

VOLUME NO. 36

Opinion No. 97

SOIL AND WATER CONSERVATION — Conservation Districts — Powers, Title 76, Ch. 1, Revised Codes of Montana 1947.

HELD: 1. State conservation districts do not have jurisdiction over state waters.

2. The Lakeshore Protection Act, Title 89, Ch. 37, R.C.M. 1947 does not conflict with the statutory powers of conservation districts.

August 24, 1976

Ms. Cathy Jones, District Secretary
Flathead Conservation District
685 Sunset Boulevard
Kalispell, Montana 59901

Dear Ms. Jones:

You have requested my opinion on the following questions regarding soil and water conservation districts:

1. Whether "the State Conservation Districts Law", Title 76, Ch. 1, R.C.M. 1947 gives conservation districts jurisdiction over state waters.
2. Whether "the Lakeshore Protection Act", Title 89, Ch. 37, R.C.M. 1947 conflicts with powers granted to conservation districts.

State conservation districts have not been granted broad administrative powers authorizing them to regulate state water. It is a fundamental rule of law that an administrative agency only possesses those powers specifically conferred upon it by the legislature. **City of Polson v. Public Service Commission**. 155 Mont. 464, 473 P.2d 508 (1970). Administrative agencies are creatures of legislation without inherent or common law powers, and only those powers conferred expressly or by necessary implication are granted to them. 3 Sutherland Statutory Construction 4th Ed. §65.02.

The regulatory powers delegated to conservation districts are narrowly limited and do not involve extensive grants of authority over the waters of this state. The powers of the districts primarily relate to conducting research, investigations and surveys, establishing conservation projects, and engaging in comprehensive planning to improve soil and water conservation. Actual prevention and control measures can only be carried out with the consent of involved landowners. Section 76-108, R.C.M. 1947.

Primary responsibility for the regulation and control of water has been conferred upon the department of natural resources and conservation pursuant to the "Montana Water Use Act," Title 89, ch. 8, R.C.M. 1947, and the "Montana Water Resources Act", Title 89, ch. 1, R.C.M. 1947. The purpose of the Water Use Act, in part, is to encourage the wise use of the state's water resources and to provide for the development and conservation of water. Section 89-866 (3) R.C.M. 1947. Authority to enforce and administer this act is granted to the department by Section 89-868 R.C.M. 1947.

The Water Resources Act provides for the establishment of water works for the conservation, development and utilization of water, and for the formulation of a "state water plan". The policy statement found within the act enunciates that "the department of natural resources and conservation shall co-ordinate the development and use of the water resources of the state so as to effect full utilization, conservation and protection of its water resources," Section 89-101.2 R.C.M. 1947. The department is directed to formulate a "state water plan" setting forth a progressive program for the accomplishment of these objectives, Section 89-132.1 R.C.M. 1947.

Thus, it is apparent that the legislature has delegated primary jurisdiction over state waters to the department of natural resources and conservation.

Conservation districts do not have broad regulatory powers over the waters of this state. The primary purpose of conservation districts is to provide support to the department of natural resources in its administration of natural resources, by helping to develop sound conservation practices.

The second issue asks whether the "Lakeshore Protection Act" conflicts with the statutory powers of conservation districts.

The Lakeshore Protection Act does not encroach upon the powers of conservation districts. The districts do not have broad administrative powers, or more particularly, any regulatory powers over waters that are abrogated by this act.

The only regulatory authority over state waters possessed by districts is found in "the Streambed and Land Preservation Act of 1975", Title 26, Ch. 15, R.C.M. 1947. The two acts are mutually exclusive by definition and do not conflict.

The streambed law grants conservation district supervisors authority to regulate projects that may physically alter or modify perennially flowing streams or rivers. The Lakeshore Protection Act, on the other hand, confers on local governmental entities, such as county commissioners, power to regulate projects potentially injurious to lakes. The acts relate to different subject matters and do not conflict. The Streambed and Land Preservation Act is the only law giving conservation districts actual regulatory control over state waters. Since the Lakeshore Protection Act does not conflict with this power there is no abrogation of the powers of conservation districts.

THEREFORE, IT IS MY OPINION:

1. State conservation districts do not have jurisdiction over state waters.
2. The Lakeshore Protection Act, Title 89, Ch. 37, R.C.M. 1947 does not conflict with the statutory powers of conservation districts.

Very truly yours,
ROBERT L. WOODAHL
Attorney General