

Irrigation Ditches—State Highway Commission—Rights-of-Way.

The state highway commission is not liable for obstructing an irrigation ditch by the construction of a highway where the ditch was not in existence at the time the highway was constructed.

The owner of a water right is entitled to a right-of-way across a state highway under such conditions as are imposed by the state highway commission but must meet these conditions and at his own expense.

September 17, 1928.

State Highway Commission,
Helena, Montana.

Gentlemen:

You have submitted to me an application of Charles D. Greenfield relative to carrying an irrigation ditch across a state highway, known as project 77C and constructed in 1921, and desire my opinion as to whether the highway commission is required to allow this ditch to be carried across the highway by the construction of a culvert, headwalls, et cetera, and if so, at whose expense.

In this connection you state that the ditch in question was not constructed at the time the highway was built, and that the right-of-way, if any, to said ditch was not a matter of public record, and that the state highway commission had no notice of the existence of the ditch or the right-of-way of the same.

Under the foregoing facts it is clear that the state highway commission could not be held liable in any way for the construction of an irrigation ditch which was not in existence at the time the highway was constructed and the right-of-way for which, if any, was not of record. Therefore, the ditch in question as far as the state highway commission is concerned has the same status as a new ditch.

The owner of a water-right is, of course, entitled to a right-of-way across a state highway under such conditions as are imposed by the

state highway commission and a culvert, headwalls, et cetera, must be constructed by the person desiring the right-of-way.

Very truly yours,

L. A. FOOT,
Attorney General.