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Trespassing in the 21st century

By The Daily Sentinel

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Can pesticides trespass?

A ruling by Seventh Judicial District Judge Charles Greenacre last week in a case involving two Hotchkiss-area neighbors suggests that they can.

Greenacre's decision, believed to be the first of its kind in the state, may well set a precedent on how Colorado deals with chemicals and neighboring property. It could also provoke calls for new legislation and regulation to deal with these sorts of disputes between neighbors.

The judge's decision said that farmers who sprayed their property with pesticides in 2010 to protect against West Nile virus should have taken precautions to prevent the chemicals from drifting onto the property of their neighbors, who grow organic food.

Their failure to take such precautions was akin to a form of trespassing, according to an Associated Press article about Greenacre's decision.

Some critics may accuse Greenacre of judicial activism for his expansive interpretation of trespassing law. But he was basically enforcing the long-standing legal tradition that "your right to swing your fist ends where my nose begins."

In other words, we all have a right to engage in behavior we enjoy — the pursuit of happiness — or to protect our interests so long as those actions don't harm our fellow citizens.

In this case, James and Georgia Hopper were hardly acting in a careless or unthinking manner. They sprayed their property to control mosquitoes that could carry West Nile virus.

That's an understandable precaution, especially given the fact that Georgia Hopper was hospitalized with the virus in 2006.

But their neighbors, Gordon MacAlpine and Rosemary Bilchak, operate an organic farm that could lose its organic status if pesticides were detected on its produce.

Additionally, MacAlpine has leukemia, and pesticides can suppress his immune system. Greenacre said the organic farmers have the right not to have their property "invaded by third persons or things."

He ruled the Hoppers could not spray pesticides within 150 feet of their neighbors' property, and may only spray when the wind won't carry chemicals to the neighbors.

Greenacre's ruling leaves open the possibility of many other types of nonhuman trespass — for instance, dust, smoke and odors, even bugs from neighbors who refuse to spray their trees. There is a good chance it will be referenced in

other cases.

His ruling has raised an intriguing question about how it may be applied in other instances, and whether it will give property owners another avenue to fight noxious chemicals or other pollutants (even annoyances?) that may drift from a neighbor's land onto their property.