

# OFFICE OF THE CITY ATTORNEY

---

435 Ryman • Missoula MT 59802  
(406) 552-6020 • Fax: (406) 327-2105  
[attorney@ci.missoula.mt.us](mailto:attorney@ci.missoula.mt.us)

## Legal Opinion 2013-024

**TO:** Donna Gaukler, Chris Boza, Alan White, Kevin Slovarp, Doug Harby, Dan Jordan, Monte Sipe, Mike Haynes, Don Verrue, Laval Means, Denise Alexander, Mary McCrea, Jason Diehl, Jeff Brandt, Chad Nicholson, Mark Muir, Mike Brady, Chris Odlin, Mike Colyer, and Scott Hoffman

**CC:** Mayor's Office, City Council, City Clerk's Office, and Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** November 21, 2013

**RE:** Montana State Law statutory protections for irrigation districts that create both non-duties as well as non-liabilities for irrigation districts.

---

## FACTS:

Earlier this week City Parks and Recreation staff learned of an apparent irrigation district large concrete water syphon facility on Missoula's south west side which was somewhat out of general sight and not readily visible near a path in an undeveloped area of city land; when a child on a bicycle left a worn path in the area, went down a steep slope and crashed into the concrete water syphon. Reportedly the large concrete water syphon facility is located on an irrigation district easement/right that passes through city lands that are basically undeveloped city park/open space type land. While to some people this specific large concrete water syphon at its current location may seem like a hazard or danger, the irrigation district might not consider it as a hazard or danger. Additionally, the irrigation district may not agree that the proposed and/or perceived corrective safety action would be necessary and/or might even believe that any safety modification might impede their irrigation ditch operations, therefore, the irrigation district might not voluntarily and cannot be required by the city to take action(s) with respect to their irrigation facilities actions that some would perceive as improving public safety in the immediate area.

There are at least three (3) large irrigation ditch operations in the Missoula valley inside the city limits that are associated with drawing water from the Clark Fork River. Several times a year somewhere in the Missoula Valley, City of Missoula government operations have interactions with irrigation ditch districts and their facilities. Therefore, since there are several new personnel in city government operations, it seemed like an appropriate time to remind city government employees of some of the statutory rights and/or protections that the Montana State Legislature has statutorily provided to irrigation districts in Montana.

### **ISSUE(S):**

- (1) With respect to protecting persons or property what potential safety duties or measures are irrigation districts exempt from being required to implement pursuant to Montana state law?
- (2) What statutory non-legal liabilities has the Montana State Legislature granted to irrigation ditch owners or operators pursuant to Montana state law?

### **CONCLUSION(S):**

- (1) Pursuant to section 85-7-2211 MCA, the Montana State Legislature has provided that owners or operators of irrigation ditches with respect to protecting persons and property from injury or damage have no duty to (A) erect fences; (B) install grates or other protective devices where a ditch goes underground or under a bridge or other object; or (C) prevent access to ditches by persons or animals.
- (2) Pursuant to section 85-7-2212 MCA, the Montana State Legislature has been granted several non-liabilities to owners and operators of irrigation ditches with respect to potential personal injury to persons or property as well as from drowning, unless the irrigation ditch owner or operator has engaged in willful or wanton misconduct.

### **LEGAL DISCUSSION:**

Title 85, Chapter 6 Montana Code Annotated (MCA) is entitled “IRRIGATION DISTRICTS”. There are approximately 73 pages of Montana laws pertaining to “IRRIGATION DISTRICTS” codified in Montana state law, title 85, chapter 7 MCA. The final two sections of these extensive Montana state laws; pursuant to sections 85-7-2211 and 85-7-2212 MCA, establish several non-duties and non-liabilities for owners and operators of irrigation ditches in Montana.

Section 85-7-2211 MCA entitled “IRRIGATION DITCHES—DUTIES RELATING TO SAFETY states as follows:

**85-7-2211. Irrigation ditches -- duties relating to safety.** An irrigation district or private person or entity owning or operating irrigation ditches must keep irrigation ditches in good general repair and condition, but for the purpose of protecting persons and property from injury or damage has no duty to:

- (1) erect fences;
- (2) install grates or other protective devices where a ditch goes underground or under a bridge or other object; or
- (3) prevent access to ditches by persons or animals. (emphasis added)

Section 85-7-2212 MCA entitled “IRRIGATION DITCHES-NONLIABILITIES” states as follows:

**85-7-2212. Irrigation ditches -- nonliabilities.** An irrigation district or private person or entity owning or operating irrigation ditches is not liable for:

(1) personal injury or property damage resulting from floodwaters caused by rainfall or other weather conditions or acts of nature;

(2) personal injury or property damage occurring on another's land and caused by water seepage that existed or began before the injured person first arrived on or obtained an interest in the land or before the damaged property was first placed on the land, if the seepage does not carry toxic chemicals onto the land;

(3) injury to a person or property while, without authorization of the district or private person or entity, the person or property is on land or water controlled by the district or private person or entity, unless the irrigation district or private person or entity engaged in willful or wanton misconduct; or

(4) death from a drowning, unless the irrigation district or private person or entity was grossly negligent or engaged in willful or wanton misconduct. (emphasis added)

It is important that city employees who may have to work on issues pertaining to irrigation ditch facilities also be somewhat aware of the statutory non-duties and non-liabilities that the Montana State Legislature has granted to the owners and operations of irrigation ditches; so that you will have some insight and understanding as to why the irrigation ditch owner or operator might be taking the position that they are with respect to a specific issue that arises.

#### **CONCLUSION(S):**

(1) Pursuant to section 85-7-2211 MCA, the Montana State Legislature has provided that owners or operators of irrigation ditches with respect to protecting persons and property from injury or damage have no duty to (A) erect fences; (B) install grates or other protective devices where a ditch goes underground or under a bridge or other object; or (C) prevent access to ditches by persons or animals.

(2) Pursuant to section 85-7-2212 MCA, the Montana State Legislature has been granted several non-liabilities to owners and operators of irrigation ditches with respect to potential personal injury to persons or property as well as from drowning, unless the irrigation ditch owner or operator has engaged in willful or wanton misconduct.

OFFICE OF THE CITY ATTORNEY

/s/ \_\_\_\_\_  
Jim Nugent, City Attorney

JN:tfa