilities and taxes. Under most written leases, the tenant will be responsible for maintenance and the landlord may be responsible for repairs. The lease also needs to specify who is responsible for purchasing insurance and paying taxes. According to Aiken, “In Nebraska, the tenant is liable for virtually all injuries to third parties on leased land. Both parties should have liability insurance for protection.” The lease also needs to describe how rent will be paid and when it is due.

One disadvantage of written leases for tenants involves lease termination. Tenants are entitled to six months notice of termination in unwritten leases. However, there is no requirement to notify the tenant the lease will not be extended in a written lease. Otherwise written leases