

## Legal and Property Rights Issues Associated with Data Centers

Roger McEowen ([roger.mceowen@washburn.edu](mailto:roger.mceowen@washburn.edu)) – Washburn University School of Law

Roger McEowen's Blog: <https://agriculturallaw.lawprofessorsblogs.com/>

June 2026

### Overview

A farmer receives an unexpected call from a site-selection consultant representing an unnamed company. The offer is several times the land's agricultural value. The consultant wants a confidentiality agreement signed immediately and presents a three-year purchase option. The landowner wonders whether this is the opportunity of a lifetime—or the beginning of years of legal complications. Increasingly, that hypothetical is becoming reality across rural America.

### In General

Artificial intelligence, cloud computing, and high-performance computing have triggered an unprecedented demand for large-scale data centers. Major technology companies and their development affiliates are increasingly looking beyond metropolitan areas and into rural America, where large tracts of relatively inexpensive land, access to high-voltage transmission lines, reliable electric service, and available water resources make agricultural regions attractive locations. Kansas, Iowa, Nebraska, Missouri, Texas, Indiana, and other agricultural states have all experienced growing interest in large-scale projects because of their transportation networks, energy infrastructure, and comparatively low land costs.

For many farm and ranch families, a proposed data center represents a once-in-a-generation economic opportunity. A sale or long-term lease may eliminate debt, provide retirement security, finance expansion, or facilitate an orderly transition to the next generation. Local officials often anticipate construction employment, expanded tax bases, and infrastructure improvements.

Yet these transactions are fundamentally different from ordinary farmland sales. They commonly involve sophisticated option agreements, zoning approvals, utility regulation, water rights, environmental compliance, eminent domain, tax planning, and constitutional property protections. Most of these issues are governed primarily by state law, making experienced legal representation indispensable.

### Negotiating Option Agreements and Purchase Contracts

Developers typically begin with an option agreement that allows time to evaluate title, environmental conditions, electrical service, utility interconnection, water availability, engineering feasibility, and local permitting. While option agreements are legitimate commercial tools, they are frequently drafted to maximize flexibility for the developer while restricting the landowner.

Landowners should negotiate definite expiration dates, escalating non-refundable option payments, meaningful limitations on assignment, and detailed provisions preserving ordinary farming operations during the due-diligence period. Contracts should expressly authorize planting, harvesting, livestock grazing, drainage maintenance, conservation activities, and participation in USDA programs until closing.

**Example:** A developer may request a three-year option with unrestricted access to conduct soil borings and environmental testing. Unless the agreement carefully allocates responsibility for crop damage, tile repair, gates, fencing, and restoration, the producer may suffer substantial



losses even if the transaction never closes. Representations, warranties, title standards, indemnification provisions, survey requirements, default remedies, and survival clauses should receive the same attention as the purchase price.

### **Electrical Demand and Utility Regulation**

One of the defining legal characteristics of modern data centers is their extraordinary demand for electricity. Large facilities may require hundreds of megawatts of continuous power—often exceeding the demand of entire rural communities. Meeting those needs may require new substations, high-voltage transmission lines, generating facilities, or major upgrades to the regional grid.

These projects raise legal questions extending well beyond the sale of farmland. Public utility commissions may be asked to approve transmission projects, allocate construction costs, or determine whether infrastructure primarily serving a private customer nevertheless promotes the public convenience and necessity. Rural electric cooperatives and municipal utilities may also confront difficult questions concerning rate design, cost allocation, and system reliability.

**Example:** If construction of a transmission corridor primarily benefits a new data center, neighboring landowners may question whether condemnation is justified or whether existing ratepayers should finance infrastructure benefiting a single industrial customer. Those questions are answered largely under state utility statutes rather than federal law.

### **Water Rights and Natural Resources**

Water availability frequently becomes the most significant legal issue. Whether irrigation rights may be converted to industrial use depends largely upon state law. In prior-appropriation jurisdictions, administrative approval generally is required before changing the place, purpose, or point of diversion. Neighboring appropriators may challenge proposed changes if senior rights would be impaired.

Water consumption varies considerably among facilities because cooling technologies differ. Air-cooled systems generally require substantially less water than evaporative cooling systems. Consequently, attorneys should evaluate project-specific engineering information rather than relying upon generalized assumptions.

**Example:** A producer selling irrigated acreage may assume that the purchaser simply acquires the existing water right. In many states, however, converting agricultural rights to industrial use requires separate administrative approval and may be subject to protest by neighboring users or groundwater management authorities.

Beyond the transfer of existing water rights, producers should carefully evaluate the long-term hydrological and regulatory implications of a proposed project. In many states, groundwater conservation districts, groundwater management districts, or similar regulatory bodies administer pumping restrictions designed to promote sustainable yield. A data center's continuous, year-round water demand differs significantly from the seasonal irrigation patterns typical of agricultural operations, potentially raising questions concerning aquifer depletion, well interference, and cumulative impacts on neighboring users. Administrative proceedings approving changes in water use often provide neighboring landowners with the opportunity to submit technical evidence or legal objections concerning impairment of existing rights. Consequently, producers should monitor regulatory filings



closely and, where appropriate, retain qualified hydrologists or water-law counsel to evaluate whether proposed industrial withdrawals comply with applicable statutory and regulatory standards.

Landowners should also determine whether mineral rights, drainage systems, access easements, and subsurface facilities will remain intact after development.

### Zoning, Land Use, and Community Impacts

Data centers frequently require rezoning, conditional-use permits, or development agreements. Public hearings often address traffic, noise, emergency services, visual impacts, stormwater management, and compatibility with surrounding agricultural uses.

Although many right-to-farm statutes protect established agricultural operations against nuisance suits brought by later-arriving residential neighbors, those statutes generally do not prohibit local governments from approving industrial development or provide affirmative protection against neighboring industrial facilities. Existing nuisance principles, zoning ordinances, and state environmental laws usually become the principal legal tools available to affected landowners.

**Example:** A county commission considering rezoning irrigated farmland for a data center may impose conditions concerning landscaping, road improvements, noise mitigation, or groundwater monitoring. Participation in those proceedings often provides neighboring landowners their most effective opportunity to influence project design.

### Easements and Eminent Domain

Even producers who decline to sell may encounter easement requests for transmission lines, fiber-optic corridors, pipelines, or roadway improvements. Easement agreements should carefully address restoration standards, drainage repairs, access routes, fencing, crop losses, biosecurity, soil compaction, and future maintenance obligations.

Where voluntary agreements cannot be reached, condemnation may become an issue. Although the United States Supreme Court established a broad federal baseline in *Kelo v. City of New London*,<sup>1</sup> many states subsequently narrowed eminent-domain authority through constitutional amendments or legislation.

**Note:** While *Kelo* remains the federal constitutional baseline concerning 'public use,' its practical significance has been substantially narrowed.<sup>2</sup> Also, in response to *Kelo*, most states enacted statutory or constitutional protections providing greater safeguards for private property. Consequently, disputes involving transmission lines and data-center infrastructure are ordinarily resolved under state constitutions, eminent domain statutes, public utility laws, and state administrative procedures rather than under *Kelo* itself.

---

<sup>1</sup> 545 U.S. 469 (2005).

<sup>2</sup> See, e.g., *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021)(Court reaffirmed robust protection against government-authorized physical invasions of private property, holding that a regulation granting union organizers access to agricultural property constituted a per se physical taking); *Knick v. Township of Scott, Pennsylvania*, 588 U.S. 180 (2019)(Court made it significantly easier for property owners to bring federal takings claims by eliminating the requirement that they first seek compensation in state court).

Landowners should also evaluate severance damages - the reduction in value suffered by the remaining property because of divided fields, impaired irrigation systems, or operational inefficiencies - not merely the value of the land physically acquired.

### **Tax, Estate Planning, and Environmental Liability**

Large purchase prices frequently create significant income-tax and succession-planning issues. Installment sales, basis allocation, depreciation recapture, charitable planning, business-entity restructuring, and revisions to wills and trusts should all be considered before closing. Some families may conclude that retaining a portion of the property, reserving mineral interests, or using phased transactions better serves long-term objectives.

In addition, careful tax planning should begin well before a purchase agreement is signed. The allocation of the purchase price among land, improvements, easements, and other property interests may significantly affect the character and timing of taxable income. Producers should also evaluate whether an installment sale can appropriately defer gain recognition, whether portions of the transaction qualify for like-kind exchange treatment if replacement real property is acquired, and whether charitable planning techniques - such as a charitable remainder trust or charitable gifts of appreciated property before closing - can reduce income tax liability while accomplishing philanthropic objectives.

Where multiple family members own the property through partnerships, LLCs, or trusts, entity restructuring before closing may produce more favorable tax and estate planning outcomes. Because these planning opportunities frequently disappear once a binding purchase contract has been executed, agricultural producers should involve their legal and tax advisors at the earliest stages of negotiations rather than after the transaction has been substantially completed.

Environmental provisions deserve equal attention. Agreements should allocate responsibility for hazardous materials, diesel storage, fuel spills, remediation, insurance, and regulatory compliance. Appropriate environmental assessments before closing may reduce future disputes and clarify responsibility for pre-existing conditions.

### **Practice Pointers for Attorneys**

- Assemble the client's advisory team early, including tax, engineering, and valuation professionals.
- Review every option agreement as though it will become the final purchase contract.
- Preserve the client's ability to continue normal agricultural operations during due diligence.
- Analyze state water law, zoning ordinances, utility regulation, and eminent-domain statutes before negotiations begin.
- Carefully quantify severance damages and restoration obligations for proposed easements.
- Coordinate the transaction with the client's estate plan, business entities, and long-term succession objectives.
- Document all material representations made during negotiations and avoid relying upon informal assurances.



### Questions Every Landowner Should Ask

There are key questions that every landowner impacted by a data center should ask. Examples include:

- Who is actually buying the property?
- Is this an option or a binding purchase contract?
- What happens if zoning is denied?
- Can I continue farming?
- Who owns the water rights?
- Who pays for environmental cleanup?
- Can the agreement be assigned?
- What happens if the project is abandoned?

### Conclusion

Data-center development is likely to remain one of the most significant land-use issues confronting rural America during the coming decade. These projects offer genuine opportunities for agricultural producers and rural communities, but they also present complicated legal questions involving contracts, electrical infrastructure, water rights, zoning, environmental compliance, taxation, and constitutional property protections. The appropriate legal response is neither reflexive opposition nor unquestioning acceptance. Instead, landowners and their advisors should insist upon disciplined contract drafting, rigorous due diligence, and careful attention to governing state law. A balanced, property-rights-oriented approach allows technological investment and agricultural production to coexist while preserving the long-term productivity, value, and independence of rural land.

As development continues, practitioners should expect rapid changes in technology, cooling methods, energy generation, and state regulatory responses. Consequently, form documents prepared for traditional agricultural real estate transactions may not adequately address the risks presented by data-center development. Each project deserves an individualized legal analysis reflecting the governing state's statutes, administrative regulations, local ordinances, and judicial precedent. Careful preparation at the outset remains the best protection against costly disputes after construction begins.

---

For more information about this publication and others, visit [AgManager.info](https://www.agmanager.info).

K-State Agricultural Economics | 342 Waters Hall, Manhattan, KS 66506-4011 | [www.ageconomics.k-state.edu](http://www.ageconomics.k-state.edu)

[Copyright 2026: AgManager.info](https://www.agmanager.info) and [K-State Department of Agricultural Economics](http://www.ageconomics.k-state.edu)

