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Aspects of Water Resources Law in Minnesota

by

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FOREWORD

This bulletin is published in furtherance of the purposes of the Water Resources Research Act of 1964. The purpose of the Act is to stimulate, sponsor, provide for, and supplement present programs for the conduct of research, investigations, experiments, and the training of scientists in the field of water and resources which affect water. The Act is promoting a more adequate national program of water resources research by furnishing financial assistance to non-federal research.

The Act provides for establishment of Water Resources Research Institutes or Centers at Universities throughout the Nation. On September 1, 1964, a Water Resources Research Center was established in the Graduate School as an interdisciplinary component of the University of Minnesota. The Center has the responsibility for unifying and stimulating University research with water resources programs of local, State and Federal agencies and private organizations throughout the State; and assisting in training additional scientists for work in the field of water resources through research.

This report is the eleventh in a series of publications designed to present information bearing on water resources research in Minnesota and the results of some of the research sponsored by the Center. The study described in this Bulletin is concerned with an analysis and interpretation of major court decisions in Minnesota pertaining to legal water rights and aspects of state and Federal statutes and Supreme Court decisions bearing on water and related land resources, and recommendations concerning ways and means for improving water laws.

The Center plans to sponsor additional research bearing on water law in Minnesota. A research project "Water Resources Administration in Minnesota" will be conducted during the period July 1, 1969 through June 30, 1972. The research project will inventory, appraise, and evaluate water resources administration in Minnesota. The application of water laws, resources and methods used in working for institutional goals, nature of each institution's involvement in water resources activities, coordination between units of government, rigidities in administrative arrangements, and institutional factors which have influenced water resource development and management will be examined. This research project will provide comprehensive background information required for effective future action in the important and increasingly complex field of water-resource administration in Minnesota.

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Raymond A. Haik [1/]
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INTRODUCTION

This is the second of two reports associated with the two-year research project "Hydrologic and Other Aspects of Water Laws in Minnesota." The study started on July 1, 1967 and was completed on June 30, 1969. The first report "Codified and Uncodified State Laws and Municipal Ordinances Bearing on Water and Related Land Resources in Minnesota" (Walton, et al, 1968) contains reproductions of the numerous legislative enactments bearing on water and related land resources. In addition, selected uncodified legislative enactments and ordinances of villages and cities bearing on water and related land resources which have the force and application of law are presented. All pertinent uncodified laws enacted during the 1965 legislative session are presented in the first report together with selected uncodified laws of other legislative sessions to provide the reader with an insight into the nature and scope of uncodified laws in the field of water and related land resources. The offices of selected villages and cities in Minnesota with varying water problems were visited during Fiscal Year 1968 and a sampling of local water use regulations was compiled. The local ordinances presented in the first report indicate the extent to which the development and management of water resources presently resides in local units of government.

During the Fiscal Year 1969 the study was concerned with the analysis and interpretation of existing Federal, state, and local legislation and major court decisions bearing on water and related land resources in Minnesota. This second report contains a compilation and a discussion of the major court decisions in Minnesota concerned with legal water rights, a discussion of pertinent aspects of states statutes, a discussion of aspects of Federal statutes and Supreme Court decisions, and recommendations concerning ways and means for improving water laws. Some of the subjects with which this second report is concerned include:

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Water policies as expressed in Minnesota's water laws, problems associated with differing scientific and legal classifications of water, provincialism and precedent in court decisions, insecurity of existing water rights, the adequacy of current legislation regulating water permits by the Department of Conservation, the adequacy of the existing riparian doctrine of water rights, coordination of state agencies, and conflicts of federal-state jurisdiction.

COMMON LAW

Various sources enunciate the State legal doctrines and principles which govern and regulate the use of water and related land resources. Those of primary importance are the State constitution, common law, and statutory enactments. None of these sources alone are determinative of a legal right pertaining to water; rather, each supplements the other. Codified and uncodified State laws bearing on water and related land resources in Minnesota were compiled by Walton, et al (1968). This section is concerned with the source of legal water rights arising from the State body of law generally referred to as the "common law."

The common law has been defined as:

> . . . the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England.[1]

A Washington federal district court has defined common law thusly:

> The common law consists of those principles, maxims, usages, and rules founded on reason, natural justice, and an enlightened public policy, deduced from universal and immemorial usage, and receiving progressively the sanctions of the courts. Common law is generally used in contradistinction to statute law.[2]

In short, the common law emanates from the judiciary when it is asked to resolve an actual dispute between two or more litigants.

Common law is important in Minnesota, for many rights and obligations pertaining to water and its uses have their origin in a substantial body of court decisions. From early in its existence, the Minnesota Supreme Court has firmly held that common law constitutes a part of our legal heritage.[3]

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1. Black's Law Dictionary 345-46 (4th ed. 1951). See generally 1 Kent, Comm. 492; Western Union Tel. Co. v. Call Pub. Co., 181 U.S. 92 (1901).

2. United States v. Miller, 236 F. 798, 800 (W.D. Wash. 1916).

3. "The common law of England, so far as it is applicable to our situation and governments, is the law of this country in all cases in which it has not been altered or rejected by statute, or varied by local usage under the sanction of judicial decisions." Schurmeier v. St. Paul & Pacific R.R. Co., 10 Minn. 82 (Gil. 59, 76) (1865).

CLASSIFICATIONS OF WATERS

To discuss the various common law principles and doctrines relating to water, certain legal classifications of the physical settings of water adopted by the court should be noted. Scientists and engineers are not always in agreement with these legal distinctions of water (Haik, 1963). Common law adheres to these distinctions and a meaningful discussion of classifications must preceed considerations of the common law.

Waters in Minnesota have been legally cataloged to include the following classifications:

A. Waters on the surface of the earth.

1. Diffused surface waters.

   Waters from rain, springs, or melting snow which lie or flow on the surface of the earth, but which do not form part of a well-defined body of water or natural watercourse.

2. Natural watercourses.

   A stream of water flowing in a definite direction of course in a bed with banks.

3. Natural bodies of water.

   Surface waters when they have ceased to spread and diffuse over the surface or percolate through the soil; when they have lost their casual and vagrant character, and have reached and come to rest in a permanent mass or body, in a natural receptacle or reservoir, not spreading over or soaking into the soil, forming a mere bog or marsh.

4. Artificial surface watercourses.

   a ditch or culvert constructed to carry flowing waters.

B. Waters under the surface of the earth.

1. Underground waters in definite streams.

   Waters flowing in known or defined or ascertainable channels or courses.

2. Underground percolating waters.

   Waters which filter through the ground and collect in underground cavities, forming springs or what are commonly known as wells.

3. Artesian waters.

   Waters located in well-defined strata which eventually reach an impervious barrier or stratum of earth so that when such a stratum is tapped, pressure produces an artesian well.

These "classes" of waters have been developed largely in court decisions and common law adheres to these distinctions and associated definitions. The definition of surface watercourses distinguishes between natural watercourses, natural bodies of water, and artificial waterways or

accumulations of water. Notwithstanding, the common law substantive principles applicable to surface watercourses in Minnesota generally are not altered or affected by these distinctions.

Waters in Minnesota also have been legally classified as follows:

A. Public Waters

1. Natural watercourses
2. Natural bodies of water
3. Artificial surface watercourses

   All waters in streams and lakes within the State which are capable of substantial beneficial public use.

4. Underground waters in definite streams.
5. Underground percolating waters.
6. Artesian waters

   Indirectly declared Public Waters through statutory means for Department of Conservation to regulate the use of underground waters.

B. Private Waters

1. Diffused surface waters

This classification is based on Chapters 105 and 106 of the State's statutes in which the Legislature declared certain waters to belong to the public and provided the statutory means for the Department of Conservation, District Courts, and County Board's Control to regulate public waters. The court, in order to delineate the extent of public use, has stated that:

> Public use comprehends not only navigation by watercraft for commercial purposes, but the use also for ordinary purposes of life such as boating, fowling, skating, bathing, taking water for domestic or agriculture purposes, and cutting ice.

A natural watercourse is defined as "a stream of water flowing in a definite direction or course in a bed with banks,"[4] or as "a stream of water and its channel, both of natural origin, where the stream flows constantly or recurrently on the surface of the earth in a reasonably definite channel."[5] The Minnesota Court defined a natural watercourse in Collins v. Wickland[6] as follows:

> In order to constitute a 'natural watercourse' the flow ordinarily must have some substantial permanency and continuity and must be a part of a well-defined stream or body of water.[7]

4. 56 Am. Jur. Waters, §6 (1956).
5. Restatement, Torts §841 (1939).
6. 251 Minn. 419, 88 N.W. 2d 83 (1958).
7. Id., 88 N.W. 2d at 86 [emphasis added by court; footnote omitted].

The court here stresses that physical characteristics such as topography, volume, and continuity of flow will be determinative of what constitutes a natural watercourse.[8]

Natural bodies of water normally bring to mind lakes or ponds. This classification of water is to be distinguished from a stream or natural watercourse in that a lake or pond is water in a natural state of rest, while water in a stream has a natural motion or current.[9] The Restatement of Torts defines a lake as "a reasonable permenant body of water substantially at rest in a depression in the surface of the earth. . ."[10] While the Minnesota court has not specifically defined a natural body of water, the court, in discussing when casual surface waters lose their characteristics as such, has described what appears to be a lake or pond:

> And such waters (surface waters), when they have ceased to spread and diffuse over the surface or percolates through the soil; when they have lost their casual and vagrant character, and have reached and come to rest in a permenant mass or body, in a natural receptacle or reservoir, not spreading over or soaking into the soil, forming mere bog or marsh, cannot be regarded as surface waters any more than they can be after they have entered into a stream.[11]

Although this apparent definition of a lake or pond appears in an early case, no revision or addition to that language can be found in any subsequently reported decision. There appears to be no reason why this definition would not be reiterated by the court today if called upon to define a natural body of water.

The Schaefer case is the only Minnesota case making a distinction between natural streams and lakes or ponds. Subsequent decisions generally treat the two classifications the same. In the case of In re Judicial Ditch No. 9,[12] the court in reference to the Schaefer case stated that "when surface waters reach and become a part of a natural stream or permanent body like a lake, they lost their character as surface waters and are governed by a different rule."[13] In the Collins case, the court in defining a natural watercourse referred to "a well-defined stream or body of water."[14] Consequently, in applying the common law principles to Minnesota's streams, lakes, and ponds, these classifications are treated the same and all are referred to as natural surface watercourses.

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8. Id., 88 N.W. 2d at 86.

9. 56 Am. Jur. Waters, §50 (1956).

10. Restatement, Torts §842 (1939).

11. Schaefer v. Marthaler, 34 Minn. 487, 26 N.W. 726, 727 (1886).

12. 152 Minn. 544, 188 N.W. 321 (1922).

13. Id., 188 N.W. at 322.

14. Collins v. Wickland, supra note 13, 88 N.W. 2d at 86. See generally Petraborg v. Zontelli, 217 Minn. 536, 15 N.W. 2d 174 (1944), where the court appears to make no distinction in applying common law doctrine to streams and lakes and ponds, mainly treating these different classifications as natural watercourses.

In classifying artificial surface watercourses, the Minnesota court applied its definition of "watercourses" and then distinguished the words "natural" and "artificial."[15] Generally, the term "artificial surface watercourse" has been used to describe a ditch or culvert constructed to carry flowing waters.[16] Another definition of an artificial watercourse is a "raceway," which has been judicially described as "an artificial canal dug in the earth, or, as it is expressed in the conclusions of law, a channel cut in the ground."[17] An artificial surface watercourse may originate from a natural watercourse. Such would occur when "the flow of a stream of water has been diverted from its natural channel, or obstructed by a permanent dam."[18] An artificial watercourse may be created by a conduit or channel to carry waters around the original bed of a natural watercourse.[19] Finally, an artificial watercourse may in effect be part of, or an extension of, a natural watercourse. This situation develops where a person had deepened, widened or otherwise altered a natural channel or watercourse.[20]

In Minnesota, the definition of diffused surface waters is well settled. The supreme court has stated that:

> 'Surface waters' consist of waters from rain, springs, or melting snow which lie or flow on the surface of the earth, but which do not form part of a well-defined body of water or natural watercourse.[21]

These waters do not lose their character of diffused surface waters by merely lying stagnant or inactive in swamps or sloughs, nor because they may be absorbed by soaking into marshy or boggy land where they collect.[22] Furthermore, flow of surface waters over the years which results in a visibly worn channel does not produce a natural watercourse. Rather, such courses are referred to by the courts as minor natural and artificial

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15. For example, Bush v. City of Rochester, 191 Minn. 591, 255 N.W. 256, 258 (1934), the court referred to "a natural well-defined or an artificial well-defined channel."

16. See, e.g., Greenwood v. Evergreen Mines Co., 220 Minn. 296, 19 N.W. 2d 726 (1945); In Re Judicial Ditch No. 9, supra note 19.

17. Wilder v. DeCou, 26 Minn. 10, 1 N.W. 48, 53 (1879).

18. Kray v. Muggli, 84 Minn. 90, 86 N.W. 882, 884 (1901).

19. Canton Iron Co. v. Biwabik-Bessemer Co., 63 Minn. 367, 65 N.W. 643 (1896).

20. E.g., Schulenberg v. Zimmerman, 86 Minn. 70, 90 N.W. 156 (1902); Gilfillan v. Schmidt, 64 Minn. 29, 66 N.W. 126 (1896).

21. Enderson v. Kelehan, 226 Minn. 163, 32 N.W. 2d 286, 288-89 (1948). See also Collins v. Wickland, supra note 13; Johnson v. Agerbeck, 247 Minn. 432, 77 N.W. 2d 539 (1956); Hartle v. Neighbauer, 142 Minn. 438, 172 N.W. 498 (1919); Schaefer v. Marthaler, supra note 18.

22. Hartle v. Neighbauer, supra note 28, 172 N.W. at 499.

drainways or channels for the drainage of diffused surface waters.[23]

In legally classifying various types of waters, confusion has existed between artificial surface watercourses and minor channels which carry off diffused surface waters. As discussed earlier, artificial surface watercourses generally refer to ditches, channels, or raceways where waters other than diffused surface water run. Distinguished from that classification are the various terms reiterated by the court in the Collins case to describe the flow of surface waters in minor, well-defined channels. Terms used by the court applicable to diffused surface waters are "depression, swale, draw, drainway, ravine, ditch, etc...."[24]

Generally, the term "ground water" is used interchangeably with "subterranean water" or "underground water." Ground waters are normally divided into two classes: (1) definite streams; and (2) percolating water. No reported Minnesota case has defined a groundwater stream, but resort to legal treatises reveals the following general definition: "Underground bodies or streams of water flowing in known and defined or ascertainable channels or courses."[25] Although the Minnesota court has not actually defined an underground stream, it has mentioned and recognized the existence of a "subterranean stream or natural flow of water."[26] In light of the language of this case, it appears reasonable to assume that the court would not deviate greatly from the general definition quoted above.

Percolating waters have been described as waters which "filter through the ground and collect in underground cavities, forming springs or what are commonly known as wells."[27] Percolating waters may also be found in a stratum or earth which is continuously being inundated by the seepage of waters.[28]

In the earlier section discussing classification of water, no mention was made of artesian waters. The reason for this is that these waters are

23. Collins v. Wickland, supra note 13. In this case, the court emphasizes the fact that a resulting visible channel caused by yearly surface water runoff is not a natural watercourse because it is not a true stream or ancient watercourse.

24. Collins v. Wickland, supra note 13, 88 N.W. 2d at 87. See also Hartle v. Neighbauer, supra note 28; Praught v. Bukosky, 116 Minn. 206, 133 N.W. 564 (1911).

25. 56 Am Jur. Waters, §102 (1956).

26. Hartle v. Neighbauer, supra note 28, 172 N.W. at 499.

27. Erickson v. Crookston Waterworks, Power & Light Co., 105 Minn. 182, 117 N.W. 435 (1908). A more encompassing definition is that found in 56 Am. Jur. Waters, §102 (1956): "Waters which ooze, seep, or percolate through the earth, or which flow in unknown or undefined channels, generally [are] referred to as 'percolating waters.'"

28. See Erickson v. Crookston Waterworks, Power & Light Co., 100 Minn. 481, 111 N.W. 391 (1907); Stillwater Water Co. v. Farmer, 89 Minn. 58, 93 N.W. 907 (1903).

generally considered to be part of the general classification of percolating waters.[29] However, in the case of Erickson v. Crookston Waterworks, Power & Light Co., which reached the supreme court twice on appeal,[30] the Minnesota court did distinguish between percolating waters and artesian waters:

> A discussion in this case does not call for a discussion of the legal principles to percolating waters....Percolating waters, as distinguished from artesian waters, filter through the ground; (whereas artesian) waters (are) located in well-defined strata.[31]

The court describes artesian waters as those which eventually reach an impervious barrier or stratum of earth so that when such a stratum is tapped, pressure produces an artesian well.[32]

HYDROLOGIC ASPECTS OF CLASSIFICATIONS

The hydrologist, in contrast to the courts, classifies water as atmospheric vapor, soil moisture, groundwater, and surface water and recognizes that these are merely phases in the continuing circulation of water in the hydrologic cycle. The interrelation and interdependance of the several phases of the hydrologic cycle are demonstrated in studies of the processes of precipitation, runoff, infiltration, deep percolation, seepage, and evapotranspiration, by which water moves from one phase to another (Thomas, 1958).

In the hydrologic cycle, water evaporates from the oceans, other bodies of water, and the land and becomes a part of the atmosphere. The evaporated moisture is lifted and carried in the atmosphere until it precipitates to the earth, either on land or in water bodies. The precipitated water may be intercepted or transpired by plants, may run over the ground surface and into streams to oceans, or may infiltrate into the ground. Much of the intercepted and transpired water and some of the surface runoff returns to the air through evaporation. The infiltrated water is temporarily stored as soil moisture at shallow depths or as groundwater at greater depths which may later flow out of rocks as springs, or seep into streams, or evaporate or transpire into the atmosphere to complete the cycle. Complex in detail, the cycle forms the central concept of the science of hydrology, and it must be kept constantly in mind when any of its different phases are considered. Anything that affects one of its phases is reflected in some or all of the others.

Water that appears in streams includes discharge from groundwater reservoirs. The discharge of groundwater supports much of the dry-season flow of most streams after water has ceased to flow into streams directly

29. 56 Am. Jur. Waters, §111 (1956).

30. 100 Minn. 481, 111 N.W. 391 (1907) and 105 Minn. 182, 117 N.W. 435 (1908).

31. Id., 117 N.W. at 439.

32. Id., 111 N.W. at 394.

over the land surface. The rest comes from lakes and swamps which, like groundwater reservoirs, provide temporary storage and thus delay immediate runoff.

Surface runoff is closely related to precipitation; the relation is not a direct one, however. Surface runoff represents the surplus, if any, of rainfall and snowmelt after the processes that lead to evapotranspiration and groundwater recharge have taken their toll--chiefly the retentiveness of soil, rock, and plant surfaces and the internal absorptive capacity of soil and subsoil. These factors, and the subsequent division of the retained water into evapotranspiration and groundwater recharge, in turn vary with the rate and form of precipitation, the type and density of vegetation and the season of the year, the temperature and humidity of the air and the vigor of air movement, the type of soil and its pervious moisture content, the configuration of the land surface, and the type, thickness, and attitude of the bodies of rock beneath the soil--that is, the geology. These conditions, some ephemeral and some permanent, lead to differences in surface runoff, groundwater recharge, and evapotranspiration from one area to another and from time to time within the same area.

Groundwater exists wherever and whenever subsurface openings are filled with water under hydrostatic pressure (atmospheric pressure or greater), and it moves whenever gravitational forces are great enough to overcome frictional resistance to flow. Groundwater is in motion almost everywhere, because so long as there are any interconnected openings at all in a volume of rock, and so long as water enters the rock at one pressure head and can escape at a lower head, water will move through the rock. Bodies of virtually static groundwater are rare. One example might be the water in a deeply buried stratum which is underlain by tight rock and overlain above by similar rock, and in which the relation to other saturated rocks below and above and to the land surface is such that there is no appreciable "hydraulic gradient" in the stratum. Even in such bodies there may be virtually imperceptible movement of water.

Water gets into the groundwater reservoir wherever it is available in excess of the field capacity of the soil and can move downward by gravity, or wherever and whenever water in a surface body has a higher head than the adjacent groundwater. It moves through the rocks around, over, under, and through obstacles formed by zones of lower permeability; it approaches the land surface or a body of surface water where the head is lower; and it is discharged by seepage or spring flow into streams, lakes or is dissipated by plants or by evapotranspiration from the soil. As a phase of the hydrologic cycle the groundwater reservoir serves as nature's great delaying and storing medium for water (McGuinness, 1963).

There is a widespread public belief, and recognition in existing court decisions, that different kinds of water exist to which different rules of law can be applied. Such a belief is only natural, for conflicts over the use of water arose long before the nature of water, especially groundwater, were well understood. The interrelation of water in the several phases of the hydrologic cycle is well established as a general principle, whether or not there is adequate evidence as to the degree of relation in specific areas (Thomas, 1961).

To date relatively few conflicts have arisen between users of water

from wells and from streams and in Minnesota it is still possible for the courts to live with water classifications which treat surface water and groundwater as if they were separate and independent resources. However, as more complete utilization of water resources is made in various areas, it is inevitable that complex problems will arise. These problems can be settled only by an adjudication of all water rights, based on full recognition of the physical principles governing the movement of water through the hydrologic cycle under natural conditions and on determination of the changes that have been effected by development.

The segregation of waters may have been practical in days when pollution problems were less imposing, litigation was among persons in the same general locality, and the science of hydrology was less advanced. But today, in areas where basin-wide pollution problems are the rule rather than the exception, the legal classification of waters is weak. Potential pollutants travel from source to source, without being deliberately discharged into them. Often these pollutants work harm in areas some distance from their place of origin. This means that water rights for all sources of water must be considered as interrelated (Gindler, 1967).

The legal classifications of water are now known not to be separate and distinct, but to be interrelated and interdependent. The minimum flow of water in watercourses comes chiefly from groundwater reservoirs, whether from "defined underground streams" or "percolating" water. The maximum flow of water in watercourses also comes in part from groundwater reservoirs, but is likely to include a large proportion of water that was temporarily "diffused surface water." "Diffused surface waters" may include water from precipitation which has not completed the process of infiltration into the ground or which cannot enter the ground because of impermeability of the surface layer, or because the ground is temporarily full; overland flows which may either seep into the ground elsewhere or enter a watercourse or lake or pond; the discharge from groundwater reservoirs at springs or seeps; water in sloughs or escaped floodwaters in "watercourses"; and marshes and bogs formed by groundwater where the water table rises to the surface. Even the snow that accumulates each winter might be designated "diffused surface water," for it is not in watercourses, nor is it soil moisture or "percolating" water or water in a "defined underground stream," and it is water on the surface.

Court decisions and statutes have classified groundwaters as (1) definite underground streams and (2) percolating waters. If the characteristics of "definite underground streams" include the turbulent flow that characterizes practically all surface streams, this class becomes a small one indeed, suitable only for cavernous limestones, some organic soils, and rocks which have large fractures or other openings. In addition, it may be shown that the "underground streams" depend upon the "percolating water" for replenishment, or vice versa.

In the hydrologic cycle, only one phase, soil moisture, can be truly adapted to prevailing concepts of land and its ownership. In other phases of the cycle, water may cross property lines as overland runoff upon the land surface, as streamflow in watercourses, or as groundwater beneath the land surface. And if the water crosses established property lines, a landowner cannot help affecting the water supplies of his neighbors when he develops and uses that water within his own property, nor can he help being

affected by the actions of his neighbors when they withdraw water within their property lines. If the quantity of water withdrawn is small, the effect at some distance may be negligible; and if the decision is necessarily provincial, not only because of the specific hydrologic conditions but also because of the water philosophy at the place and time that the decision was rendered. This provincialism may not be fully recognized, particularly if the fundamental hydrology is not adequately understood (Haber, et al, 1958).

The interconnection between waters in a watercourse and underground waters has been recognized in the Public-Private classification of waters. The law regarding the interconnection of other water sources, diffused surface waters and watercourses, for example, is not so clear. One major problem is the common view that diffused surface waters can be diverted and used without liability and that no right can be acquired to the use of diffused surface waters.

RIGHTS IN NATURAL SURFACE WATERCOURSES

Generally, two legal doctrines are recognized in governing a person's right to use waters in natural surface watercourses [hereinafter called watercourses]. One doctrine, which is most commonly applied in the western United States, is that of appropriation. This doctrine is based on the proposition that "first in time is first in right."[33] Priority of use is the one important element of this doctrine and a later user of water can only concern himself with the unappropriated waters in the watercourse. In short, he has no standing to object if a prior user consumes all the water. Generally, the use of waters under the appropriation doctrine is governed by a type of permit system. Each party contemplating the use of waters in a watercourse makes application for the use of so much water and he must thereafter diligently use the water for the contemplated purpose.[34]

The Minnesota Supreme Court has rejected this fundamental element of the appropriation doctrine. The court was not persuaded by the argument that a prior user of waters in a watercourse may continue to use the waters to the exclusion of a later user. The court in Reeves v. Backus-Brooks Co.[35] stated:

> ...it matters not how much the owner of land upon a stream has actually used the water, or whether he has used it at all, his right to the use of it as a riparian owner remains unaffected during any period of time.[36]

Although the Minnesota court has thus rejected a basic element of the doctrine, the permit system adopted by the Minnesota Legislature embodies certain features of that doctrine. However, no express advantage is given

33. Eddy v. Simpson, 3 Cal. 249 (1853).

34. Haik, Theories of Water Law, Minn. CLE, Vol. I, No. 3, 81, 84 (1963).

35. 83 Minn. 339, 86 N.W. 337 (1901).

36. Id. at 344, 86 N.W. at 338.

to a prior appropriator under the Minnesota permit system.[37] Furthermore, certain additional statutory rights to use water have been afforded Minnesota's mining industry by the legislature.[38]

The second major doctrine regulating water rights in watercourses is the riparian doctrine. This doctrine is primarily in effect in the more humid eastern states, including Minnesota. The underlying basis for this doctrine is predicted on ownership of lands abutting on a watercourse. The riparian doctrine is expressed in two separate theories, the natural flow theory and the reasonable use theory.

For purposes of discussion of these two theories, various terms should be defined. First, riparian lands are those which abut on a natural watercourse. Secondly, the owner of abutting lands is normally referred to as a riparian owner. Applying these terms of the "natural flow" theory, a riparian owner would have the absolute right to the flow of a watercourse past his riparian lands in its natural state, neither diminished in quality or quantity. The natural flow doctrine does not correspond to reality in that it would result in almost a total non-use of a watercourse except by the lowest or last downstream user. No consumptive use by an upstream riparian owner could be undertaken because the resultant impairment in the quantity and quality of a watercourse would give rise to endless litigation under the natural flow theory. The natural flow doctrine appears to have no vitality in the common law of Minnesota: "The right of a party to the uninterrupted and full use of the water as it flows naturally past his land is not an absolute right..."[39]

MINNESOTA RIPARIAN DOCTRINE - REASONABLE USE THEORY

The Minnesota Supreme Court follows the riparian doctrine embodying the reasonable use theory in deciding relative rights in natural watercourses. The leading case is Red River Roller Mills v. Wright,[40] where the court held:

> His [riparian owner] enjoyment must necessarily be according to his opportunities prior to those below him, and subsequent to those above him, and liable to be modified or abrogated by the reasonable use of the stream by others.[41]

37. The permit system, as set out in Minn. Stat. Ch. 105 (1965), and how it alters and affects the common law in Minnesota, will be more fully discussed in a later section.

38. See Minn. Stat. §105.64 (1965).

39. Red River Roller Mills v. Wright, 30 Minn. 249, 254, 15 N.W. 167, 168 (1883).

40. 30 Minn. 249, 15 N.W. 167 (1883).

41. Id., 15 N.W. at 168.

Application of the reasonable use theory to determine a riparian owner's right involves a difficult question as to what use is or is not reasonable. The Minnesota court has expressed no explicit guidelines to define the term "reasonable." The court in the Red River Roller Mills case indicated that:

> What constitutes a reasonable use is not a question of law, but of fact, to be determined by the jury or the court from all the circumstances of the case...[42]

The court then went on to say:

> Whenever it appears that any use of a stream by one riparian owner interferes with the reasonable use of the stream by a lower riparian owner, to his injury, either by the interruption, diversion, abstraction, or pollution of the water, the burden of proof is upon the former to show that his use is reasonable, and the greater the injury is to the lower owner the greater necessity for such use must the upper owner show in order to establish its reasonableness.[43]

USERS OF WATERS

Generally, riparian owners are the only ones who have the right to use waters in a watercourse abutting their lands. However, the Minnesota court has upheld a riparian owner's grant to allow a non-riparian landowner to draw water from a stream across the riparian owner's estate.[44] This decision appears to be an exception to the general rule and is contrary to the Minnesota permit system which prohibits water use by non-riparian landowners.[45]

A riparian owner does not lose his rights to use water through non-use. In Reeves v. Backus-Brooks Co., the court dismissed any suggestion that a riparian owner loses his rights to use water:

> All persons having lands on the margin of a flowing stream have, by nature, certain rights to use the water of that stream, whether they exercise those rights or not, and they may begin to use them whenever they will...A mere non-user of his right raises no presumption against him.[46]

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42. Ibid.

43. Id., 15 N.W. at 169.

44. St. Anthony Falls Water Power Co. v. City of Minneapolis, 41 Minn. 270, 43 N.W. 56 (1889).

45. See infra, discussion of Minn. Stat., Ch. 105 (1966).

46. Reeves v. Backus-Brooks Co., supra note 40, 86 N.W. at 338.

This protection of the right to future use was also stressed in the Red River Roller Mills case where the court rejected the prior users' argument that they had acquired a special interest by reason of the fact that their use of the water commenced some two years prior to the subsequent user.

However, the use and non-use of water by a riparian owner is relevant in the court's determination of reasonableness. In Pinney v. Lucey,[49] the court held that an individual's construction of a dam in a stream was a reasonable use of the waters and did not affect an opposite riparian owner's rights. Emphasizing the court's decision was the fact that the latter had never made any use of the waters in the stream.

Finally, in applying the reasonable use theory pertaining to the riparian doctrine, the court has treated as equals an upper, lower, and opposite riparian owner. No different rights exist by reason of the physical setting of a riparian owner's lands. The important criterion is that one's lands actually abut the watercourse.[48]

PRIORITIES AS TO COMPETING USES

Perhaps because Minnesota has a relative abundance of water, few cases involving a dispute between competing users of water have arisen. However, from those few cases considered by the supreme court, an indication of the priorities to be afforded to conflicting uses may be surmised. In a case involving a mining company and a resort owner, the court found strong and compelling reasons to prevent any diminution in the recreational values of the waters in question.[49] The court stressed that ownership of riparian lands resulted in certain propriety rights to enjoy the sandy beaches for swimming, the hunting and fishing opportunities, and the natural beauty of scenery of the lake itself for those who view it. When these rights were contrasted with the mining company's intention to drain partially the lake bed in order to extract iron ore, the court affirmed the issuance of an injunction against the mining company based on the following reason:

> It is fundamental that a riparian owner's rights are measured by the necessities and character of his use. Paramount among such uses is the right to the water for ordinary domestic and manufacturing purposes ...Here Youngstown intends, for private gain and on a purely commercial basis, not only temporarily to divert but completely to drain the waters from the eastern section of the lake for mining operations that will extend over a period of 20 years. The eastern section, once the source of excellent bass fishing, will be converted into an industrial enterprise in which plaintiffs have no interest. In fact, Youngstown's con-

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47. 44 Minn. 367, 46 N.W. 561 (1890).

48. See e.g., Minnesota Loan & Trust Co. v. St. Anthony Falls Water Power Co., 82 Minn. 505, 85 N.W. 520 (1901); Pinney v. Lucey, ibid.

49. Petraborg v. Zontelli, 217 Minn. 536, 15 N.W. 2d 174 (1944).

templated operations far exceed a reasonable use within the meaning of our decisions.[50]

Although the court stated that ordinary domestic and manufacturing uses of water were of equal importance, the recreational and aesthetic uses of one of Minnesota's numerous watercourses here took priority over the contemplated commercial use.

The most clear expression of a common law priority of use is contained in St. Anthony Falls Water Power Co. v. St. Paul Water Commissioners.[51] Here, the court held that the public use of water is paramount and takes priority over other riparian uses. In affirming the Minnesota court's decision, the United States Supreme Court stated:

> Whatever may be the rights of the plaintiffs in error [riparian owners] under their charters or as the riparian owners of land to build and maintain their dams to the center of the stream, there is no [Minnesota] decision cited which holds that they are entitled to the use of all the water which would naturally flow past their lands and over their dams so constructed, nor has the state court decided that the only right of the state, to which the alleged right of the plaintiffs in error is subject or subordinate in any way, is limited to the right of the state to control or use the bed of the stream and the waters therein for purposes of navigation only.[52]

Supporting this common law principle of a municipality's paramount priority to the use of waters for a public purpose is the case of Mitchell v. City of St. Paul,[53] where the Minnesota Supreme Court held that the public right to the use of waters for a water supply of inhabitants of a city is supreme to all other rights, including those of riparian owners.

Another case dealing with the rights of competing users, Sanborn v. People's Ice Co.,[54] involves the removal of ice from a lake for commercial purposes. A summer resident-owning property on the lake brought an action to prevent an ice company from cutting and removing large blocks of ice because such conduct lowered the water level the following summer. Again, the court ruled in favor of the domestic user by holding the commercial activity unreasonable. In short, emphasis was placed on common users' rights in domestic uses of waters.[55]

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50. Id. 15 N.W. 2d at 182.

51. 168 U.S. 349 (1897).

52. Id. at 371.

53. 225 Minn. 390, 31 N.W. 2d 46 (1948).

54. 82 Minn. 43, 84 N.W. 641 (1900).

55. It should be noted that this case arose under a statute prohibiting the removal of water where the result would be a lowering of the lake level. By reason of the ice company's demurrer to the complaint, it admitted that its conduct, in fact, lowered the level of the lake. However, from the facts before the court, this is not quite so certain. Consequently, the Sanborn decision is not as strong a precedent for domestic use priority as appears.

The case of Meyers v. Lafayette Club[56] involved an action to enjoin the Lafayette Club from using the waters of Lake Minnetonka to sprinkle its golf course. The club's use of the waters allegedly impaired other riparian owners' swimming and boating activities. In the course of its opinion, the court asserted that the club's "sprinkling of its ground bordering on the lake was not a commercial or artificial use."[57] Further, the court held that the sprinkling was not unreasonable and did not prevent the other riparian owners from enjoying their respective rights.

Consequently, the court did not enjoin the Lafayette Club from using the waters for sprinkling because a "riparian owner has the right to make reasonable use of the water for domestic, agricultural, and mechanical purposes."[58] Similar competing users, therefore, who are in dispute as to use of the same waters, whether for domestic, commercial, agricultural or mechanical purposes, thus face the burden of establishing the reasonableness of their conduct in light of all the circumstances. And as the Meyers case illustrates, the fact that one competitor is using the waters for consumptive purposes is not prima facie an unreasonable use.

LEGAL DIFFERENCES WITH RESPECT TO STREAMS, LAKES, PONDS AND WATERCOURSES

As discussed earlier, the common law does recognize various classifications of waters. Just as no distinction in the application of substantive common law rules are made regarding natural and artificial watercourses, the Minnesota Supreme Court has failed to apply different principles to lakes, ponds or watercourses: "...the common law is that the same rules as to riparian rights which apply to streams apply also to lakes, or other bodies of still water."[59] Consequently the reasonable use theory adopted by the court in formulating rights under the riparian doctrine does not vary, notwithstanding the numerous legal classifications.

NAVIGABLE WATERS

The doctrine of riparian rights in watercourses involves common law principles of navigability. The determination of whether waters are navi-

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56. 197 Minn. 241, 266 N.W. 861 (1936).

57. Id., 266 N.W. at 866.

58. Id., 226 N.W. at 865.

59. Lamprey v. State, 52 Minn. 181, 198, 53 N.W. 1139, 1143 (1893). This principle has been reaffirmed in Meyers v. Lafayette Club, supra note 56.

gable or not is relevant in situations where the state, public, and riparian owners all assert rights in the use of waters and ownership of underlying beds.

There has been one reported case in Minnesota where a riparian owner directly contended that the right of another riparian owner to use the water in a navigable watercourse is more restricted than a right to use waters in a non-navigable watercourse.[60] The court rejected the argument of restricted rights in navigable waters by saying that a riparian owner is entitled to the use of waters for any purpose as long as he does not obstruct navigation.

Minnesota test of navigability. - The early case of Lamprey v. State[61] expressed the following test in determining whether a watercourse was navigable:

> ...under present conditions of society, bodies of water are used for public uses other than mere commercial navigation, in its ordinary sense, we fail to see why they ought not to be held to be public waters, or navigable waters, if the old nomenclature is preferred. Certainly, we do not see why boating or sailing for pleasure should not be considered navigation as well as boating or sailing for mere pecuniary profit. Many, if not most, of the meandered lakes of this state, are not adapted to, and probably will never be used to any great extent for, commercial navigation; but they are used--and as populations increase, and towns and cities are built up in their vicinity, will be still more used--by the people for sailing, rowing, fishing, fowling, bathing, skating, taking water for domestic, agricultural and even city purposes, cutting ice, and other public purposes which cannot now be enumerated or even anticipated.... We are satisfied that, so long as these lakes are capable of use for boating, even for pleasure, they are navigable, within the reason and spirit of the common-law rule.[62]

The rule of navigability thus adopted by the Minnesota court incorporates recreational uses into the definition of commerce in determining whether a body of water is navigable. The substance of this test has been adopted by the legislature in enacting Section 105.38 which provides:

> ...all waters in streams and lakes within the state which are capable of substantial beneficial public use are public waters...The public character of water shall not be determined exclusively on whether it is a body or stream of water which was navigable in fact or susceptible of being used as a highway for commerce...[63]

Federal test of navigability. - The Supreme Court of the United States

60. Morrill v. St. Anthony Falls Water Power Co., 26 Minn. 222, 2 N.W. 842 (1879).

61. Supra note 59.

62. Id., 53 N.W. at 1143-44.

63. Minn. Stat. §105.38 (1965).

in United States v. Holt State Bank,[64] in declaring the Minnesota noncommercial navigability test to be an erroneous standard, held that watercourses are navigable "when they are used, or are suceptible of being used, in their natural and ordinary condition, as highways for commerce, over which trade and travel are or may be conducted..."[65]

Since that Supreme Court decision, the Minnesota court has generally adhered to the federal standard.[65] As a result, numerous lakes and streams in Minnesota are not navigable under the federal test. The restrictive nature of the federal test in its application to riparian rights in use of waters has been reduced by the decision in Johnson v. Seifert[67] where the court stated that:

> It is not to be overlooked that the federal test of navigability is designed for the narrow purpose of determining the ownership of lakebeds, and for the additional purpose of identifying waters over which the federal government is the paramount authority in the regulation of navigation. Whether waters are navigable has no material bearing on riparian rights since such rights do not arise from the ownership of the lakebed but as an incident of the ownership of the shore.[68]

OWNERSHIP OF WATERCOURSES, BEDS AND OVERLYING WATERS

Non-navigable watercourse. - Since the Johnson case, the federal test of navigability probably is most important in the area of determining the ownership of lands underlying watercourses. When a body of water is determined to be non-navigable, the owners of abutting land have an ownership interest in the bed of the lake.[69] The riparian owner of a non-navigable watercourse therefore owns the fee of the bed of the body of water subject to regulation by the state of Minnesota, and subject to the common rights of other abutting owners.[70]

Not only do riparian owners own the bed, but they enjoy the exclusive

64. 270 U.S. 49 (1926).

65. Id. at 56.

66. E.g., State v. Adams, 251 Minn. 521, 89 N.W. 2d 661 (1957), cert. denied, 358 U.S. 826 (1958); State v. Longyear Holding Co., 224 Minn. 451, 29 N.W. 2d 657 (1947), cert. denied, 336 U.S. 948 (1949).

67. 257 Minn. 159, 100 N.W. 2d 689 (1960).

68. Id., 100 N.W. 2d at 694 [footnotes omitted].

69. Lamprey v. State, supra note 59. See also Bingenheimer v. Diamond Iron Mining Co., 237 Minn. 332, 54 N.W. 2d 912 (1952); Scheifert v. Briegel, 90 Minn. 125, 96 N.W. 44 (1903).

70. Johnson v. Seifert, supra note 65A; State v. Adams, supra note 65.

right to use the waters overlying the bed of the non-navigable watercourse. This principle was declared in the early 1900's by the Minnesota court:

> It is elementary that every person has exclusive dominion over the soil which he absolutely owns; hence such an owner of land has the exclusive right of hunting and fishing on his land, and the waters covering it.[71]

Thus, the determination that a watercourse is non-navigable gives rise to the common law principle that the bed of the lake belongs to those riparian owners who may use the overlying water for all purposes. However, the Minnesota court has given indication that the public character and regulation of water may restrict a riparian owner who owns the underlying lakebed from exercising exclusive dominion of the overlying waters.[72]

Navigable watercourses. - If a watercourse is determined to be navigable under the federal commercial test, a riparian owner's water rights still exist but are subject to certain interests of the state and public. Besides the earlier discussion on Minnesota's riparian doctrine, common law rules provide that riparian owner's title to lands abutting a navigable watercourse extends to the ordinary high-water mark.[73] The state, on the other hand, owns absolutely the bed of a navigable watercourse.[74] Further, the state owns the waters overlying its beds.[75]

Notwithstanding the state's paramount rights in the bed and waters of a navigable watercourse, and the restrictions imposed by the reasonable use theory, riparian owners do enjoy certain rights in the use of navigable waters.

Justice Mitchell, in the case of In re Union Depot Street Railway & Transfer Co.,[76] stated the principles affecting a riparian owner's use of navigable waters thusly:

> ...he has certain riparian rights incident to the ownership of real estate bordering upon a navigable stream. Among these are the right to enjoy free communication between his abutting premises and the navigable

71. Lamprey v. Danz, 86 Minn. 317, 321, 90 N.W. 578, 580 (1902). See also State v. Bollenbach, 241 Minn. 103, 63 N.W. 2d 278 (1954); L. Realty Co. v. Johnson, 92 Minn. 363, 100 N.W. 94 (1940); Minnesota Valley Gun Club v. Northline Corp., 207 Minn. 126, 290 N.W. 222 (1940).

72. State v. Kuluvar, supra note 5; Johnson v. Seifert, supra note 65A.

73. E.g., State v. Korrer, 127 Minn. 60, 148 N.W. 617 (1914).

74. E.g., State v. Longyear Holding Co., supra note 65; Lamprey v. State, supra note 59.

75. E.g., Nelson v. DeLong, 213 Minn. 425; 7 N.W. 2d 342 (1942); Lamprey v. State, supra note 59. Ownership in this instance means that the state is holding the waters in its sovereign capacity in trust for the public.

76. 31 Minn. 301, 17 N.W. 626 (1883).

> channel of the river, to build and maintain suitable landings, piers, wharves, on and in front of his land, and to extend the same therefrom into the river to the point of navigability even beyond low-water mark, and to this extent exclusively to occupy such and like purposes the bed of the stream, subordinate only to the paramount public right of navigation. * * * These riparian rights are property, and cannot be taken away without paying just compensation therefore.[77]

Thus, a riparian owner has the right to use the waters of a navigable watercourse and the state cannot deny him access to those waters. He can encroach on those waters pursuant to permit up to the point where he does not impair the waters' navigability or other public purpose.[78]

An important doctrine in Minnesota mentioned earlier is the state's ownership of navigable waters and the underlying bed. This doctrine is commonly referred to as the Minnesota Trust Doctrine. The fundamental aspect of the doctrine is that the state, in its sovereign capacity, acts as trustee for the people and holds the navigable waters and the lands under them for public use.[79] The trust, for the exclusive benefit of the public, enables people to use and enjoy the waters of Minnesota equally and in common with riparian owners. The court, in order to delineate the extent of public use has stated that:

> Public use comprehends not only navigation by watercraft for commercial purposes, but the use also for ordinary purposes of life such as boating, fowling, skating, bathing, taking water for domestic or agriculture purposes, and cutting ice.[80]

As a result of this common law rule enabling non-riparian owners to enjoy the countless number of natural watercourses of the state, the particular significance of the federal test of navigability becomes apparent. By applying the more restrictive federal navigability test, the public would be deprived of access to, and enjoyment of, numerous Minnesota lakes and streams. Recognizing this problem, the Minnesota court responded in a series of cases, commencing with State v. Bollenbach,[81] by distinguishing between the overlying waters and the bed of a watercourse. The distinction was clearly articulated in 1958 when the court said that "the ownership of beds of streams and lakes is quite a different matter from the right to control waters."[82]

The effect of these holdings is that the federal test is used to determine the ownership of an underlying bed, while the state's non-commercial test of substantial beneficial public use as expressed in Johnson v. Seifert and State v. Kuluvar is used to determine what waters are included within

77. Id., 17 N.W. at 628 [emphasis added by court].

78. E.g., State v. Korrer, supra note 68; Lamprey v. State, supra note 59.

79. State v. Longyear Holding Co., supra note 65; Petraborg v. Zontelli, supra note 52; Nelson v. DeLong, supra note 69.

80. Nelson v. DeLong, supra note 70, 7 N.W. 2d at 346.

81. 241 Minn. 103, 63 N.W. 2d 278 (1954).

82. State v. Adams, supra note 65; 89 N.W. 2d at 678.

the Minnesota Trust Doctrine. By applying this dual standard, the court has made large, non-navigable bodies of water available for the public use. Fortunately, the public enjoys the valuable natural resource of water without being a riparian owner.

RIGHTS IN DIFFUSED SURFACE WATERS

Cases which have arisen in Minnesota dealing with diffused surface waters have been limited mainly to the questions of damages occasioned by one property owner discharging such waters upon the lands of another. No Minnesota cases have dealt with the collection and use of diffused waters.

COMMON ENEMY DOCTRINE

Early in its history, Minnesota adopted the common enemy doctrine as it applied to diffused surface waters. In Pye v. City of Mankato,[83] the court enunciated that rule as follows:

> Surface water is a common enemy, which an owner, in the necessary and proper improvement of his land, may get rid of as best he may, subject, however, to the restriction of the maxim that a man must so use his own as not unnecessarily to injure another.[84]

Although originally adopting the common law rule of diffused surface water as being a common enemy, the court thereafter modified that rule.

This modification became obvious a few years after the Pye case when the court re-examined the common enemy doctrine. In Beach v. Gaylord,[85] the court found the defendant liable for discharge of surface waters upon the plaintiff's lands because defendant's activity in collecting and dispersing these waters was not incident to the ordinary use or improvement of defendant's property. In the course of its opinion, the court stated:

> ...for although, under the common-law rule as to surface waters, which has been adopted in this state, it is held to be a common enemy which each owner...may get rid of as best he may...but he must not thereby cause it to flow upon the premises of another in greater volume or quantity than it would naturally otherwise do.[86]

83. 36 Minn. 373, 31 N.W. 863 (1887).

84. Id., 31 N.W. at 864.

85. 43 Minn. 476, 45 N.W. 1095 (1890).

86. Id., 45 N.W. at 1096. For other early cases applying the common enemy doctrine, see Township of Blakely v. Devine, 36 Minn. 53, 29 N.W. 342 (1886); Hoganon v. St. Paul, M. & M. Ry. Co., 31 Minn. 224, 17 N.W. 374 (1883); McClure v. City of Red Wing, 28 Minn. 186, 9 N.W. 767 (1881).

Under the common enemy doctrine, each case presents a factual situation where the court or jury is asked to determine if the alleged wrongful discharge resulted from an ordinary improvement as well as whether the discharge resulted in a greater quantity of water.

DOCTRINE OF REASONABLE USE

Because the common enemy rule was continually modified with exceptions and limitations each time it was applied, the court in 1894 adopted the doctrine of reasonable use in deciding disputes regarding diffused surface waters.[87] In Sheehan v. Flynn, the court held:

> The common-law rule as to liability for the diversion of surface water has been modified in this and other states by the rule that a person must so use his own as not unnecessarily or unreasonably to injure his neighbor. A circumstance to be considered in determining what is reasonable use of one's own land is the amount of benefit to the estate drained or improved, as compared with the amount of injury to the estate on which the burden of the surface water is cast...
>
> We hold that one has a right to drain his land for any legitimate use, whether for a railroad track, a wheat field, or a pasture, and whether the improvement is directly and wholly for the purpose of drainage, or whether it is for some other purpose, and such drainage is a mere incidental result. But, if he collect and convey the surface water off his own land, he shall do what is reasonable under all the circumstances, to turn it into some natural drain, or into some course in which it will do the least injury to his neighbor, -- and, if he would prevent it from coming upon his land, he must not do so by obstructing some natural drain, and thereby hold back the water and flood the land of his neighbor, at least if such natural drain is an important one.[88]

For the most part, the rule of the Sheehan case has been followed by subsequent decisions of the Minnesota Supreme Court. In Enderson v. Kelehan, the court noted that the reasonable use doctrine did not follow the common law or civil law rule of drainage, but had "attained a distinct and independent status."[89,90] In this case, the court also set out guidelines to be utilized in determining what is reasonable:

1. There is a reasonable necessity for such drainage.
2. If reasonable care be taken to avoid unnecessary injury to the land receiving the burden.
3. If the utility or benefit accruing to the land drained reasonably outweighs the gravity of the harm resulting to the land receiving the burden.

87. Sheehan v. Flynn, 59 Minn. 436, 61 N.W. 462 (1894).

88. Id., 61 N.W. at 463, 466.

89. 226 Minn. 163, 32 N.W. 2d 286 (1948).

90. Id., 32 N.W. 2d at 289.

4. If, where practicable, it is accomplished by reasonably improving and aiding the normal system of drainage according to its reasonable carrying capacity, or if, in the absence of a practicable natural drain, a reasonable and feasible artificial drainage system is adopted.[91]

While factual disputes still exist as to the reasonableness of the discharge of diffused surface waters from one's property to another, the court has provided definite standards to assist the trier of facts in its decision. In Collins v. Wickland,[92] the court clarified the distinction between natural watercourses governed by the riparian doctrine and its reasonable use theory and visibly worn channels which annually disperse surface waters regulated by the Sheehan doctrine. Secondly, the Collins case emphasized the factual difference between urban and rural areas, illustrating that different requirements for drainage exist in each area. The court went on to say that even in urban areas, a different approach to drainage exists as between commercial or industrial and residential areas. As a result, no rigid drainage rule should be applied in each case because factors like topography, land utilization, and general physical characteristics vary too greatly from case to case.[93] The decision in Collins v. Wickland exemplifies the Minnesota Supreme Court's approach in updating the common law rules pertaining to water for present-day rural-urban conditions.

RIGHTS IN NATURAL GROUND WATERS

PERCOLATING WATERS

Various legal theories have been established to govern the use and control of percolating ground waters. The common law or "English" rule provides that percolating waters are a part of the soil on which they flow, ooze and seep. Since they are a part of the soil, an owner may do what he wants with such waters, at least in the absence of malice or contractual relationship, regardless of the effect this may have on abutting or lower landowners. This rule is also commonly referred to as the absolute ownership rule.[94]

Minnesota has rejected the absolute ownership rule and, instead, adopted a rule of reasonable use to regulate percolating waters. Before discussing Minnesota's rule, it should be noted that the percolating waters doctrine of reasonable use is oftentimes used interchangeably with the terms the American Rule and doctrine of "correlative rights." This latter term, however, generally applies when a supply of percolating water is insufficient to supply all users, resulting in all common overlying landowners then sharing proportionately in the available supply.[95] A correlative rights rule also applies to reconcile disputes between owners of separate tracts overlying the same artesian basin or reservoir.[96]

Although the Minnesota court in the case of Stillwater Water Co. v. Farmer[97] used the term "correlative rights," the fundamental principles of that term were rejected by implying that one landowner could use all the available percolating waters to the detriment of another abutting landowner:

> If the collection of these [percolating] waters was essential and necessary that defendant might use them for any reasonable purpose, or even, if from the evidence, it could be found that he was competing with the plaintiff, and proposed to use the waters for a public purpose, or if it were necessary that the natural conditions of his land should be disturbed and sub-surface waters drained in order to improve it...[98]

The language just quoted would appear to indicate that Minnesota does not even follow a reasonable use doctrine for percolating waters. If a man's use of percolating waters is not malicious and wasteful, the court seems to say he may use and control as much as he desires, to everyone's exclusion.

From this rather harsh language and its implications, the court in the Stillwater Water Co. case concluded by stating the applicable rule to be:

> We see no reason why the maxim, 'So use your own property as not to injure another,' should not be applied in a proper case, to percolating waters, or why the limitation found therein is not pertinent when reason and justice suggest the need of it,...
>
> We therefore formulate and announce the rule governing the facts here to be that, except for the benefit and improvement of his own premises, or for his own beneficial use, the owner of land has no right to drain, collect, or divert percolating waters thereon, when such acts will destroy or materially injure the spring of another person, the waters of which spring are used by the general public for domestic purposes. He must not drain, collect or divert such waters for the sole purpose of wasting them.[99]

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91. Ibid. See also Johnson v. Agerbeck, 247 Minn. 432, 77 N.W. 2d 539 (1956).

92. 251 Minn. 419, 88 N.W. 2d 83 (1958).

93. Id., 88 N.W. 2d at 88.

94. 56 Am. Jur. Waters, §113 (1956).

95. E.g., Eckel v. Springfield Tunnel & Development Co., 87 Cal. App. 617, 262 Pac. 425 (1928); Katz v. Walkinshaw, 141 Cal. 166, 70 Pac. 663 (1903).

96. Erickson v. Crookston Waterworks, Power & Light Co., 105 Minn. 182, 117 N.W. 435 (1908). Since the Minnesota court treats artesian basins separately from percolating waters, the true doctrine of correlative rights as it applies to artesian basins is not actually merged into Minnesota's reasonable use doctrine governing percolating waters.

97. 89 Minn. 58, 93 N.W. 907 (1903).

98. Id., 93 N.W. at 908-909.

99. Id., 93 N.W. at 910.

The court did place reliance on the fact that a sale of water to the public was involved here. However, based on the reasoning adopted by the court in a subsequent appeal of the same case, there is nothing to indicate that the common law doctrine of reasonable use would not apply in a dispute between individual landowners concerning the use of percolating waters.[100]

When comparing the court's holding in the Stillwater Water Co. case with the reasonable use rules applied by the court in cases involving surface watercourses and diffused surface water cases, various similarities in the formulation and expression of these reasonable use doctrines are apparent. However, there is one major distinction which the Minnesota court has made. In the riparian reasonable use doctrine applied to surface watercourses and the reasonable use doctrine applied to cases involving diffused surface waters, all affected landowners are given due consideration for their needs and possible damage resulting from the flow or unavailability of water. In contrast, the Stillwater Water Co. case indicates that if a person is in need of all the ground water on his land, he may reasonably use that water regardless of the adjoining owners' needs. Such a right of complete use is not allowed under the riparian rights doctrine; but until the court is asked to re-examine its implications in the Stillwater Water Co. case, its language remains unqualified.

ARTESIAN WATERS

In the earlier section discussing classifications of water, no mention was made of artesian waters. The reason for this is that these waters are generally considered to be part of the general classification of percolating waters.[101] However, in the case of Erickson v. Crookston Waterworks, Power & Light Co., which reached the supreme court twice on appeal,[102] the Minnesota court did distinguish between percolating waters and artesian waters:

> A discussion in this case does not call for a discussion of the legal principles to percolating waters...Percolating waters, as distinguished from artesian waters, filter through the ground; [whereas artesian] waters [are] located in well-defined strata.[103]

While hydrologists do not accept such legal distinctions, the court describes artesian waters as those which eventually reach an impervious barrier or stratum of earth so that when such a stratum is tapped, pressure produces an artesian well.[104]

Once the court recognized artesian waters as distinct from percolating waters, it went out to discuss the doctrine of reasonable use. The dispute arose because plaintiff had constructed an artesian well. Defendant, on

100. Stillwater Water Co. v. Farmer, 92 Minn. 230, 99 N.W. 882 (1904).

101. 56 Am. Jur. Waters, §111 (1956).

102. 100 Minn. 481, 111 N.W. 391 (1907) and 105 Minn. 182, 117 N.W. 435 (1908).

103. Id., 117 N.W. at 439.

104. Id., 111 N.W. at 394.

the other hand, had a contract with the municipality to provide artesian waters to the inhabitants. Plaintiff erected various wells, the result of which caused plaintiff's well to become useless by reason of the drop in the artesian basin level. In the first appeal, the court held that the defendant could not deprive the plaintiff of his use of artesian waters. The court reasoned that since the doctrine of reasonable use was in effect in Minnesota, the defendant could not reasonably deny plaintiff his right to obtain the underground waters. Such a ruling would guarantee water to the least-developed well in the basin.

On the second appeal, the court reversed and directed the trial court to conduct a new trial by reason of the fact that defendant supplied water to residents of the municipality of which plaintiff was only one resident. The court indicated that if defendant's acts are reasonable, then: "...it will likewise require [plaintiff] to suffer a reasonable inconvenience for the common good of others equally dependent upon the same gift of nature."[105] In the Crookston cases, the court adhered to the doctrine of reasonable use by finding that the action of the City of Crookston in developing a ground water supply was not reasonably calculated to injure the property rights of another landowner whose well was affected. The effect was to require the landowner to develop more completely his well. The court's decision did not consider the true correlative rights doctrine since there was no showing that a shortage of water existed.

UNDERGROUND WATERCOURSES

No cases have been decided in Minnesota pertaining to natural underground watercourses. However, language in the Crookston cases indicates the rules the court would apply in resolving disputes over the use of underground waters. "Why should not analogous rules apply to a lake demonstrated to exist underground as to one in plain sight."[106] Then, in the second Crookston appeal, the court had occasion to say:

> Reasonable use is a question of fact, and if the rule is applicable to the use of a stream by an upper and lower proprietor, where both are dependent upon it as a motive power...,it is applicable here, where all the people of the City of Crookston are dependent upon a common source of supply of water [underground artesian basins] for domestic purposes.[107]

By reason of this language and other such similar discussion in cases dealing with diffused surface waters and surface watercourses there is no reason at the present to doubt that the court would not apply the doctrine of reasonable use to underground watercourses. Of course, the doctrine of reasonable use applicable in this situation would undoubtedly reflect the thinking which has been given by the Minnesota court to the riparian, diffused surface waters and percolating water reasonable use doctrines.

105. Id., 117 N.W. at 441.

106. Id., 111 N.W. at 393.

107. Id., 117 N.W. at 441.

RIGHTS IN ARTIFICIAL WATERCOURSES

As was discussed earlier, the Minnesota court has recognized the legal classification of artificial watercourses, but no appellate court has been requested to decide a case where the uses of such watercourses have been in dispute. In light of the adoption of common law principles of reasonable use for other water classifications, it appears likely that these principles would likewise be applied to disputes involving artificial watercourses.

Two cases decided by Minnesota court deal indirectly with the uses and respective rights of abutting owners in artificial watercourses. They are important because they reveal the court's tendency to apply the same legal principle to both artificial and natural watercourses. In Kray v. Muggli, an artificial impoundment had existed over 30 years prior to the commencement of the lawsuit by an abutting owner who was objecting to the abandonment of a dam across a natural watercourse. The court held that the artificial watercourse has existed for such a time that the riparian owners acquired a right to its continual maintenance. During the course of its opinion, the court cited with approval the following language of a Wisconsin court decision:

> The watercourse, though artificial, may have originated under such circumstances as to give rise to all the rights riparian proprietors have in a natural and permanent stream, or have been so long used as to become a natural watercourse prescriptively...[108]

The court thereafter cites the Minnesota case of Canton Iron Co. v. Biwabik Bessemer Co.[109] The conclusion to be drawn, of course, is that the Minnesota court will apply the reasonable use riparian doctrine to artificial, as well as natural, watercourses.

However, the Canton Iron Co. case points out that certain factors must be present before the court will treat an artificial watercourse substantially the same as a natural one. In the Canton case, the defendant had diverted a natural channel, but not for any great length of time. Further, the defendant did so only to improve its lands and never stated that it would be a permanent diversion. Here the court held that the plaintiff had no right to rely, and consequently no right to enforce the continual existence on the permanency of the artificial watercourse.

Without further cases dealing with artificial watercourses, it is difficult to predict with certainty what general principles the court will apply. However, it appears that artificial watercourses will be governed by the common law riparian right doctrine which the court applies to disputes involving natural watercourses.

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108. Kray v. Muggli, supra note 25; 86 N.W. at 865.

109. Supra note 26.

OTHER COMMON LAW PRINCIPLES APPLICABLE TO WATERS IN MINNESOTA

Various legal principles have been applied by the Minnesota Supreme Court to all waters and their uses in this state. These common law principles affect riparian and non-riparian owners alike and are integrated with the other basic principles affecting water. Many of these common law principles, of course, are altered or modified to some extent by legislative enactments.

PRESCRIPTIVE RIGHTS

Prescriptive rights and related problems arise in Minnesota where waters have discharged and flooded from one person's property to another. Generally, cases dealing with this flowage problem center around two situations: (1) riparian owners and natural watercourses; and (2) landowners discharging diffused surface waters.

Riparian owners and watercourses. - Prescriptive rights here refer to one causing a watercourse to overflow another person's property for a sufficient length of time, thereby giving the actor the right to maintain the overflowage continuously. Early cases held that the flooding must be done adversely for a period of 20 years.[110] Presently, the period required to gain prescriptive rights is set by statute at 15 years. Although the requisite time period has changed, the law relative to prescriptive rights remains the same as stated in the Mueller case: "To acquire a right by prescription to overflow the lands of another, it would require 20 years uninterrupted adverse use or enjoyment."[111] The corollary of this rule is that a person whose lands are flooded by another does not generally prejudice his rights by mere delay in bringing an action to prevent or eliminate the flooding prior to the running of the statutory period. Also, no prescriptive rights can be obtained until after the expiration of the time period.

Another criterion necessary to acquire a prescriptive right in the diversion of natural watercourses is illustrated in Carpenter v. Board of Commissioners,[112] where the court said:

> ...merely maintaining a dam on one's own land, without thereby raising the water, will not create a prescriptive right upon the lands of another. It is only the uninterrupted flowing of such lands for the statutory period that will create such a right.[113]

In addition, the flooding of another's lands must produce a benefit to the

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110. Mueller v. Fruen, 36 Minn. 273, 30 N.W. 886 (1886).

111. Id., 30 N.W. at 887.

112. 56 Minn. 513, 58 N.W. 295 (1894).

113. Id., 58 N.W. at 296.

land of the claimant and be adverse to the other landowner's use of his land.[114]

Prescriptive rights may be obtained by the alteration of an existing natural watercourse for the necessary period of time in such artificial condition. Again, a claimant must show an accrued benefit to him by reason of the changed circumstances.[115] On the other hand, if a person whose lands have been adversely affected by the alteration allows such a condition to exist for the statutory period, he will be estopped from asserting that no prescriptive rights have accrued to a claimant. "A silent acquiescence in the maintenance of defendant's improvements for a sufficient length of time might give rise to a prescriptive right to continue them perpetually."[116]

The doctrine of prescriptive rights thus affords a landowner the opportunity to improve his land by diverting or altering natural watercourses which flow on his land. This is done by adversely affecting the land of another through flooding or otherwise imposing a burden on his neighbor's lands. Equally true is the principle that a landowner may acquire prescriptive rights in altered or changed watercourses brought about by another. This situation arises when a person improves his property with reference to a change in the watercourse and in reliance on its continuance. When such occurs, the court has held, as in the Kray case, that:

> The person who placed the obstruction in the stream, or caused the diversion of the waters, and all those claiming under or through him, are estopped upon principles of equity from restoring the waters to their natural channel or state.[117]

Landowner and diffused surface waters. - The common law principles of prescriptive rights for natural watercourses are usually equally applicable to problems dealing with diffused surface waters. A landowner who has discharged diffused surface waters off his lands onto those of another for the necessary period of time is entitled to continue that conduct as a matter of right.[118] The manner or method of discharge, whether it be by open ditch, a tile system, or natural runoff into a ditching system on another's land, is immaterial, so long as the claimant receives benefit by his continuous conduct for the sufficient time period.

Again, the important feature of adversity or hostility must be present

114. E.g., Kinney v. Munch, 115 Minn. 536, 132 N.W. 326 (1911); Baldwin v. Fisher, 110 Minn. 186, 124 N.W. 1094 (1910). Compare Schulenberg v. Zimmerman, 86 Minn. 70, 90 N.W. 156 (1902).

115. Kray v. Muggli, supra note 25.

116. Minnesota Loan & Trust Co. v. St. Anthony Falls Water Power Co., 82 Minn. 505, 85 N.W. 520 (1901).

117. Kray v. Muggli, supra note 25, 86 N.W. at 884.

118. Schuette v. Sutter, 128 Minn. 150, 150 N.W. 662 (1915).

for a claimant to secure prescriptive rights. In Naporra v. Weckwerth, the court emphasized the fact that:

> ...if the entry was permissive and, without a subsequent, distinct, and positive assertion of a hostile right, it could never give an easement by prescription no matter how long continued.[119]

Thus, the acquisition of prescriptive rights in the area of diffused surface waters does not depend on consent, agreement, color of title or any initial claim to a legal right; rather these rights are acquired through an original hostile or adverse interest to utilize the lands of another to the possible detriment of the true owner.

OBSTRUCTION AND DIVERSION

Closely analogous to the common law principles of reasonable use and prescriptive rights are the principles of obstruction and diversion. These later common law rules have been formulated by the court in cases mainly dealing with natural watercourses and diffused surface waters.

Natural watercourses. - As discussed earlier, a riparian landowner is entitled to the reasonable use of waters which flow past his abutting lands. If a riparian owner diverts or obstructs a watercourse in a reasonable manner, then no lower or upper riparian owner has any basis from which to object. However, if a court finds conduct creating a diversion or obstruction in a watercourse unreasonable, the common law provides various remedies. In one case, Aubol v. Grand Forks Lumber Co.,[120] the defendant permitted its logs to pile up in a stream, thereby causing a diversion from the natural bed. As a result, plaintiff was deprived of the use of the waters for agricultural and domestic purposes. The court granted plaintiff an injunction ordering the defendant to restore the stream to its natural channel, saying it: "...will enjoin the unlawful diversion of a stream from its natural course," and the rule "...is the same in case of unlawful obstructions in a stream."[121]

What distinguishes the remedy afforded plaintiff in this case as compared with those cases dealing with prescriptive rights is the doctrine of laches. Basically, this doctrine provides that when a person has allowed a condition to exist for a length of time during which the actor and others relied on the changed condition, the former cannot then be heard to complain about the present conditions. In short, if a complainant "has slept upon his rights,"[122] the court will not provide him a remedy for an admitted obstruction or diversion.

Another remedy available to a riparian landowner who has been damaged by an unreasonable obstruction or diversion of a watercourse is monetary

119. 178 Minn. 203, 226 N.W. 569, 571 (1929).

120. 131 Minn. 186, 154 N.W. 968 (1916).

121. Id., 154 N.W. at 969.

122. Ibid.

damages. This remedy is generally utilized when an upper riparian owner's lands are occasionally flooded. Upon the happening of such event, the Minnesota Supreme Court has held that the injured Party's rights are adequately restored by a monetary award.[123]

Common law in Minnesota grants a riparian owner the right to remove and eliminate an obstruction in a watercourse. A person exercising this right must do so reasonably and not unnecessarily injure the lands upon which he enters. Further, the entry may only be for the purpose of cleaning or removing the obstruction which has caused the watercourse to flow to the aggrieved party's detriment.[124]

The rules relating to obstruction and diversion of natural watercourses as evidenced by the above discussion illustrate the approach the Minnesota court has taken in other areas of the common law pertaining to water. Specifically, no precise statement may be applied to any given situation. Rather, the surrounding facts and circumstances of each situation must be applied to the nebulous doctrine of reasonable use. Thus, one may obstruct or divert natural watercourses, but he may do so only after making "proper and adequate provision for passage therein of such waters..."[125] In short, a person must act reasonably, but what is reasonable is determined only after he acts. The effect oftentimes dampens any attempt to obstruct or divert a watercourse, even though the result might be beneficial to at least some.

Diffused surface waters. - The common law principles relating to obstruction and diversion of natural watercourses are substantially identical to the ones adopted in resolving diffused surface water disputes.[126] In fact, cases are more numerous in this latter area because Minnesota applies the Sheehan v. Flynn doctrine, i.e., a landowner may rid his land of diffused surface waters onto another's property in a reasonable manner. The Sheehan doctrine appears to have produced numerous agreements and projects among landowners in an attempt to provide an overall plan of orderly discharge of diffused surface waters into natural watercourses. At the same time, of course, more controversies are created between landowners as to what are their rights.

The most recent Minnesota case dealing with the obstruction and diversion of diffused surface waters is Collins v. Wickland.[127] Here, the court stresses that the primary criterion governing parties' drainage activities is reasonableness. Thus, factors such as physical characteristics and rural-urban setting all become relevant to determine "...whether an obstructer or diverter of a drainway or drainage channel for surface waters has made a

123. E.g., Skinner v. Great Northern Ry. Co., 129 Minn. 113, 151 N.W. 968 (1915); Fossum v. Chicago, M. & St. P. Ry. Co., 80 Minn. 9, 82 N.W. 979 (1900).

124. Reed v. Board of Park Commissioners, 100 Minn. 167, 110 N.W. 1119 (1907).

125. Dun. Dig., Waters §10167 (1956).

126. Poynter v. County of Otter Tail, 223 Minn. 121, 25 N.W. 2d 708, 714 (1947).

127. Supra note 84.

reasonable use of his tract."[128] Other cases decided by the court have likewise uniformly held that only when a person has unreasonably diverted or obstructed the flow of diffused surface waters will he be subject to damages or injunctions.[129]

In a situation where adjoining landowners jointly construct a ditch or other drainage channel to carry off diffused surface waters, rights accrue to each party to have the artificially constructed drainage system maintained. The test is again one of reasonable use and not of negligence or due care.[130] The language the court had adopted as the general rule regarding obstruction and diversion of diffused surface waters in this situation is:

> ...where neighboring landowners unite in the construction of a ditch to drain and improve their several holdings, each of them is thereafter estopped from closing the ditch in a way to deprive the others of the drainage provided.[131]

The importance of an agreement or understanding between landowners in order for the above rule to become applicable should be underlined. If a drainage system is constructed by one person to improve his land and incidentally benefits adjoining lands, the adjoining owner cannot demand maintenance of that system in the absence of prescriptive rights. The court has held that a temporary diversion of surface waters does not create an equitable estoppel which a benefited landowner may assert to demand the continuance of that diversion.[132]

TRANSFER AND ASSIGNMENT OF WATER RIGHTS

The common law in most states provides that waters may not be diverted to or used on non-riparian tracts of land. The Minnesota Supreme Court has ruled to the contrary. In the leading case of St. Anthony Falls Water Power Co. v. City of Minneapolis,[133] the court held valid a lease or conveyance of water rights to a non-riparian: "...a riparian owner may grant a part of his estate, not abutting on the stream, and, as appurtenant thereto, a right to draw water from the stream through his land."[134]

128. Collins v. Wickland, supra note 84; 88 N.W. 2d at 88.

129. E.g., Greenwood v. Evergreen Mines Co., supra note 23; Nye v. Kahlow, 98 Minn. 81, 107 N.W. 733 (1906); Jungblum v. Minneapolis, N.U. & S.W.R. Co., 70 Minn. 153, 72 N.W. 971 (1897).

130. Will v. Boler, 212 Minn. 525, 4 N.W. 2d 345 (1942).

131. Id., 4 N.W. 2d at 348 [citation omitted].

132. Canton Iron c. v. Biwabik-Bessemer Co., supra note 26.

133. 41 Minn. 270, 43 N.W. 56 (1889).

134. Id., 43 N.W. at 57.

Various other cases dealing with water power diversion, docks and piers, illustrate the court's treatment of water rights as property rights which can be conveyed, transferred, or assigned.[135]

A series of Minnesota cases dealing with rights in submerged lands also disclose the principle that certain riparian rights may be alienated or transferred to someone other than a riparian owner. The case of Hanford v. St. Paul and D.R. Co., is the leading case enunciating that principle:

> ...the riparian proprietor has the exclusive right...to improve, reclaim, and occupy the submerged land, out to the point of navigability, for any private purpose, as he might do if it were his separate estate;...that the enjoyment of the right - the use of the premises - need not be associated with the use of the upland;...that when the land has been reclaimed it may be conveyed, according to most of the authorities, apart from the original upland...[136]

This principle has been followed by the court in subsequent decisions with the latest expression of the rule found in Nelson v. DeLong:[137]

> ...we have repeatedly held, that rights in the shoreline and submerged lands along the lake shore may be separated and disassociated from littoral or riparian rights and transferred to and enjoyed by persons having no interest in the original riparian estate.

The transfer or alienability of riparian rights in submerged lands is not an absolute right or privilege enjoyed by riparian owners. Rather, this right is modified by the court as follows:

> ...any grant by the riparian owner transfers only rights which are qualified, restricted and subordinated to the paramount rights of the state.[138]

As noted earlier, the state's rights are those held in trust for the public to enjoy - recreational and domestic uses of public waters.

The common law presently appears well settled that riparian rights in waters and related lands may be granted, conveyed or otherwise assigned to non-riparian owners. However, mention has been made of the permit system in effect in Minnesota, which has on occasion altered the common law. Such is the case here, for the state has adopted the position that permits will

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135. E.g., Gravel v. Little Falls Improvement & Nav. Co., 74 Minn. 416, 77 N.W. 217 (1898); City Power Co. v. Fergus Falls Water Co., 55 Minn. 172, 56 N.W. 685, 56 N.W. 1006 (1893); Cargill v. Thompson, 50 Minn. 211, 52 N.W. 644 (1892); Minneapolis Mill Co. v. Hobart, 26 Minn. 37, 1 N.W. 45 (1878).

136. 43 Minn. 104, 42 N.W. 596, 44 N.W. 1144, 1147-48 (1890).

137. 213 Minn. 425, 7 N.W. 2d 342, 346 (1942).

138. Id., 7 N.W. 2d at 347.

not be issued to anyone requesting to use waters on non-riparian lands.[139]

WATER QUALITY

Another equally important doctrine relating to water which the Minnesota court has had numerous occasions to consider is water quality. The early case of O'Brien v. City of St. Paul illustrates the court's recognition of a legal wrong for impairment of the quality of water:

> For a supra riparian owner to increase the flow of a natural watercourse by draining into it other streams so as to injure a lower riparian owner is a nuisance, and actionable by the latter; so also is the fouling of the watercourse by the supra riparian owner.[140]

From this early pronouncement of the availability of a remedy for polluting and fouling of Minnesota's waters, the supreme court has been confronted with disputes in two general areas; namely, (1) private parties affecting the quality of waters in a natural watercourse, and (2) municipal corporations' treatment and discharge of sewage disposal.

In the first general area, the cases decided by the Minnesota court indicate that when the question is one of pollution or contamination of waters, the doctrine of reasonableness plays an important role. In the leading case of Red River Roller Mills v. Wright,[141] discussing riparian rights in waters, the court announced the rule that:

> Whenever it appears that any use of a stream by one riparian owner interferes with the reasonable use of the stream by a lower riparian owner, to his injury, either by the interruption...or pollution of the water, the burden of proof is upon the former to show that his use is reasonable...Subject to the limitations and modifications already stated, every man has a right to the natural flow of the water unpolluted past his land.[142]

In this case, the court held that because sawdust and other refuse was discharged from his sawmill into the watercourse, causing great harm to the plaintiff's flour mill, the defendant was not making a reasonable use of the stream.

Other cases reveal the court's willingness to grant either an injunction or award monetary damages, or both, when one has unreasonably altered or affected the purity of a natural watercourse, even though the one com-

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139. Haik, Theories of Water Law, Minn. CLE, Vol. I, No. 3, 96 (1963). A more detailed discussion of the permit system and its ramification on the common law in Minnesota is found infra.

140. 18 Minn. 176 (Gil. 163, 165-66) (1872).

141. 30 Minn. 249, 15 N.W. 167 (1883).

142. Id., 15 N.W. at 169-70.

plaining does not suffer a great economic hardship. In one case, the plaintiff made no use of the water for household purposes, but only for occasional watering of her dairy herd. The defendant operated a cheese factory obtaining a considerable amount of its raw products from the farmers in the same county. In its operation, defendant discharged whey into the stream flowing past plaintiff's lands. The trial court found defendant's operations "responsible for the sludge and noxious odor that emanates from and pollutes this stream."[143]

Evidence showed plaintiff's damages to be $63.00 a year in diminished rental value of the pasture land. Based on these facts, the appellate court affirmed the trial court's action in issuing an injunction:

> ...the discharge of whey upon plaintiff's premises and interfering by its stanch and disagreeable appearance with plaintiff's proper enjoyment of her home and property justified the court in enjoining that nuisance.[144]

In another dispute, the defendant had contaminated and polluted a spring owned and used by plaintiff for commercial purposes. Defendant's operation of a creosoting plant near the spring had caused defendant to construct earlier a sewer to discharge refuse in a nearby stream so as not to affect the purity of plaintiff's spring. However, the sewer broke and slowly an accumulation of creosote waste seeped into the spring. The court held that the pollution of the spring rendered it worthless and affirmed the award of damages to the plaintiff.[145]

A major source of water contamination and pollution arises from municipal sewage waste and disposal being discharged into Minnesota's lakes, rivers and streams. There is no dispute but that a municipal corporation may engage in the business of providing sewage disposal and like services to its citizenry. This undertaking, however, is a proprietary or private function as compared to a governmental or public one.[146] Consequently, when a municipal corporation undertakes the treatment of sewage and like substances, it becomes exposed to the same liability of a private party for unreasonably polluting and contaminating waters.

Various cases illustrate a municipal corporation's liability for polluting waters. Generally, its liability is based on negligence in the operation of a sewage plant and not on the original construction of the plant. Further, the theory of negligence is sustained on one of two underlying principles; namely, nuisance or trespass. In Batcher v. City of Staples, the court affirmed an award of damages to plaintiff because the city's sewage plant, "...ever since its construction, has collected and deposited on plaintiff's lands large quantities of foul, offensive, decayed, and poisonous matter, which polluted the water of the brook and filled the air with offensive and poisonous vapors."[147] The Minnesota court not only recognizes the remedy of damages for one whose property is adversely affected by pollution, but will also sustain a remedy of injunctive relief. Thus, in a situation where the discharge of sewage and filth upon the plaintiff's lands is caused by a municipal corporation's continuous activity, an injunction will issue to abate any further discharge. The court in these circumstances implies that a continuous nuisance will cause irreparable injury and the damaged party's only satisfactory remedy is one of an equitable injunctive decree, notwithstanding the cost and inconvenience to a municipality and its citizens.[148]

The Minnesota Supreme Court has even extended a municipality's liability for polluting waters from sewage discharge where the majority of the materials attributed to the pollution came from a private source. In these situations, the court stresses the fact that "the duty of maintenance, repair, operation, and the keeping of the sewer from creating a nuisance rested on the city."[149] Consequently, even though the city does not contribute substantially to the effluent discharged by the sewer, as in a case where a canning factory caused 85 to 90 percent of the ultimate pollution,[150] the harm sustained by a party attributed to the municipality's conduct in discharging injurious and noxious materials into a body of water must still be ascertained and imposed on the wrong-doer.[151]

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143. Satren v. Hader Co-operative Cheese Factory, 202 Minn. 553, 279 N.W. 361 362 (1938).

144. Id., 279 N.W. at 364.

145. Sandstone Spring Water Co. v. Kettle River Co., 122 Minn. 510, 142 N.W. 885 (1913).

146. See Keever v. City of Mankato, 113 Minn. 55, 129 N.W. 158 (1910).

147. 120 Minn. 86, 139 N.W. 140, 141 (1912).

148. Joyce v. Village of Janesville, 132 Minn. 121, 155 N.W. 1067 (1916).

149. Huber v. City of Blue Earth, 213 Minn. 319, 6 N.W. 2d 471, 473 (1942).

150. Id., 6 N.W. 2d at 473.

151. Schuster v. City of Chisholm, 203 Minn. 518, 282 N.W. 135 (1938).

ASPECTS OF STATE STATUTES

The discussion of Minnesota's common law illustrated that certain judicial principles have been abrogated or modified by statutory enactments. These changes are apparent after reading the many statutes that in some manner affect waters in Minnesota (see Walton, et al, 1968). To understand the principles and concepts which regulate the use and enjoyment of waters in Minnesota, one must not rely solely on one source of law to the exclusion of the other in an attempt to "announce" the applicable rule of law. Rather, the common law and the statutory law may abrogate, define, restrict, complement, expand, or otherwise clarify the interpretation or construction placed on the other.

General charge and control over the waters of the state and of their use, sale, leasing or other disposition is given to the commissioner of conservation.[152] He is given the power to devise and develop a general water resources conservation program for the state, which program shall contemplate the conservation, allocation and development of all the waters of the state, surface and underground, for the best interests of the people.[153]

MINNESOTA PERMIT SYSTEM

The basic provisions of the state's statutes dealing with water and related topics are found in Chapter 105. From the original enactment up to the present, the legislature has sought to establish a water policy for the state. Presently, this policy in large part is as follows:

> In order to conserve and utilize the water resources of the state in the best interest of the people of the state, and for the purpose of promoting the public health, safety and welfare, it is hereby declared to be the policy of the state:
>
> (1) Subject to existing rights all waters in streams and lakes within the state which are capable of substantial beneficial public use are public waters subject to the control of the state. The public character of water shall not be determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or on whether it is a body or stream of water which was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union. This section is not intended to affect determination of the ownership of the beds of lakes or streams.
>
> (2) The state, to the extent provided by law from time to time, shall control the appropriation and use of surface and underground waters of the state.
>
> (3) The state shall control and supervise, so far as practicable, the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs, and all control structures in any of the public waters of the state.[154]

152. Minnesota Statutes § 84.027.

153. Minnesota Statutes § 105.39.

154. Minnesota Statutes §105.38 (1965).

To enforce and give effect to the declared policy, the legislature provided the statutory means for state control and regulations over all waters:

> It shall be unlawful for the state, any person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state to appropriate or use any waters of the state, surface or underground without the written permit of the commissioner previously obtained upon written application therefore to the commissioner. The commissioner may give such permit subject to such conditions as he may find advisable or necessary in the public interest. Nothing in this section shall be construed to apply to the use of water for domestic purposes serving at any time less than 25 persons or to any beneficial uses and rights, outside the geographical limits of any municipality, in existence on July 1, 1937, or to any beneficial uses and rights, within the geographical limits of any municipality, in existence on July 1, 1959.
>
> Except in the construction and maintenance of highways when the control of public waters is not affected, it shall be unlawful for the state, any person, partnership, association, private or public corporation, county, municipality or other political subdivision of the state, to construct, reconstruct, remove, or abandon or make any change in any reservoir, dam or waterway obstruction on any public water; or in any manner, other than in the usual operation of dams beneficially using water prior to July 1, 1937, to change or diminish the course, current or cross-section of any public waters, wholly or partly within the state, without written permit from the commissioner previously obtained. Application for such permits shall be in writing to the commissioner on forms prescribed by him.[155]

It was not until 1963 that the Minnesota Supreme Court considered the constitutionality of the regulatory sections of Chapter 105. In State v. Kuluvar,[156] the court declared the act to be constitutional, stating that:

> It is fundamental, in this state and elsewhere, that the state in its sovereign capacity possesses a proprietary interest in the public waters of the state. Riparian rights are subordinate to the rights of the public and subject to reasonable control and regulation by the state... We find no difficulty in holding that the statute is a regulation and that it does not unconstitutionally infringe upon any rights of a riparian owner, including the rights to use his land above the ordinary low-water mark, the right to wharf out to the point of navigability, or rights arising because of the claimed ownership of the bed underlying any waters declared public by Section 105.38.[157]

The permit system thus established curtails to a considerable extent the importance of the reasonable use doctrines formulated by judicial decision. This fact was pointed out in the Kuluvar case where the court stated that:

> When it is established that the public has access to waters capable of substantial beneficial use by all who so desire, the statute directs that the state fulfill its trusteeship over such waters by protecting against interference by anyone, including those who assert the common-law rights of a riparian owner.[158]

The permit procedure creates a system approximating the appropriation doctrine. Any person desiring to use surface or underground waters must make application to the state. Such application shall be submitted with accompanying maps, plans and specifications setting forth the contemplated use and appropriation and any other data as the commissioner may require.[159] Under this system, the decision of what constitutes reasonable use lies no longer with the riparian owner but rather with the commissioner of conservation.[160]

Certain limitations coupled with administrative practices in the application of the permit system indicate that the common law doctrine of reasonable use has not been discarded altogether. First, the legislature exempted domestic users from the provisions of the permit system. Second, any beneficial use and rights in water outside the geographical limits of a municipality in existence on July 1, 1937 do not come under the provisions of the permit system. Finally, any beneficial use and rights within a municipality's geographical limits in existence on July 1, 1959 are not governed by the permit system.

Although these enumerated exceptions to the permit system would be presumably controlled by common law doctrines of reasonable use, no judicial decision has been rendered on this point. As a result, uncertainty exists in Minnesota as to whether beneficial uses and rights means actual enjoyment or use by a riparian owner having rights in water or includes as a property concept a right of future use.[161]

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155. Minnesota Statutes §109.41(1), .42 (1965). The commissioner referred to in this provision is the commissioner of conservation. Minnesota Statutes §105.37 (2) (1965). His duties are more elaborately set out in §105.39 (1) as follows:

> WATER CONSERVATION PROGRAM. The commissioner shall devise and develop a general water resources conservation program for the state. The program shall contemplate the conservation, allocation, and development of all the waters of the state, surface and underground, for the best interests of the people. The commissioner shall be guided by such program in the issuance of permits for the use and appropriation of the waters of the state and the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs and other control structures, as provided by Sections 105.37 to 105.55.

156. 266 Minn. 408, 123 N.W. 2d 699 (1963).

157. Id., 123 N.W. 2d at 706-07.

158. Id., 123 N.W. 2d at 706.

159. Minnesota Statutes §105.44 (1965).

160. Of course, a party aggrieved by the administrative agency has recourse under Chapter 105 to a judicial review of the agency's findings and order. See Minnesota Statutes §105.47 (1965).

161. Failure to use the waters does not affect the riparian owner's rights to do so in the future. Reeves v. Backus-Brooks Co., 83 Minn. 339, 86 N.W. 337 (1901).

Administrative practices in issuing permits to use and appropriate waters tend to support the fact that the commissioner looks to the reasonableness of each separate application. In an interim report by a legislative committee, the commissioner's approach was described thusly:

> Decision is made on each application without reference to standards or precedent and achieves legal enforceability only through vague presumption of administrative reasonableness which may be unfounded in fact.[162]

The impression from such language is one of legislative disagreement with the commissioner's approach. Yet, this test of determining the reasonableness of each owner's contemplated use of water is precisely the same criterion the court adopts in its application of the common law doctrine of reasonable use.

Two other circumstances indicate the inter-relationship between the permit system and the common law concept of reasonable use. First, Minnesota's permit system does not establish any priority of water uses. True, other statutory enactments illustrate a preference for a certain use, such as in the mining industry,[163] but the legislature has not as yet enacted provisions to resolve possible conflicts between competing users. Secondly, neither the common law principles nor the permit system afford a riparian owner any certainty that his use of water will be deemed reasonable. In the former, an owner's use is always subject to another's future reasonable use of waters. In the latter, the same uncertainty is injected in the system, for the legislature has decreed that the commissioner retains the right to cancel a permit previously issued. In summary, the Minnesota permit system in theory adopts an appropriation concept while in practice relies heavily on historical and traditional common law concepts to regulate waters.

WATER RESOURCES BOARD

The 1955 Legislature, in creating the Minnesota Water Resources Board, provided that the board be composed of members conversant with water problems and conditions within the watershed of the state other than government employees. It also provided that the membership of the board could be increased by the governor to five members. While the board was given the power to employ such technical and professional personnel as it might require, funds have not been appropriated to allow for such employment.

The declared intention of the legislature when creating the Water Resources Board was to create a forum where the conflicting aspects of public interests involved could be presented and a controlling water policy be determined. The intent was to have the issues resolved by one state agency conversant with the whole body of water law. The need to effect a systematic administration of water policy for the public welfare out of a code of water law contained in numerous statutes was expressly recognized.[164]

162. Report of the Legislative Interim Commission on Water Conservation, Drainage and Flood Control, 1955, p. 17.

163. Minnesota Statutes §105.64 (1965).

164. Minnesota Statutes §105.72.

The board is given authority to decide questions of water policy where the use, disposal, pollution, or conservation of water is a purpose, incident, or fact in a proceeding that involves a question of state water law and policy.[165] The board may also resolve inconsistencies between statutes and may determine the proper application of that policy to facts in the proceeding when the application is a matter of administrative discretion.

The decision-making power given to the Water Resources Board can be invoked when the proceeding of an agency involves a question of water policy in one or more of the areas of water conservation, water pollution, preservation and management of wildlife, drainage, soil conservation, public recreation, forest management, and municipal planning. The board's jurisdiction can be invoked by petition, by any party to such a proceeding, the governor, the agency, the commissioner of conservation, or the director of any division of the Department of Conservation, the head of any other department of state, and any bureau or division of the federal government whose function is concerned in such a proceeding. Moreover, any person or group who the board deems representative of any substantial segment of the state or particularly able to present evidence bearing on the public interest may so petition.[166]

In addition, the court involved in a matter concerning the question of water policy of a nature enumerated in the foregoing paragraph may ask to have the matter referred to the board.[167]

Upon such a petition, the proceeding abates until recommendation by the board or until 60 days after the conclusion of the hearing before the board, whichever is earlier. Consent of the board to hear a matter is shown by a brief statement in general terms of the questions of public policy that the board will consider.

The board then is to proceed with all reasonable dispatch to hear, determine, and make its recommendations on the questions it has consented to consider. The decision of the board is in the form of a written recommendation. In the proceeding and upon any judicial review, the recommendation is evidence.[168]

MINING AND THE DRAINAGE AND DIVERSION OF WATER

The most illustrative example of legislative water policy involved the enactments to further the mining of four minerals. The commissioner of conservation is permitted by statute to grant permits for the drainage, diversion, control or use of waters when necessary for mining. In 1949, the legislature granted the commissioner such powers as they related to the mining of iron ore and taconite. In 1967, the legislature expanded this permit power to copper, copper-nickel, and nickel mining. Permits may be granted under this statute upon the following determination by the

165. Minnesota Statutes §105.73.

166. Minnesota Statutes §§105.74, 105.75.

167. Minnesota Statutes §105.51.

168. Minnesota Statutes §105.77.

commissioner:

1. That the proposed drainage, diversion, control or use will be necessary for the mining of substantial deposits, and that no other feasible and economical method therefore is reasonably available.

2. That the proposed drainage, diversion, etc. will not substantially impair the interests of the public in lands or waters except as authorized in the permit.

3. That the proposed mining operations will be in the public interest.[169]

In addition to the amendment of Section 105.64 in 1967, the legislature specifically gave the copper, copper-nickel, and nickel mining industries the right to use water from Birch Lake and the south Kawishwi River and, in connection with their operations, to flood or otherwise affect lands of the state adjacent to that lake and river subject to the conditions that the industry obtain a permit pursuant to Chapter 105, and that the water withdrawn from said lake and river be returned to the drainage basin from which it is taken in conformity with the water quality standards established by the Water Pollution Control Commission or other pollution control agencies.

The industry was also required to obtain from the Water Pollution Control Commission a permit for the maintenance of disposal systems in connection with such operations.

No lands of the state are to be flooded without permit, license, or lease having first been obtained from the commissioner of conservation. The commissioner is by statute specifically authorized to grant such permits, licenses and leases.[170]

Minnesota Statutes Section 93.43 was also amended to provide that the business of mining, producing, or beneficiating copper, copper-nickel, or nickel is declared to be in the public interest and necessary to the public welfare, and the use of property therefore declared to be a public use and public purpose. Under this statute as well, the commissioner of conservation is authorized to license the flooding of state lands in connection with any permit or authorization for the public water issued by the legislature or by the commissioner of conservation pursuant to law.

With respect to mining and prospecting generally, the Department of Conservation is, with the approval of the executive council, empowered to issue rules and regulations governing the issuance of permits and leases for the prospecting for and mining of minerals under the waters of any public lake or stream in the state.[171]

Another example of legislative water policy involved enactments concerning the establishment, operation, and maintenance of a water supply

169. Minnesota Statutes § 105.64.

170. Minnesota Session Laws, 1967, Chapter 556.

171. Minnesota Statutes § 93.08.

system from Lake Superior to, and between the city of Cloquet and the city of Duluth. The two not coded acts related to this example are summarized below:

CHAPTER 474--S. F. No. 1656
Approved May 3, 1963

An act relating to the city of Duluth, and the city of Cloquet; authorizing such cities to make, enter into, and execute jointly, agreements and contracts for the establishment, operation, and maintenance of a water supply system from Lake Superior to, and between such cities, as such cities shall deem to be for their advantage and in the public interest; authorizing such cities to apply for and receive grants or loans, or both; to issue and sell general obligation bonds or revenue bonds to pay for the cost of establishing such water supply system; and authorizing such cities to adopt and enforce such rules and regulations relating to the operation and maintenance of such system, and the rates, charges, or rentals to be charged for the services supplied by such system.

CHAPTER 518--H. F. No. 1846
Approved May 20, 1965

An act relating to the city of Cloquet; authorizing the establishment, construction, operation, and maintenance of a water supply system from Lake Superior within and without the state, and the acquisition by gift, purchase, and eminent domain proceedings of the necessary lands and rights of way therefor without governmental approvals: authorizing the issuance and sale of general obligation or revenue bonds to pay for the cost of such water supply system; and authorizing the adoption and enforcement of rules and regulations relating to the operation and maintenance of such system, and the rates, charges, or rentals to be charged for the services supplied thereby.

COUNTY AND JUDICIAL DRAINAGE SYSTEMS

The county boards of the various counties and the district courts are authorized to construct and maintain public drainage systems in accordance with Minnesota Statutes Chapter 106. Such boards and courts are also authorized by statute to drain in whole or in part lakes which have become shallow and have marshy character and are not of sufficient depth or volume to be of any substantial public use. A meandered lake is not to be drained, except on the determination of the commissioner of conservation that such lake is not public waters.

In connection with the power of the county boards and district courts to regulate drainage and control flood waters, such boards are authorized to raise, lower, or establish the height of water in any body of water. The board or court can construct and maintain all necessary structures and improvements for flood control and other public purposes related to flood control. The public water policy underlying the drainage legislation is

the reclamation of land by the removal or management of surface water.

DAMS AND LAKE WATER LEVELS

Upon permission of the commissioner of conservation, the county boards are given the power to maintain and improve and operate water control works for any body or any part of a body of water which is situated in a single county for the following reasons:

(1) To improve navigation thereon.

(2) To promote the public health, safety, and welfare.[172] The county board is given the power to acquire by gift, purchase or condemnation, any existing dam or control works that may affect the level of such waters. The county board is also given the power to acquire other land and property needed for the purpose of improving any body of water.[173]

As to any body of water lying within a city, village or borough in this state, such municipality is given the same powers to improve the waters as are conferred on the county boards.[174]

The legislature has provided that there shall be no improvements either by county boards or by municipalities unless the public have access to some portion of the shore of such waters.

In addition to the general powers granted to all county boards, certain counties are given the additional power to determine and award damages to property affected by such improvements and to determine and assess special assessments against property affected thereby for benefits resulting in any way from such improvement. A system of determining such special assessments for Hennepin County is set out in Minnesota Statutes §110.127.

DRAINAGE AND CONSERVANCY DISTRICTS

The district courts of any county in this state are empowered to establish a drainage and conservancy district, upon the filing of a petition complying with the statutory requisites found in Minnesota Statutes §111.04. Such drainage and conservancy district may be entirely within or partly within and partly without any county and include the whole or any part of one or more counties. Such district may be for any or all of the following purposes:

(1) For the regulation of streams, channels, and watercourses, and the flow of water therein.

172. Minnesota Statutes §110.121.

173. Minnesota Statutes §110.122.

174. Minnesota Statutes §110.126.

(2) For reclaiming or otherwise protecting land subject to overflow.

(3) For irrigation.

(4) For the prevention of forest fires.

(5) For regulation and control of flood waters and the prevention of floods.

(6) For diverting streams or watercourses and regulating their use.

(7) Regulating the use of streams, ditches, or watercourses for sanitation and public health.[175]

The district thus created is run by a governing board, one of whom is elected as a president, and one of whom is designated as secretary. The plans for the district as a whole, or for any subdivision, are to be approved by the Commissioner of Conservation. The board is also given the power to employ a chief engineer and an attorney.[176]

The rights enjoyed by landowners to use the waters of the district for any purpose continue as they existed at the time of the organization of the district. When improvements made by the district make possible a greater, better or more convenient use of or benefit from the waters of the district for any purpose, the right to such greater, better or more convenient use of or benefit from such waters shall be considered the property of the drainage and conservancy district, and such rights may be leased or assigned for reasonable compensation to the district.[177]

All parties desiring to use such waters or watercourses, not landowners upon the organization of the district, may make application to the board of directors for lease or for permission for such use, preferences given first to domestic and municipal water supplies. Districts are not allowed to charge for use of water taken by private persons for home and farm use or for watering stock.[178] The Drainage and Conservancy Act of Minnesota has not been used, and the few districts organized some 40 years ago have been abandoned or reorganized as watershed districts.

WATERSHED DISTRICTS

In order to carry out conservation of natural resources of the state through land utilization and flood control upon sound, scientific principles, a public corporation known as a watershed district may be established for the protection of the public health and welfare and for the provident use of the natural resources.[179]

A watershed district is established by the filing of a nominating petition with the Water Resources Board. The nominating petition is re-

175. Minnesota Statutes §111.03.

176. Minnesota Statutes §111.08.

177. Minnesota Statutes §111.22.

178. Minnesota Statutes §111.23.

179. Minnesota Statutes §112.34.

control and abatement of pollution and the establishment of a reasonable pollution standard for the waters of the state.

The committee is to maintain liaison between the Pollution Control Agency and the communities, industries and persons concerned with water resources. It is also to assist in programs designed to inform the public of the importance of conservation, utilization and development of the water resources of this state, and the prevention, control and abatement of water pollution.[185]

SANITARY DISTRICTS

Minnesota Statutes §115.19 provides for the creation of a sanitary district for the purpose of promoting the public health and welfare by providing for an adequate and efficient system and means of collecting, conveying, pumping, treating and disposing of domestic sewage and garbage and industrial waste within the district in any case where the commission (now Pollution Control Agency) finds there is need, and that such purposes cannot be accomplished by any existing agency. No sanitary district may be created within 25 miles of the boundary of any city of first class without the approval of the governing body of such city and the approval of the governing body of every municipality in the proposed district.

Specifically, such district may:

(1) Construct and maintain facilities within or without the district required to control and prevent pollution of waters within its territory.

(2) Construct and maintain facilities within or without the district to provide for disposal of sewage, industrial and other waste originating within its territory. The district has the power to require any person upon whose premises there is a source of sewage, industrial and other waste, to connect the same with its disposal facilities.

(3) Construct and maintain facilities within or without the district to provide for the disposal of garbage or refuse originating within the district, and may require any person upon whose premises garbage is produced to dispose of the same through its system.

(4) Procure supplies of water so far as necessary to accomplish any of its purposes.

CONTROL OF MUNICIPAL POLLUTION

In order to control water pollution by municipalities, the commission (Pollution Control Agency) is granted the power to issue, modify, or revoke orders after due notice and hearing for the following purposes when deemed necessary to prevent, control or abate pollution:

185. Minnesota Statutes §115.17.

(1) Prohibit or direct the abatement of any discharge of sewage, industrial waste or other waste into the waters of the state.

(2) Prohibit the storage of any liquid in a manner which does not reasonably assure proper retention against entry into any waters of the state that would be likely to pollute any waters.

(3) Require the construction, installation, maintenance and operation by any municipality of any disposal system or any part thereof or the reconstruction, alteration or enlargement of its existing disposal system, or the adoption of other remedial measures to prevent, control or abate pollution or discharge of sewage or other waste by a municipality.[186]

It is specifically provided by Minnesota Statutes §115.43 that in exercising the foregoing powers, the commission shall give due consideration to the expansion of business, commerce and trade and other economic factors affecting the feasibility of any proposed action, including the burden on a municipality of any tax which may result therefrom. The former Water Pollution Control Commission was required by statute to prepare a long-range plan and program for effecting the abatement of pollution of all waters of the state. The succeeding Pollution Control Agency is given the specific task of studying and investigating the problems of solid waste control and problems concerning the uses of land in areas of the state which are affected by the pollution of air and water and reporting to the governor and the legislature in regard thereto not later than February 15, 1969.

REGIONAL SANITARY SEWER DISTRICTS

In order to provide a method by which municipalities in a drainage area designated by law may join together to prevent water pollution in excess of reasonable standards in that area, the 1965 legislature provided in Minnesota Statutes §§115.61-115.67 for regional sanitary sewer districts. The district created by these sections are municipal corporations, responsbile for the collection, treatment and disposal of sewage and industrial waste and other wastes received from the sewage systems of all municipalities within its corporate limits for the purpose of preventing pollution of public waters in excess of the permitted standards. Each district is responsible for the planning, collection, treatment and disposal facilities for all municipalities within its drainage area.

STATE BOARD OF HEALTH

The State Board of Health is empowered by Minnesota Statutes §114.12, to adopt and enforce regulations to control, among other things:

(1) The pollution of streams and other waters.

(2) The distribution of water by private persons for drinking or domestic use.

186. Minnesota Statutes §115.43.

(3) The accumulation of filthy and unwholesome matter injurious to public health.

(4) The general sanitation of tourist camps, summer hotels, and resorts in respect to water supplies and the disposal of sewage, garbage, and other wastes.

SOIL CONSERVATION DISTRICTS

The policy of the state of Minnesota, as articulated by the legislature, is set out in Minnesota Statutes § 40.02, as follows:

> It is hereby declared that it is for the public welfare, health, and safety of the people of Minnesota to provide for the conservation of the soil erosion, for land resource planning and development, and for flood prevention or the conservation development, utilization, and disposal of water, including but not limited to, measures for fish and wildlife, and recreational development, and thereby preserve natural resource, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, and protect public lands by land-use practices, as herein provided for.

The underlined portion of this statute was added by the legislature in 1965, indicating an increased awareness of water utilization and conservation to land resource planning and development.

To effect these policies, a state soil conservation committee was established, and provision made for the establishment of soil conservation districts, which districts become governmental subdivisions of the state, vested with extensive powers over all phases of soil conservation.[187]

GAME AND FISH MANAGEMENT

The game and fish laws are found in Minnesota Statutes, Chapter 97, and the primary responsibility for their implementation rests with the Division of Game and Fish of the Department of Conservation. Of particular relevance to the control and use of Minnesota's waters are the following powers specifically granted to the commissioner in connection with game and fish management:

(1) The commissioner may enter into contracts with bordering states relating to the removal of rough fish in boundary waters between Minnesota and those states, and to regulate the taking and possession of fish and mussels from such areas.[188]

(2) The commissioner can set aside and reserve for any period he deems advisable, any waters of the state in the aid of propagation

187. Minnesota Statutes § 40.07.

188. Minnesota Statutes § 97.48, Subd. 2 and 3.

and protection of wild animals.[189]

(3) The commissioner is empowered to acquire, by gift, lease, purchase or condemnation, access rights for the public to waters to which the public theretofore had no access or inadequate access, and upon which the public has a right to hunt and fish.[190]

(4) The commissioner may designate all or part of any lake which does not exceed 2,000 acres of water, or any streams, as experimental waters and establish regulations relating thereto as he deems desirable after a public hearing held in the county where the lake or stream or major portion thereof is located.[190]

(5) The commissioner may, by gift, lease, purchase, or trade of other state lands, acquire wildlife lands, including marsh and wetlands and the margins thereof, including ponds, small lakes, and stream bottom lands which he finds desirable to acquire in the interests of water conservation relating to wildlife development programs.[191]

The commissioner also has the power to designate by order any land or water areas, more than 50 percent of which are in public ownership, as state game refuges.[192]

TOPOGRAPHIC SURVEY

The commissioner of conservation is authorized to make or provide for a topographic survey of the state, to map the results, and to make necessary aerial surveys to accomplish this.[193]

The State Mapping Advisory Board continually studies the topographic and mapping needs of the state and advises the commissioner of conservation in determining the order of surveys and in the general planning of mapping operations. The board is also charged with the responsibility of promoting the coordination of survey and mapping activities of private agencies within the state.

STATE GEOLOGICAL SURVEY

On February 29, 1872, the legislature provided for a comprehensive geological and natural history survey of the state to be made by the University of Minnesota under the direction of the Board of Regents. Laws 1872, Chapter 30. The geological surveys made thereunder encompass and analyze a complete account of the minerals of the state, including chemical

189. Minnesota Statutes § 97.48, Subd. 11.

190. Minnesota Statutes § 97.48, Subd. 15.

191. Minnesota Statutes § 97.48.1.

192. Minnesota Statutes § 99.25.

193. Minnesota Statutes § 84.53.

analyses thereof, magnitude of the various geological strata, richness in ores, corals, mineral water, etc., and their economic value and accessibility.

The natural history surveys include survey and examination of the vegetable products of the state, including all native trees, shrubs, and grasses, and a like survey and examination of the state's mammals, fish, reptiles, birds and insects.

WATER-BORNE TRANSPORTATION

TRANSPORTATION TERMINALS

Chartered cities in this state having populations of not less than 4,000 nor more than 50,000 are empowered to acquire land for passenger or freight transportation terminals by purchase or condemnation.[194] Such cities are also empowered to construct and maintain docks, wharves, and other water transportation facilities and to charge a reasonable price for their use.

PORT AUTHORITIES

A commission known as a port authority was established by the legislature to serve any city of over 50,000 inhabitants situated upon a port or harbor located on a navigable lake or stream. Port authorities located upon the Great Lakes - St. Lawrence Seaway system are known as seaway port authorities.[195] Generally, port authorities are charged with the duties of promoting the general welfare of the port district, endeavoring to increase its volume of commerce, provision of adequate facilities, and the promotion of efficient, safe, and economic handling of commerce.

HARBORS AND WHARVES

Cities of the first class have the right and power to condemn lands to harbors, wharves, boat landings, and such canals and approaches thereto as may be required.[196] Such cities are also authorized to establish and maintain public landings, wharves and docks, transfer railroad tracks, and loading, unloading, transfer and storage facilities. The cities may charge reasonable fees to maintain such facilities and regulate the manner of their use.[197]

194. Minnesota Statutes §458.02.

195. Minnesota Statutes §458.09.

196. Minnesota Statutes §458.24.

197. Minnesota Statutes §458.25.

WATER TERMINALS

Cities of the second class in this state located upon navigable boundary waters have the power to acquire, by purchase or condemnation, land for the establishment of docks, wharves and water terminal facilities.[198] Such cities also have the power to construct the facilities on the land so acquired, and to charge a reasonable price for their use.

WATER SAFETY LAWS

The legislature declared in 1959 that:

> It is the policy of this state, which is blessed with an abundance of water, to promote its full use and enjoyment by all of the people, now and in the future, to promote safety for persons and property in connection with the use of the waters of the state, to promote uniformity of laws relating to such use and to conform with any requirements of the United States relating thereto.[199]

Chapter 361 of the Minnesota Statutes sets out watercraft licensing requirements of Minnesota, as well as a comprehensive set of water safety rules. The sheriffs of the respective counties are charged with the responsibility of enforcing the water safety rules, and to maintain a program of search and rescue, posting and patrol, and inspection of watercraft for hire.

METROPOLITAN COUNCIL

The 1967 Legislature, by Chapter 896, created a Metropolitan Council for the seven-county area composed of Anoka, Carver, Washington, Ramsey, Hennepin, Dakota and Scott Counties. The Metropolitan Council, which succeeds to the powers and duties of the former Metropolitan Planning Commission, is governed by a 15-member board appointed by the governor, 14 from council districts and a chairman appointed at large with the advice and consent of the senate. The council is given broad powers in the area of water resources and is directed to prepare a comprehensive development guide for the metropolitan area which recognizes physical, social and economic needs. All requests by local governmental units for federal loans or grants must be submitted to the council. In the field of water, the council is authorized to study the feasibility of programs relating but not limited to water supply, refuse disposal, surface water drainage, transportation, and other subjects of concern to residents of the metropolitan area.

198. Minnesota Statutes §458.42.

199. Minnesota Statutes §361.01.

MINNESOTA RESOURCES COMMISSION

In order to lay the basis for the establishment of a long-term comprehensive program to preserve, develop and maintain the natural resources of the state, the legislature enacted the Omnibus Natural Resources and Recreation Act of 1963.[200] The resources to which this application is directed included lakes, rivers and streams. In particular, the legislative purpose provided for the essential planning for both ground and surface water research necessary for recreation and conservation purposes, including hydrologic studies. It was also intended to provide an inventory of presently available outdoor recreational resources.

In 1967, the purpose of this act was revised by the legislature to one of providing the legislature with the background necessary to evaluate proposed programs to preserve, develop and maintain the natural resources of the state. The long-range planning function was eliminated.[201]

The Minnesota Resources Commission (formerly Outdoor Resources Commission), comprises seven members of the senate appointed by the Committee on Committees, and seven members of the house appointed by the speaker.[202]

STATE PLANNING AGENCY

The agency was created by the legislature in 1965 for the purpose of preparing comprehensive, long-range recommendations for the orderly and coordinated group of the state.[203]

WATER RESOURCES COORDINATING COMMITTEE

During 1967, the State Planning Agency activated a Water Resources Coordinating Committee. The Committee serves in an advisory role and is composed of representatives from the following organizations: Department of Conservation, Geological Survey, Department of Health, State Soil and Water Conservation Commission, Department of Agriculture, Department of Economic Development, Department of Highways, University of Minnesota, Pollution Control Agency, Water Resources Board, League of Minnesota Municipalities, Association of Minnesota Counties, and Metropolitan Council.

The Committee is:

Encouraging State, Federal, local and private organizations to cooperate with one another in the definition and solution of the State's water and related land resources planning problems. Through informal coordination and liaison and/or administrative arrangements, acceptable to the parties involved, bringing about a joint approach to planning problems of concern to more than one organization.

Establishing and maintaining liaison with all organizations concerned with water and related land resources planning in the State.

Participating in Federal, Federal-State, or inter-state comprehensive water and related land resources planning, including the work of Commissions created under Title II of the Federal Water Resources Planning Act of 1965.

Preparing a comprehensive statewide water and related land resources plan in harmony with comprehensive planning of other resources of the State and in light of local, regional, national and international water and related land resources plans. Amending, revising, and/or re-evaluating the statewide plan as necessary to reflect changing needs, conditions and expectations.

And assisting the State Planning Agency and State Planning Advisory Committee in the early establishment of an overall strategy for the development of water and related land resources, including the identification of objectives for water and related programs, and the framing of major areas of policy inquiry. In that there are a number of choices as to how water and water related resources can be used, these alternatives need to be established early in the planning process and tested against pre-emptive considerations, such as demands of population and industrial expansion, so that there can be an optimum allocation of planning resources directed towards providing answers to urgent problems. These answers constitute a series of approximations leading to a comprehensive water and related land resources plan.

FEDERAL-STATE PLANNING ORGANIZATIONS

In the last two decades, the water and related land resource planning programs of Federal agencies have expanded greatly and new Federal agencies have been brought into the planning field. The need for close coordination of these programs became increasingly apparent, not only to the Federal establishment, but also the State and local groups. Also, great concern was voiced by some States over the fact that planning for the water resources development within the sovereign States was being done largely by the Federal Government. In 1959 and 1960, a United States Senate Select Committee on National Water Resources held hearings throughout the country and prepared a report which has become historically of great significance in the planning program for water resources of our nation. Two of the recommendations that speak to the point of comprehensive planning that this Committee developed were that the Federal Government, in cooperation with the States, should: Prepare and keep up-to-date plans for comprehensive development for all major river basins, and stimulate more active participation by the States in water planning. A further recommendation by the Committee was that Congress request the Executive Branch to submit for congressional consideration, in January, 1962, a program for preparing comprehensive plans for each major river basin or water resource region, toward the end of providing for the

200. Minnesota Statutes §§86.06, 86.12.

201. Minnesota Session Laws, 1967, Chapter 867.

202. Minnesota Statutes §86.07.

203. Minnesota Statutes §§4.10, 4.17.

development of plans for all basins by 1970, in cooperation with the States. The comprehensive plans, thus developed, should be kept up to date and each report submitted to the Congress recommending authorization of a project should show the relation of the project to the comprehensive plan.

In a special message to Congress, President Kennedy in February, 1961 accepted the recommendation of the Senate Select Committee and committed his Administration to the goal of developing comprehensive plans for all major river basins by 1970. President Johnson has renewed the commitment, although budgetary requirements have resulted in advancing the scheduled date of completion to 1972. As an initial step in carrying out this commitment, coordinated budgets were prepared for 18 studies whose geographic areas would blanket the nation, except for the two areas of Alaska and the Tennessee Valley Authority. This was the first time that the major Federal agencies had coordinated their planning schedules and funding estimates in this manner. This action assured the working together of these agencies in a cooperative planning effort. The Bureau of the Budget and the Congress have recognized this as a forward step in agency coordination and respected the budgets as developed. In 1968, ten of these studies are being funded. The first of the studies scheduled for completion is the Ohio River Basin which is in its final stages, and should be completed by January 1, 1968. In Fiscal Year 1969, the Missouri and Upper Mississippi studies are scheduled for completion.

The basic objective of a framework plan (also referred to as a Type 1 plan) is to provide a broad guide for the best use of water and related land resources in the area under consideration. In order to accomplish this, the coordinated participation by all agencies--Federal, States, local governments and others concerned--is incorporated. Also, the expertise of all the disciplines involved in water resources development, engineers, economists, social, and biological scientists, are drawn upon. The six major elements of the plan are as follows:

1. Projections of economic and population development. Economic and population base studies start with information from a nationwide study by the Office of Business Economics of the Department of Commerce and the Economic Research Service of the Department of Agriculture, to prepare economic projections, including population and growth in major economic sectors, to the years 1980, 2000, and 2020. A data bank has been prepared which will make it possible to assemble data and projections for subbasins or subregions. These projections are reviewed and revised in the field study.

2. Translation of economic and population projections into needs for water and related land resources uses. The economic projections are made for employment, income, and output for major economic sectors. In addition, information is needed on efficiency of water use in different economic sectors, on costs of substitutes and other factors that affect rates of water use in relation to economic activity. Relating projected economic activity and population growth to water use and pollution loadings is a responsibility of field planners in the respective studies.

3. Appraisals of the availability of water supplies, including quantity and quality. The use of mathematical models and computers has

provided substantial improvement in this technique in recent years and should be utilized to the extent practicable in the framework plan.

4. Appraisals of the availability and characteristics of related land resources. This involves the classification of soils and relating them to potential agricultural use, including irrigation capabilities. Also included are urban land changes, outdoor recreation and wildlife needs, greenbelts, and other potential uses.

5. Outline of the characteristics of projected water and related land resources problems. Based on the collection of the foregoing data, the critical problem areas should surface, and the characteristics of the problems can be brought into focus.

6. Alternative approaches that appear appropriate for solution for the foregoing problems. This analysis will be based on the general knowledge of development opportunities and costs, reasoned approximations, available data, and judgment of experienced planners. Those basins or parts of basins that have problems will be described, including the possible solutions. Areas where no problems are expected in the immediate future will also be indicated.

A basic group in the preparation of any framework plan is a coordinating committee or other field coordination device. This group should be comprised of those Federal agencies with the major planning responsibilities and those States which are located substantially within the geographical boundaries of the study area. The first responsibility of the coordinating committee has been the development of a plan of study which has included objectives, scope, organization, tentative report outline, manner of operation, work plan, schedules, and a budget program. This has provided the basis for various types of investigations that must be performed and assignments of work to the States and agencies. In addition to the foregoing, the plan of study specifies precision and accuracy required, schedules to be met, cost limitations, coordination to be accomplished, and management and control procedures.

Three different types of coordinating mechanisms, each involving a coordinating committee or device, are now being used in the preparation of a framework plan. These are:

The ad hoc coordinating committee, chaired by a representative of a Federal or State agency and comprised of representatives of participating States and Federal agencies. This is the method used for framework plan for the Upper Mississippi River Region.

The river basin inter-agency committee, which usually has an annually rotating chairmanship, and also is comprised of participating States and Federal agencies. These inter-agency committees now are chartered by the Water Resources Council. The Missouri River Basin Inter-Agency Committee uses a standing committee on comprehensive basin planning to handle the overall direction of that plan.

The river basin commission established under the authority of the Federal Water Resources Planning Act of 1965. The Chairman of the commission is a Federal employee appointed by the President and reports

to the President through the Water Resources Council. The Commission has a professional staff jointly supported by State and Federal funds. The Great Lakes Basin Commission and the Souris-Red-Rainy Rivers Basin Commission have been activated.

The Water Resources Coordinating Committee is participating in the activities of the following Federal-State planning organizations: Souris-Red-Rainy River Basins Commission, Great Lakes Basin Commission, Upper Mississippi River Comprehensive Basin Study Coordinating Committee, and Missouri Basin Inter-Agency Committee.

JOINT CONTROL OF INTERSTATE WATERS

MICHIGAN, MINNESOTA, WISCONSIN BOUNDARY COMPACT

The Michigan, Minnesota, Wisconsin Boundary Compact, ratified and approved by the legislature in 1947, formally sets the boundaries in the waters of Lakes Michigan and Superior between the signatory states.[204]

GREAT LAKES BASIN COMPACT

The compact, ratified by the legislature in 1955, created an agency of the party states known as the Great Lakes Commission.[205] The commission functions are advisory, and it is to deal with the following waters lying within the party states:

(1) Lakes Erie, Huron, Michigan, Ontario, St. Clair, Superior, and the St. Lawrence River, together with any and all natural or man-made water interconnections between or among them.

(2) All rivers, ponds, lakes, streams, and other watercourses which, in their natural state or in their prevailing condition, are tributary to Lakes Erie, Huron, Michigan, Ontario, St. Clair, and Superior or any of them which comprise part of any watershed draining into any of said lakes.

The stated purpose of the compact is, through cooperative action:

(1) To promote the orderly, integrated, and comprehensive development, use, and conservation of the water resources of the Great Lakes Basin (hereinafter called the Basin).

(2) To plan for the welfare and development of the water resources of the Basin as a whole as well as for those portions of the Basin which may have problems of special concern.

204. Minnesota Statutes §§1.15, 1.17.

205. Minnesota Statutes §§1.21, 1.22.

(3) To make it possible for the states of the Basin and their people to derive the maximum benefit from utilization of public works, in the form of navigational aids or otherwise, which may exist or which may be constructed from time to time.

(4) To advise in securing and maintaining a proper balance among industrial, commercial, agricultural, water supply, residential, recreational, and other legitimate uses of the water resources of the Basin.

(5) To establish and maintain an inter-governmental agency to the end that the purposes of this compact may be accomplished more effectively.

SOUTH DAKOTA-MINNESOTA BOUNDARY WATERS COMMISSION

The South Dakota-Minnesota Boundary Water Commission consists of the director of the game and fish commission of South Dakota, the commissioner of conservation of Minnesota, and an engineer appointed by the governors of Minnesota and South Dakota, and has the power and authority:

(1) To investigate and prescribe a plan for controlling and regulating the levels of artificially controlled boundary waters.

(2) To conduct investigations, surveys, and hearings, and make orders to the effect the control of the levels of the boundary waters.

The commission's orders are enforced by application for injunction to the district court or circuit court in either state in any county affected by the order.

TRI-STATE WATERS COMMISSION

This commission was created for the purpose of facilitating cooperation to insure the most advantageous utilization of the waters of the Red River, for the control of the flood waters of this river, and for the prevention of the pollution of such waters.[206]

The commission is given the duty of studying the various water problems relating to the water supply within the drainage basin of the Red River lying within the boundaries of the states. To effect its purposes, the commission is given the following powers:

(1) To approve, before commencement of construction, plans for works on boundary waters contemplated by state, municipal, or industrial agencies.

(2) To exercise the power of eminent domain.

(3) To cooperate in studies, surveys, and the maintenance and operation of water projects, with federal, state or municipal agencies.

206. Minnesota Statutes §114.09.

(4) To exercise all other powers not inconsistent with the constitutions of the United States, North Dakota, South Dakota or Minnesota.

Although the commission is empowered to maintain and control lake levels and stream flow on boundary waters within the area, it can do so only with the approval of the county or state agencies in which area such lake or stream is located. In certain areas designated by statute, the commission has no jurisdiction over lake levels or stream flow.[207]

MINNESOTA-WISCONSIN BOUNDARY COMPACT

This compact, ratified by the legislature in 1965, was created in order to conduct studies and to develop recommendations relating to the present and future protection, use and development in the public interest, of the lands, river valleys and waters which form the boundary between this state and Wisconsin; and

In order to assist in co-ordinating the studies, conservation efforts and planning undertaken by the several departments, agencies or municipalities of the states parties to this compact with respect to such lands, river valleys and waters; and

In order to assist in the participation by states parties to this compact in federal programs which relate to the present and future protection, use and development in the public interest, of such boundary lands, river valleys or waters.[208]

THE BOUNDARY WATERS CANOE AREA

No study of the law applicable to Minnesota waters would be complete without reference to the various laws designed to protect and preserve the Boundary Waters Canoe Area, an area unique to the state of Minnesota, the use of which is governed by treaty, federal law and state law.

The Webster-Ashburton Treaty of 1842 between the United States and Great Britain established the boundary line between the United States and Canada, and provided that "all the Water Communications and all the usual portages along the line from Lake Superior to Lake of the Woods, also Grand Portage, from the shore of Lake Superior to the Pigeon River is now actually used, shall be free and open to the use of the citizens and subjects of both countries." In 1909, the United States and Great Britain entered into the Root-Bryce (Boundary Waters) Treaty, which defined boundary waters as the waters from main shore to main shore of the lakes, rivers, and connecting waterways along the international boundary between the United States and Canada, including all bays, arms, and inlets. The treaty sets forth an agreement between the United States and Great Britain that the navigation of all navigable boundary waters shall forever continue free and open for the purpose of commerce to the inhabitants of and to the ships, vessels,

207. Minnesota Statutes §114.09, Subd. 8.

208. Minnesota Statutes §1.31.

and boats of both countries subject to any laws and regulations of either country within zone territories not inconsistent with the privilege of free navigation and applied without discrimination of both countries.

The Shipstead-Nolan Act of 1930 withdrew public lands in the Superior National Forest area of northern Minnesota from entry or appropriation under the public land laws of the United States.[209]

Logging was forbidden on all shorelines from any lake or stream in the area to a depth of 400 feet from the natural waterline. Alteration of the natural water level of any lake or stream in the designated area without permit was prohibited. In 1948, the Thye-Blatnik Act empowered the Secretary of Agriculture to acquire lands within the area where in his opinion the development, exploitation, or the potential development and exploitation, impaired or threatened to impair the unique qualities and natural features of the remaining wilderness, canoe country.[210]

The Wilderness Act of 1964, Public Law 88-577; 78 Stat. 890, so far as it dealt with the use of water in the boundaries-canoe area, provided that the use of aircraft or motorboats, where established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. The act also provided that within the wilderness area, including the BWCA, the President may authorize regulations concerning the prospecting for water resources and the establishment and maintenance of reservoirs and water conservation works. The act specifically provided that it was not to be construed as an exemption from state waters laws.

REGULATORY PROGRAMS

Historically, the various divisions of the Conservation Department have been established to administer and enforce the laws pertaining to water as enacted by the legislature. Although in recent years there has been a greater emphasis placed on planning and study as is evidenced by the preceding discussion, enforcement and administration of existing laws is an essential part of the duties of the Conservation Department. The major responsibility of regulation still rests with the Commissioner of Conservation through the application of the permit system. Investigation, field checks, survey and sanctions for violations are all tasks performed by the department.

The Minnesota Highway Department is responsible for maintaining proper drainage of state highways and perpetuating the drainage systems. The Hydrologic Unit of the department handles the job of inspecting, repairing and improving drainage projects affecting the state's highway system. Problems dealing with sedimentation and erosion are also studied by the highway department, as well as other state agencies, in cooperation with the Corps of Engineers. New methods, approaches and equipment are sampled and tested constantly.

209. 16 U.S.C.A. 577.

210. 16 U.S.C.A. 577(c).

Drainage and irrigation problems are an ever-recurring problem to the citizens of Minnesota. Much of the regulation in this area is derived from the provision of Chapter 106 of the Minnesota Statutes. Here local agencies are mainly involved, either through the county boards or district courts. Again, irrigation procedures are regulated by the permit system previously discussed.

POLICIES OF THE STATE

According to the formal declarations of policy and statements contained in the codified and uncodified State laws bearing on water and related land resources, it is the policy of the state to:

promote the full use and enjoyment of water resources by all of the people, now and in the future;

promote safety for persons and property in connection with the use of the waters of the state;

promote uniformity of laws relating to the use of water resources and to conform with any requirements of the United States thereto;

encourage cooperation between two or more municipalities to prevent, control, or abate pollution of waters;

encourage the acquisition, development, and maintenance of parks, wildlife sanctuaries, forest and other reservations, botanical gardens, and means for public access to historic sites, and to lakes, rivers, and streams and to other natural phenomena;

encourage the control of mosquitoes;

encourage the establishment of public trails and portages;

promote the planning, construction, maintenance, and improvement of the Great River Road or Mississippi River Parkway;

aid in securing the location of federal parks in the states;

exempt from taxation real and personal property used solely and exclusively for the abatement of water pollution;

encourage and foster a mode of land utilization that will facilitate the economic and adequate provision of water supply, drainage, sanitation, and recreation;

conserve and develop natural resources;

promote the general welfare of ports and increase the volume of the commerce thereof;

promote the efficient, safe, and economical handling of commerce,

and the provision of adequate docks, railroad, and terminal facilities open to all upon reasonable and equal terms;

encourage the establishment and development of proposed desirable harbor and river improvements and industrial developments in port districts;

encourage the acquisition in the name of the state of suitable lands and the development thereof for wildlife habitat purposes;

provide for the management of fishing in lakes;

promote the conservation, development, reclamation, and protection of tracts of land located in harbors upon the Great St. Lawrence Seaway, which by reason of topography, submersion, erosion, depletion, and other causes tend to impede navigation and are valueless for any useful riparian purpose;

promote tourism;

provide for the preservation of the public health by controlling the general sanitation of tourist camps, summer hotels, and resorts in respect to water supplies, disposal of sewage, garbage, and other wastes;

permit the leasing of state owned lands for the depositing of stripping, lean ores, tailings, or waste products of the iron-ore business;

declare the business of mining and beneficiating taconite to be in the public interest and necessary to the public welfare;

promote solid waste control;

classify waters and adopt standards of purity and quality to achieve a reasonable degree of purity of water resources of the state consistent with the maximum enjoyment and use thereof in furtherance to the welfare of the people of the state;

prohibit or direct the abatement of any discharge of sewage, industrial waste, or other wastes, into any waters of the state where the same will be in conflict with established classifications and standards of purity;

encourage the construction, improvement, maintenance, and operation of water supply and waste treatment systems, works, or facilities;

control and regulate privies, cesspools, septic tanks, toilets, and other facilities and devices for the reception or disposal of human excreta and/or other domestic wastes;

provide for the prevention, control, and abatement of all water of the state, so far as feasible and practical, in furtherance of conservation of such waters and protection of the public

health and in furtherance of the development of the economic welfare of the state;

safeguard the water of the state from pollution by: (a) preventing any new pollution; and (b) abating pollution giving due consideration to the establishment, maintenance, operation, and expansion of business, commerce, trade, industry, traffic and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom and shall take or provide for such action as may be reasonable, feasible and practical under the circumstances;

promote the public health and welfare by providing an adequate and efficient system and means of collecting, conveying, pumping, treating, and disposing of domestic sewage and garbage and industrial wastes;

cooperate with North Dakota and South Dakota for the most advantageous utilization of the waters of the Red River of the North, for the control of the flood waters of this river, and for the prevention of the pollution of such waters;

make and alter reasonable orders requiring the discontinuance of the discharge of sewage, industrial waste or other wastes into any waters of the state resulting in pollution in excess of the applicable pollution standard;

carry out conservation of the natural resources of the state through land utilization, flood control, and other needs upon sound scientific principles for the protection of the public health and welfare and the provident use of the natural resources;

promote the retention and conservation of all water precipitated from the atmosphere in the areas where it falls, as far as practicable;

encourage the construction and maintenance of reservoirs, dikes, or other structures, including dams for power purposes;

discourage diverting of the waters of one general watershed to another general watershed;

preserve shore lines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature;

improve navigation;

promote public access to waters;

control flood waters;

drain in whole or in part lakes which have become normally shal-

low and of a marshy character and are not of sufficient depth or volume to be of any substantial public use;

effect a systematic administration of water policy for the public welfare;

encourage and foster the development and management of water and related land resources at the local level;

permit the drainage, diversion, control, or use of any waters under his jurisdiction when necessary for the mining of iron ore, taconite, copper, copper-nickel or nickel;

encourage the conservation of underground water supplies of the state by requiring owners to control artesian wells to prevent waste;

improve navigation, protect and improve domestic water supply, protect and preserve fish and other wildlife, protect the public interest in the shore and shore lines of public waters, and promote public health, shall have power to construct, maintain, and operate all necessary dikes, dams, and other structures;

encourage the collection of basic data pertaining to surface or ground waters of the state;

preserve, develop, and maintain the natural resources of the state. Such resources include, but without limitation, forests, parks, historic sites, wildlife areas, access to an improvement of lakes, rivers, streams, scenic areas, and camping grounds;

conserve and utilize the water resources of the state in the best interests of the people of the state, and for the purpose of promoting the public health, safety, and welfare;

control and supervise, so far as practicable, the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs, and all control structures in any of the public waters of the state;

encourage and promote the use of privately owned lands and waters by the public for beneficial outdoor recreational purposes;

encourage the development for recreational purposes including, but not limited to, historic sites, archaeology, public access, parks, scenic easements, camp grounds, wildlife areas, county and school forests, water impoundment, and natural areas and trails;

recognize that lands, waters, forests, wetlands, wildlife, and such other natural resources which serve economic purposes also serve to varying degrees and for varying uses outdoor recreation purposes, and that sound planning of resource utilization for the full future welfare of this state must include coordination

and integration of all such multiple uses;

encourage the control of noxious aquatic vegetation and algae and scum conditions on public waters;

recognize canoe and boating routes on the Little Fork, Big Fork, Minnesota, St. Croix, Snake, Mississippi, Red Lake, Cannon, Des Moines, Crow Wing, St. Louis, Rum, Kettle, Cloquet, Root and Crow rivers which have historic and scenic values;

encourage the preserving, protecting, propagating, and breeding wildlife of all suitable kinds, including all species of game and fish and fur-bearing animals and birds of rare and useful species, and for the development of forests and prevention of forest fires, and the preservation and development of rare and distinctive species of flora;

control the displacement of underground waters by underground storage of gas or liquid under pressure;

declare that regulation and control of the operation of aircraft upon or over any wilderness area and public waters therein is necessary for the protection and promotion of public health, safety, and welfare and other interests of the public therein and for the protection and conservation of natural wilderness conditions and other natural resources therein for the public benefit;

encourage the restoration and control of water levels in lakes;

promote the conservation of wild rice;

encourage the development of forests and the prevention of forest fires, and for experimenting in an practically advancing afforestation and reforestation;

encourage the development of state parks, state public camp grounds, public access sites, boat launching facilities, state recreation reserves, trails, state monument sites, and recreational areas;

discourage the disturbance, obstruction, or interference with the natural flow or condition of public waters beyond the boundaries of the state in a manner so as to seriously affect the public welfare and interests of the state;

encourage the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts;

coordinate the management of the public domain; eliminate duplication of effort and function; and best serve the public in the development of a long range program to conserve the natural resources of the state;

develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion;

provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion and land resource planning and development, and for flood prevention or the conservation development, utilization, and disposal of water, including but not limited to measures for fish and wildlife and recreational development, and thereby preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, and protect public lands by land-use practices;

cooperate with the government of the United States, with financial agencies created to assist in the development of the agricultural resources of this state;

encourage and promote the development of agricultural industries;

provide for a program of comprehensive statewide planning;

encourage and foster the orderly and coordinated growth of the state;

encourage the development of planning programs by state departments and agencies and local levels of government;

carry forward the participation of the state as a member of the council of state governments;

encourage and assist the legislative, executive, administrative, and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with officials and employees of the other states, of the federal government, and of local units of government;

to endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulation proposals for and by facilitating:

the adoption of compacts;

the enactment of uniform or reciprocal statutes;

the adoption of uniform or reciprocal administrative rules and regulations;

the personal cooperation of governmental offices with one another;

the personal cooperation of governmental officials and employees with one another, individually;

the interchange and clearance of research and information;

assist in co-ordinating the studies, conservation efforts and

planning undertaken by the several departments, agencies or municipalities of the state;

cooperate with the governments of the United States and of Canada, the party states and any public or private agencies or bodies having interests in or jurisdiction sufficient to affect the natural resources of the state, encourage:

stabilization of lake levels;

measures for combating pollution, beach erosion, floods, and shore inundation;

uniformity in navigation regulations within the constitutional powers of states;

proposed navigation aids and improvements;

uniformity or effective coordinating action in fishing laws and regulations and cooperative action to eradicate destrictive and parasitical forces endangering the fisheries, wildlife and other water resources;

suitable hydroelectric power developments;

cooperative programs for control of soil and bank erosion;

derive the maximum benefit from utilization of public works, in the form of navigational aids or otherwise which may exist or which may be constructed from time to time;

secure and maintain a proper balance among industrial, commercial, agricultural, water supply, residential, recreational, and other legitimate uses of the water resources of the state;

promote the orderly, integrated and comprehensive development, use, and conservation of the water resources, encourage the:

control or alleviation of damage by flood waters;

improvement of stream channels for drainage, navigation, and any other public purpose;

reclaiming or filling wet and overflowed lands;

providing water supply for irrigation;

providing and conserving water supply for domestic, industrial, recreational, or other public use;

providing for sanitation and public health and regulating the use of streams, ditches, or watercourses for the purpose of disposing of waste;

repair, improve, relocate, modify, consolidate, and abandon, in whole or in part, drainage systems;

imposition of preventive or remedial measures for the control or alleviation of land and soil erosion and siltation of watercourses or bodies of water affected thereby;

regulating improvements by riparian landowners of the beds, banks, and shores of lakes, streams and marshes by permit or otherwise in order to preserve the same for beneficial use;

regulating of the use of public waters;

regulation and control of flood waters and the prevention of floods, by deepening, widening, straightening, or diking the channels of any stream or watercourse, and by the construction of reservoirs or other means to hold and control such waters.

The policy of the state consists not only of these formal declarations and statements enunciated by the legislature, but also consists of the rules and regulations adopted by state and local agencies consistent with law and the actions of state and local agencies. The legislative formal declarations and statements are broad and general and often conflicting in nature when considered from a comprehensive viewpoint. Considerable latitude is given to state agencies to formulate policy through the adoption of detailed rules and regulations. Little has been done to eliminate conflicts between rules and regulations formulated by special interest state agencies nor to weld together legislative formal declarations and statements and state agency detailed rules and regulations into a unified state policy for water and related land resources development and management. Records show many instances where the state policy as enunciated by one state agency is at odds with another state policy enunciated simultaneously by a second state agency. From the standpoint of other states and the Federal government, Minnesota's policy is undefined on a comprehesive detailed basis.

MANDATORY COORDINATION AND COOPERATION

Statements concerning mandatory coordination and cooperation of state, local and Federal agencies and other organizations such as Commissions and Compacts contained in the codified and uncodified state laws bearing on water and related land resources are presented below.

STATE PLANNING AGENCY

In order that the state benefit from an integrated program for the development and effective employment of its resources, and in order to promote the health, safety, and general welfare of its citizens, it is in the public interest that a planning agency be created in the executive branch of the state government to engage in a program of comprehensive statewide planning. The agency shall act as a directing, advisory, consulting, and coordinating agency to harmonize activities at all levels of government, to render planning assistance to all governmental units, and to stimulate public interest and participation in the development of the state.

The governor may direct any state department or other agency of the state government to furnish the state planning agency with such personnel, equipment, and services as are necessary to enable it to carry out its

powers and duties, prescribe the terms thereof, including reimbursement of costs thereof. Any moneys paid to a state department or other agency of the state government pursuant to this subdivision are hereby annually appropriated to such department or agency for the same purposes for which its funds were expended in furnishing personnel, equipment, and services to the State Planning Agency. All state Departments and agencies shall cooperate with the State Planning Officer in the exercise of the powers and duties conferred upon him by provisions of sections 4.10 to 4.17 and are directed to assist the Planning Agency if the State Planning Officer so requests. Such departments and agencies shall also furnish to the Planning Agency such information, data, and reports as the State Planning Officer may from time to time request.

DEPARTMENT OF CONSERVATION

The purpose of Laws 1967, Chapter 905 is to centralize the operating authority of the Department of Conservation in a commissioner and his deputy in lieu of the commissioner and several operating divisional directors; to coordinate the management of the public domain; to eliminate duplication of effort and function; and to best serve the public in the development of a long-range program to conserve the natural resources of the state.

The overall coordination of acquisition and development programs, comprehensive planning activities, including statewide recreational planning programs required by state or federal law, and not the responsibility of the State Planning Agency, are under the control and supervision of the Commissioner. The Commissioner may cooperate and enter into agreements with the United States government, any department of the State of Minnesota, or any state or country adjacent to the State of Minnesota for the purpose of effecting any of the provisions of sections 105.37 to 105.55. He may cooperate with any department of the government of the United States in the execution of surveys within the state.

Division of Waters, Soils and Minerals

Upon request by any county board or judge of the district court or engineer on any public ditch, the director shall advise them relative to any engineering questions or problems arising in connection with any public ditch.

The director shall perform such engineering work as may be requested by the State Water Policy Board, and shall appear in all hearings and proceedings before the State Water Policy Board affecting waters within the state.

The director shall cooperate with all agencies and departments of the state and federal government relating to projects or works of improvement affecting waters within the state and shall make recommendations to the agencies involved and to the governor as to the desirability, feasability and practicability of such proposed projects and works of improvement.

No contract or agreement shall be made by any department or agency of the state or any municipality with the United States or any agency or department thereof, for the collection of basic data pertaining to surface or ground waters of the state without first securing the written approval of the director.

The director, with the approval of the Commissioner, may make cooperative agreements with and cooperate with any person, corporation or governmental authority for the purpose of effectuating the provisions of this section.

WATER RESOURCES BOARD

Upon request of the Board for the purpose of carrying out any of its functions, the supervising officer of any state agency, or any state institution of learning, shall, insofar as it may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the State Board from the staff or personnel of the agency or institution of learning, and make such special reports, surveys or studies as the State Board may request.

The Board has the function defined in sections 105.72 to 105.79 when the decision of the agency in a proceeding involves a question of water policy in one or more of the areas of water conservation, water pollution, preservation and management of wildlife, drainage, soil conservation, public recreation, forest management, and municipal planning.

Watershed Districts

Watershed districts cooperate or contract with any state or subdivision thereof or federal agency or private or public corporation. The managers may enter into contracts or other arrangements with the United States government, or any department thereof, with persons, railroads, or other corporations, with public corporations, and the state government of this state or other states, or any department thereof, with drainage, flood control, soil conservation, or other improvement districts, in this state or other states, for cooperation or assistance in constructing, maintaining, and operating the works of the district, or for the control of the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease or acquire land or other property in adjoining states in order to secure outlets; to construct and maintain dikes or dams or other structures for the accomplishment of the purposes of this chapter.

STATE SOIL AND WATER CONSERVATION COMMISSION

There is hereby established, to serve as an agency of this state and to perform the functions conferred upon it in this chapter, the State Soil and Water Conservation Commission to be composed of nine members, five of whom shall be bona fide farmers actually operating farms either as owners

operators, or tenants and selected as herein provided. Four members thereof shall be ex officio members composed of the following: The Director of the Agricultural Extension Service of the University of Minnesota; the Dean of the Institute of Agriculture of the University of Minnesota; the Commissioner of Conservation; the Commissioner of Agriculture. Upon request of the Commission, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning, shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the Commission members of the staff or personnel of the agency or institution of learning, and make such special reports, surveys, or studies as the Commission may request. In addition to the powers and duties hereinafter conferred upon the State Soil and Water Conservation Commission, it shall have the following powers and duties:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in carrying out any of their powers and programs;

(2) To keep the supervisors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them;

(3) To coordinate the programs of the several soil conservation districts organized hereunder, so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts;

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

Soil Conservation Districts

A soil conservation district organized under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body, corporate and politic, exercising public powers, and the district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this chapter:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of the

state or any of its agencies, or with the United States or any of its agencies.

(2) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter.

(3) To enter into any agreement or contract with the Secretary of Agriculture, or other designated authority, under the provisions of said Public Law 566, or any act amendatory thereof or supplementary thereto, for the construction, maintenance, and operation of works of improvement as defined in said act. The supervisors of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred with one another in the exercise of any or all powers conferred in this chapter. Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, shall cooperate with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands.

POLLUTION CONTROL AGENCY

The Agency, so far as it is not inconsistent with its duties under the laws of this state, may assist and cooperate with any agency of another state, of the United States of America or of the Dominion of Canada or any province thereof in any matter relating to water pollution control. If the Agency determines after a hearing on the subject matter that cooperation between two or more municipalities is necessary to prevent, control, or abate pollution, it may adopt a resolution so declaring and determining whether it will be feasible to secure such cooperation by contract between the municipalities concerned.

All state departments and agencies are hereby directed to cooperate with the Pollution Control Agency and its director and assist them in the performance of their duties, and the Pollution Control Agency is authorized to cooperate with other departments and agencies of the state, with municipalities, with other states, with the federal government and its agencies and instrumentalities, in the public interest and in order to control pollution.

Upon the request of the Pollution Control Agency the governor may, by order, require any department or agency of the state to furnish such assistance to the Agency or its director in the performance of its duties

or in the exercise of his powers imposed by law, as the governor may, in his order, designate or specify; and with the consent of the department or agency concerned, the governor may direct all or part of the cost or expense for the amount of such assistance to be paid from the Pollution Control Agency fund or appropriation in such amount as he may deem just and proper.

COUNTY BOARD

When the whole or any part of any body of water is situated in a single county, the County Board of Commissioners, in order to improve navigation thereon, or to promote the public health, safety and welfare, may improve the same and maintain the improvement and operate control works; provided that no such improvement affecting public waters be made until a permit therefor be issued by the Commissioner of Conservation of the State of Minnesota as provided by law. The County Board may make cooperative agreements with the United States or state government or any other county or city, village or borough for the purpose of effecting the provisions of sections 110.121 to 110.126.

GREAT LAKES BASIN COMPACT

All officers of this state are hereby authorized and directed to do all things falling within their respective jurisdictions necessary to or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of this state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of this state are hereby authorized and directed at reasonable times and upon request of said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal powers respectively.

MINNESOTA-WISCONSIN BOUNDARY AREA COMMISSION

The Minnesota-Wisconsin Boundary Area Commission shall cooperate with the federal government of the United States and with any public or private agencies having an interest in, or jurisdiction sufficient to affect, the present and future protection, use and development in the public interest, of the lands, river valleys or waters comprising the boundary of this state with any other party state. All officers, employees, departments and agencies of the states parties to this compact are by this compact encouraged to do all things within their respective jurisdictions, to assist the Commission in carrying out the duties imposed upon it by this compact.

These statements, for the most part, are weak expressions describing piecemeal cooperation, often on a voluntary basis, between agencies and organizations. Responsibility for comprehensive coordination and cooperation within the water and related land resources development and management field is not centralized. There is not a single entity charged specifically with the responsibility of coordinating Federal, State, interstate, local, and nongovernmental activities pertaining to water and related land resources planning, development and management.

ASPECTS OF FEDERAL STATUTES AND SUPREME COURT DECISIONS

Private rights to the use of the water in streams are generally recognized as the creatures of state law, and each state is free to choose the form that law shall take. A state's law of private water rights cannot be a self-contained unit, sealed off at the state lines, at which point the law of the adjoining state takes over. Two factors prevent this. First, water itself crosses the state lines or forms state boundaries and what is done in one state will have repercussions on its neighbor. Secondly, the federated nature of American government will not permit such isolation, since the states are only quasi-sovereign. The Constitution gives the national government interests in water and powers to implement them, powers in some respects superior to those of the states. The powers of sovereignty are divided between the government of the Union, and those of the states. They are each sovereign, with respect to the objects committed to it, and neither sovereign, with respect to the objects committed to the other.[211]

The ever broadening powers of the Federal Government in the field of water and related land resources result from the pyramiding of Federal statutes and Supreme Court Decisions over the last 100 years. No express power over water and related land resources is found in the United States Constitution. The large body of Federal law, (see Anon, 1950) which has emerged derives its assertion from several sources in the Constitution: the Commerce Clause, the Property Clause, the Water and Treaty powers, and the General Welfare powers.

When the Constitution was established, express powers were delegated to the Congress: To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur. Treaties made under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding; to levy taxes and to appropriate funds to provide for the general welfare of the United States; the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish; no state shall, without the consent of the Congress enter into any agreement or compact with another state; to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.

From these powers Federal law, concerning water and related land resources, developed, first upon navigation, then flood control, then irrigation, then power, and finally comprehensive river basin development.

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211. M'Clulloch v. Maryland, 4 Wheat. 316, 410 (U.W. 1819).

In recent years the federal government has greatly expanded its programs dealing with land and water through such acts as the Federal Water Pollution Control Act,[212] and the Watershed Protection and Flood Prevention Act.[213] By the Act of September 5, 1962, Pub. Law 87-639, 76 Stat. 438, Congress authorized the Secretary of the Army and the Secretary of Agriculture to make joint investigations of watershed areas for flood control, conservation, development of the utilization of water, and allied purposes, and to report to Congress through the President on recommended improvements. Increasing demands on our resources have influenced the expansion of federal regulation of bodies of water that cross or form state or international boundaries.

Decisions as to the control of our water resources will have a great effect on the future economic life of the state and the nation, and even on governmental structure. Control of water can mean control of land use. Thus, the question of governmental regulation of water use involves both the rights of landowners, particularly those who depend on water to carry out their activities, and the underlying philosophy of whether state or federal laws shall govern the field of water and related land resources.

There has been extensive discussion concerning federal-state relationships in the water law field, particularly in the western states.[214] No attempt will be made to cover all of the areas that are being discussed, but comments will be made on the growth of federal authority and some of the active areas of federal regulation.

Congressional responsibility and authority in the field of water resources stems primarily from constitutional delegations of power to the federal government under the commerce, war, and general welfare clauses of Article I, Section 8, of the United States Constitution, the property clause of Article IV, Section 3, and the treaty provisions of Article II, Section 2, clause 2, and Article IV, clause 2. The commerce clause has been the principal basis for federal regulation of major inland waterways.

Congress has always taken an interest in the development of water resources. Early congressional efforts were the subject of frequent disputes between Congress and the executive branch of the government. These early efforts dealt with the need to establish and improve waterways for navigation. Chief Justice Marshall, in the famous case of Gibbons v. Ogden, 9 Wheat. (22 U.S.) 1, 6 L. Ed. 23 (1824), gave Congress judicial support by holding that the power of Congress comprehended navigation within the limits of every state of the union insofar as navigation was connected with commerce. Early appropriations for navigation surveys and studies of the Mississippi and Ohio Rivers for the purpose of improving rivers and harbors were, however, vetoed by the presidents on the basis that the Constitution did not sanction such acts by Congress.

The Supreme Court in Gilman v. City of Philadelphia, 3 Wall (70 U.S.) 713, 18 L. Ed. 96 (1865), reaffirmed the power of Congress to regulate commerce and exercise control over navigable waters, and brought to a close all active opposition from the executive branch with regard to the constitutionality of legislation in the area of navigation.

The power to control navigation and navigable waters includes the power to prevent obstructions[215] and the power to protect the navigable capacity of waters by preventing diversions of water.[216] The Supreme Court considers a stream navigable if it is or can be made navigable.[217] Nonnavigable tributaries of a navigable stream are subject to regulation to protect the navigable capacity of the stream.[218] Federal regulations control over state laws in case of conflict.[219]

Federal activity in the field of flood control has been greatly expanded since the Civil War, when it was considered primarily a problem for local officials and not a proper concern for congressional action. Early efforts to appropriate federal funds were generally justified by arguing that it was the right and duty of the federal government to build flood control levees to improve navigation. A national flood control program was started in 1874, when a Commission of Engineers was appointed to investigate and report to Congress a plan for the permanent reclamation and prevention of inundation of lands in the alluvial Mississippi River basin.[220]

With the passage of the Flood Control Act of 1936,[221] Congress estab-

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212. 62 Stat. 1155 (1948) as amended, 33 U.S.C. 466-466k (1958), as further amended, 33 U.S.C. 466-466j (Supp. III, 1961).

213. 68 Stat. 666 (1954) as amended, 16 U.S.C. 1001-1008 (1958), as further amended, 16 U.S.C. 1002-1007 (Supp. III, 1961), and Food and Agricultural Act of 1962, Secs. 103-106, 76 Stat. 608 (1962).

214. See, for example, Sato, Water Resources--Comments Upon the Federal-State Relationship, 48 Calif. L. Rev. 43 (1960); Corker, Water Rights and Federalism--The Western Water Rights Settlement Bill of 1957, 45 Calif. L. Rev. 604 (1957); Note, Federal-State Conflicts Over the Control of Western Waters, 60 Columbia L. Rev. 967 (1960).

215. United States v. Republic Steel Corp., 362 U.S. 482, 80 S. Ct. 884, 4 L. Ed2d 903 (1960).

216. Sanitary Dist. of Chicago v. United States, 266 U.S. 405, 45 S. Ct. 176, 69 L. Ed. 352 (1925).

217. United States v. Appalachian Elec. Power Co., 311 U.S. 377, 66 S. Ct. 291, 85 L. Ed. 243 (1940).

218. United States v. Rio Grande Dam & Irrigation Co., 174 U.S. 690, 19 S. Ct. 770, 43 L. Ed. 1136 (1899); note 51 infra and preceding text.

219. United States v. Chandler-Dunbar Co., 229 U.S. 53, 33 S. Ct. 667, 57 L. Ed. 1063 (1913); United States v. Twin City Power Co., 350 U.S. 222, 76 S. Ct. 259, 100 L. Ed. 240 (1956).

220. Act of June 22, 1874, Ch. 411, 88 Stat. 199.

221. Act of Oct. 22, 1936, Ch. 688, Secs. 1-9, 49 Stat. 1570, now 33 U.S.C. 701a-701f and 701h (1958). These sections are part of 33 U.S.C.

lished a national flood control policy. Present-day legislation provides for the planning of water and related land resources on a watershed basis. This approach provides a greater role for state governments to meet the objections of those opposed to encroachment on states' rights and prerogatives in the water law field. The federal authority in the flood control area is now so broad that the United States Corps of Engineers can provide flood plain planning on small nonnavigable streams such as tiny Bassett's Creek in Hennepin County. The question to be answered is whether Minnesota will participate effectively in water resources programs or will it abdicate its role and lose another area of resource management.

In the western states multiple water resource development was initiated under the Reclamation Act of 1902.[222] This act, as amended from time to time,[223] provides for the expenditure of federal funds, which are to be repaid by water users served by the project in question. Water uses developed in connection with the irrigation projects, in addition to the use for irrigation which was primary under the original act, include uses for domestic water supply, navigation, and the production of hydroelectric power.

Examples of federal multiple-purpose water resource development projects are the Boulder Canyon Project, which includes the Hoover Dam, the Bonneville Project, and the Columbia River Basin Project, which includes the Grand Coulee Dam.[224] The most famous federal multiple-purpose development of water resources on a watershed basis is the Tennessee Valley Authority.[225] In the past years in Minnesota we have seen the development of the Missouri Basin Inter-Agency Committee, Upper Mississippi River Comprehensive Basin Study Coordinating Committee, Great Lakes Basin Commission, and Souris-Red-Rainy River Basins Commission, under various federal acts, for irrigation, navigation, recreation, production of hydroelectric power, preservation and propagation of wildlife, and other purposes. Already conflicts are arising between navigation interests desiring adequate water depths in the shipping season, interests desiring regulated flows for power generation and irrigation interests.

Ch. 15, Flood Control (1958), as amended, 33 U.S.C. 701r-1 and 709a (Supp. III, 1961) and further amended by the Flood Control Act of 1962, Pub. Law 87-874, Title II, Secs. 205, 206, & 208, 33 U.S.C. 701n, 701r-1, and 701s.

222. Act of June 17, 1902, Ch. 1093, 32 Stat. 388.

223. Most of the provisions of the original act (together with later reclamation acts) are now codified in Ch. 12 of 43 U.S.C. (1958) and 43 U.S.C. 373a-615hh (Supp. III, 1961), as amended by various acts in 1962 (43 U.S.C. 373a-1, 377a, 485h, 485h-6 and -7, 615t, 615u, and 615ii-616w), and by the Act of June 21, 1963, Pub. Law 88-44, 77 Stat. 68.

224. The statutory provisions relating to the Boulder Canyon Project are in Ch. 12A of 43 U.S.C. (1958). Those relating to the Bonneville and Columbia River Basin Projects are in Chs. 12B and 12D of 16 U.S.C. (1958) and 16 U.S.C. 832a-1 (Supp. III, 1961).

225. Tennessee Valley Authority Act of 1933, Ch. 32, 48 Stat. 58, as amended, 16 U.S.C. 831-831dd (1958), as further amended, 16 U.S.C. 831d, 831h-2 (repealed), and 831n-4 (Supp. III, 1961).

In the area of recreational use of waters Congress, in Section 4 of the Flood Control Act of 1944,[226] included provisions authorizing recreational developments at reservoirs built by the Corps of Engineers. In addition, the 1946 amendments[227] to the Fish and Wildlife Coordination Act[228] authorized federal expenditures for the preservation and protection of fish and wildlife in connection with water resource developments by federal agencies.

In the field of water pollution the major federal program was initiated by the Federal Water Pollution Control Act of 1948.[229] The main features of this program include grants to states and municipalities for the construction of sewage treatment works and other installations designed to prevent pollution of our waters.

The Department of Agriculture has extensive programs in the water resources field, particularly under the Watershed Protection and Flood Prevention Act, as amended,[230] and other programs carried out by the Soil Conservation Service of the Department of Agriculture.

The extent to which the federal government has broadened its control in the resource area is shown by the expanding jurisdiction of the Federal Power Commission and by recent cases involving water rights in the western states in which it has been contended that the federal government is not bound by the local law with regard to appropriation of water.

In United States v. Rio Grande Dam & Irrigation Co., 174 U.S. 690, 19 S. Ct. 770, 43 L. Ed. 1136 (1899), an injunction was granted to prevent an appropriation of waters from the nonnavigable portion of the Rio Grande where this would substantially interfere with the navigability of the navigable parts of the stream. Under this decision, the test of federal control was whether or not the effect of the use of the non-navigable waters on the downstream navigable capacity was substantial.

The leading case defining waters subject to federal control is United States v. Appalachian Elec. Power Co.,[231] sometimes called the New River case. There the definition of navigable waters in Sec. 3 of the Federal Power Act[232] was broadened by the holding that the New River was navigable

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226. Act of Dec. 22, 1944, Ch. 665, Sec. 4, 58 Stat. 889; now 16 U.S.C. 460d (1958), as amended by the Flood Control Act of 1962, Pub. Law 87-874, Title II, Sec. 207, 76 Stat. 1195, 16 U.S.C. 460d.

227. Act of Aug. 14, 1946, Ch. 965, 60 Stat. 1080.

228. Act of March 10, 1934, Ch. 55, 48 Stat. 401, as amended, 16 U.S.C. 661-666c (1958).

229. Note 212, supra.

230. Note 213, supra.

231. 311 U.S. 377, 66 S. Ct. 291, 85 L. Ed. 243 (1940).

232. Act of June 10, 1920, Ch. 285, Sec. 3(8), 41 Stat. 1063, as amended, 16 U.S.C. 796 (1958).

even though artificial aids would be needed to make it suitable for commercial navigation, and the clear implication that tributaries of streams that are navigable under this test are themselves to be considered navigable, and thus subject to licensing by the Federal Power Commission.[233]

The power of the federal government to control nonnavigable tributaries of navigable streams was enlarged by the Federal Power Commission in its recent decision in Union Electric Co., Docket No. E6927, decided April 19, 1962. The Commission there held that it had jurisdiction for licensing purposes over a pumpback hydroelectric power project on nonnavigable waters. While the commission determined that it had jurisdiction because of the effect the project would have on downstream navigable capacity, it also held that even if downstream navigable capacity would not be affected, the proposed development of power for interstate transmission and use was sufficient evidence of a potential to affect interstate transmission and use was sufficient evidence of a potential to affect interstate commerce to subject the installation to the Commission's licensing powers.

The Union Electric Co. case represents a further expansion of federal control over waters under the commerce clause of the Constitution.

Further evidence of the federal government's expanding authority in the control of waters is found in Federal Power Commission v. Oregon, 349 U.S. 435, 75 S. Ct. 832, 99 L. Ed. 1215 (1955). The Pelton Dam was to be built on government lands reserved for power sites and Indian lands reserved to the United States for power purposes, all located in Oregon. These lands were not part of the public domain. The State of Oregon contended that the dam would harm migratory fish that spawn above the damsite and that installation of the dam would be contrary to Oregon law and in violation of the terms of the Desert Land Act of 1877,[234] which provided that all surplus water over and above that actually appropriated and used by individuals as provided in the act, "together with the water of all lakes, rivers and other sources of the water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes subject to existing rights." The river in question was nonnavigable and was therefore considered by Oregon to be subject to state control. The Court rejected all of Oregon's contentions. It held that the Desert Land Act did not apply to waters on government reservations, and that the Federal Power Commission had exclusive jurisdiction, under the property clause of the Constitution, to license the use of such waters, without regard for state law.

The decision in the Pelton Dam case created great anxiety among water users in the western states.[235] Fear was expressed that the decision in

233. Cf. Oklahoma ex. rel. Phillips v. Guy F. Atkinson Co., 313 U.S. 508, 61 S. Ct. 1050, 85 L. Ed. 1487 (1940). (Multi-purpose project including hydroelectric power production as part of flood control scheme; power of flood control held to extend to nonnavigable parts of river and to tributaries.)

234. Act of March 3, 1877, Ch. 107, 19 Stat. 377, as amended, 43 U.S.C. 321 (1958).

235. See Sato, note 214, supra; Corker, note 214, supra at 607-614.

First Iowa Hydro-Electric Cooperative v. Federal Power Commission,[236] which had made it clear that, under the commerce clause of the Constitution, state laws governing the use and control of navigable streams are inapplicable when they conflict with federal law, was going to be carried further to give the federal government exclusive authority over all water rights on all federal lands. Since most of the unappropriated watershed lands were reserved lands in national forests or other federal lands not open to public entry, it was feared that the Pelton Dam case established the federal government as owner of all unappropriated waters in the West.

The effect of the Pelton Dam decision was immediately felt in a case involving federal appropriation of ground water in Nevada.[237] At the time of the Pelton Dam decision the Hawthorne, Nevada, Naval Ammunition Depot had applications for state permits for six wells, all located within the boundaries of the depot, pending before the Nevada State Engineer. Just before the final steps required for allowance of the permits were taken, the Pelton Dam case was decided. Immediately thereafter, the applications were withdrawn on the theory that compliance with state law was unnecessary. The state sued to require the depot to comply with the state permit law. The Federal District Court dismissed the complaint. While it rested its decision in part on the national defense aspect of the case and on reclamation cases, it also stated that it was "inclined to the...view" that the Pelton Dam case was "determinative."[238] The decision was affirmed by the Court of Appeals for the 9th Circuit, but on the ground that the government's waiver of sovereign immunity in water rights cases[239] did not extend to situations where a state "seeks a declaration of her sovereign, proprietory right to the corpus or control of waters in general."[240]

The exact extent of the federal government's control over waters under the property clause of the Constitution is still undetermined. The Pelton Dam case was cited in two 1960 Supreme Court cases,[241] but in both cases the governmental action in question was upheld as a proper exercise of the commerce power. One of the cases[242] did hold that the rules governing Federal Power Commission licensing in relation to public lands and reservations of the United States, under the property clause of the Constitution, were inapplicable in the case of a power project reservoir on lands owned by an

236. 328 U.S. 152, 66 S. Ct. 906, 90 L. Ed. 1143 (1946).

237. Nevada ex. rel. Shamberger v. United States, 165 F Supp. 600 (D Nev. 1958), affd. 279 F2d 699 (C.A. 9th, 1960).

238. 165 F Supp. 608.

239. Act of July 10, 1952, Ch. 651, Title II, Sec. 208(a), 66 Stat. 560, 43 U.S.C. 666a (1958).

240. 279 F2d 701.

241. Federal Power Commission v. Tuscarora Indian Nation, 362 U.S. 99, 80 S. Ct. 543, 4 L.Ed2d 584 (1960), and United States v. Grand River Dam Authority, 363 U.S. 229, 80 S. Ct. 1134, 4 L. Ed2d 1186 (1960).

242. Federal Power Commission v. Tuscarora Indian Nation, note 241, supra.

Indian nation in fee.

Another recent example of the extent to which the federal government can determine water rights is found in the decision in Arizona v. California, 373 U.S. 546, 83 S. Ct. 1468, 10 L. Ed2d 542 (June 3, 1963). This long-standing litigation arose out of a dispute among the states of Arizona, California, Nevada, New Mexico, and Utah over the use of Colorado River waters. The United States intervened in the litigation. It asserted a superior right to control the waters of the river under the Boulder Canyon Project Act.[243]

The Supreme Court expressly rejected the argument that federal operation of water resource projects must be in compliance with state law. It held that the Secretary of the Interior, in choosing between users in each state and in settling the terms of his contracts, was not bound to follow state law. In reply to the argument that Sec. 8 of the Reclamation Act[244] requires the United States, in the delivery of water, to follow priorities laid down by state law, the Court stated[245] that under its prior decisions[246] interpreting Sec. 8 of the Reclamation Act, the United States is required to comply with state law "merely...when in the construction and operation of a reclamation project, it becomes necessary for it to acquire water rights or vested interests therein." It pointed out that the acquisition of water rights is not to be confused with the operation of federal projects, and stated that where the federal government has "undertaken a comprehensive project for the improvement of a great river and for the orderly and beneficial distribution of water, there is no room for inconsistent state laws." The Court further stated that the things the states can continue to do with respect to regulation of watercourses within their limits "can be decided when the occasion arises. But where the Secretary's contracts, as here, carry out a congressional plan for the complete distribution of waters to users, state law has no place."

The Chief Justice took no part in the case. Dissents were filed by Mr. Justice Harlan (joined by Justice Douglas and Stewart) and Mr. Justice Douglas. Mr. Justice Douglas characterized the decision as "the boldest attempt by judges in modern times to spin their own philosophy into the fabric of the law, in derogation of the will of the legislature. The present decision...grants the federal bureaucracy a power and command over water rights in the 17 Western States that it never had had, that it always wanted, that it could never persuade Congress to grant, and that this Court up to now has consistently refused to recognize."[247]

243. See note 224, supra.

244. Act of June 17, 1902, Ch. 1093, Sec. 8, 32 Stat. 390, 43 U.S.C. 383 (1958).

245. 373 U.S. 586-588, 83 S. Ct. 1490-1492, 10 L. Ed2d 570-571.

246. Ivanhoe Irrigation Dist. v. McCracken, 357 U.S. 275, 78 S.Ct. 1174, 2 L. Ed2d 1313 (1958); City of Fresno v. California, 372 U.S. 627, 83 S. Ct. 996, 10 L. Ed2d 281 (1963).

247. 373 U.S. 628, 83 S. Ct. 1512, 10 L. Ed2d 581.

The above are some examples of federal-state conflicts in the management of our water resources. It is only natural that the majority of the disputes have arisen in the West, where water is scarce and is the key to the development and expansion of new communities and new industry. In recent years there has been a growing concern among eastern water users over the role of the federal government in this field. The concern is justified. The problem of "power and command over water rights," now most acute in "the 17 Western States," is becoming and will become more acute in every other state, including Minnesota, as the demands on its water resources increase.

The importance of water resources to the nation was well stated by the President in a portion of his message to Congress on March 1, 1962:[248]

> Our Nation's progress is reflected in the history of our great river systems. The water that courses through our rivers and streams holds the key to full national development. Uncontrolled, it wipes out homes, lives, and dreams bringing disaster in the form of floods; controlled, it is an effective artery of transportation, a boon to industrial development, a source of beauty and recreation, and the means for turning arid areas into rich and versatile cropland. In no resource field are conservation principles more applicable. By 1980, it is estimated, our national water needs will nearly double--by the end of the century they will triple. But the quantity of water which nature supplies will remain almost constant.

The same concern and increasing federal dominance in land resource decisions can be illustrated by examples of recent major federal land use programs.

The federal government has adopted a policy that requires the preservation of lands devoted to recreational use. This is clearly evident in the Congressional declaration of purpose stated in the act creating the Department of Transportation. "It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites."[249] This policy is exemplified by the requirement that all alternative routes must be considered. No program or project is to be approved:

> ...which requires the use of any publicly owned land from a public park, recreation area, wildlife and waterfowl refuge, or historic site unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.[250]

Despite a strong effort by the highway lobby to remove this section completely, the 1968 Federal Highway Act retained it for publicly owned

248. 108 Cong. Rec. 2828, 2829 (daily ed. March 1, 1962), House Doc. No.

249. 49 U.S.C.A. 1651(b)(2).

250. 49 U.S.C.A. 1653(f).

lands. Thus, this section is a significant expression of current federal policy in favor of preserving such lands.

A similar policy statement exists for the federal-aid highway system itself:

> It is hereby declared to be the national policy that in carrying out the provisions of this title, the Secretary shall use maximum effort to preserve Federal, State, and local government parklands and historic sites and the beauty and historic value of such lands and sites. The Secretary shall cooperate with the States in developing highway plans and programs which carry out such policy. After July 1, 1968, the Secretary shall not approve under Section 105 of this title any program for a project which requires the use for such project of any land from a Federal, State, or local government park or historic site unless such program includes all possible planning, including consideration of alternatives to the use of such land, to minimize any harm to such park or site resulting from such use.[251]

The regulations promulgated by the Bureau of Public Roads, which administers all federal-aid highway programs, require that:

> ...The conservation and development of natural resources, the advancement of economic and social values, and the promotion of desirable land utilization, as well as the existing and potential highway traffic and other pertinent criteria are to be considered when selecting highways to be added to a Federal-aid system or when proposing revisions of a previously approved Federal-aid system.[252]

This federal policy is being implemented. A Department of Transportation Release, on September 24, 1967, announced a 4.8 million dollar contract with Baltimore, Maryland. According to the Secretary, the contract:

> ...may well set a pattern for designing urban highways across the nation....For the first time in any major city, all of the environmental skills available will be brought to bear on the design of the highway from the very beginning....With early planning consideration of the highway's social, economic, historical and functional impact, this will become not just a road through a city, but an integral part of the city.

Federal policy in other areas also reflect concern for the retention of recreation areas and open space. In 1963, Congress began to enact a series of measures establishing new outdoor recreation programs. A federal Land and Water Conservation Fund was established to be administered by the Secretary of the Interior, and a declaration of policy was enacted for federal multi-purpose water resource projects:

> The Congress finds and declares it to be desirable that all American people of present and future generations be assured adequate outdoor recreation resources, and that it is desirable for all levels of government and private interests to take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop, and utilize such resources for the benefit and enjoyment of the American people.[253]

As early as 1935, Congress included in the Federal Power Act a provision that the Commission must take recreational purposes and opportunities into account when considering power project plans that affect land uses.[254]

Congress has recently recognized the value of maintaining open spaces, particularly in urban areas, as reflected by its enactment of the Housing and Urban Development Act of 1965. The House Report contains the following language:

> In many urban areas, undeveloped land is rapidly disappearing or greatly increasing in cost. Prompt action must be taken to acquire suitable land while it is still available. This will not only help to conserve public funds in the face of sharply increasing land costs, but will also assist in shaping urban development to allow provision of transportation and other public facilities at minimum cost.
>
> ...our urban population is growing considerably more rapidly than parks and other urban open spaces are being provided, so that the backlog of unmet needs is actually expanding rather than decreasing. An increase in the Federal grant level is vital if communities are to be given adequate assistance in preserving open space land.

H.R. Rep. No. 365, 89 Cong. 1st Sess., 1965 U.S. Code, Cong. & Admin. News 2614, 2655-56. The Congressional declaration of purpose for this Act also indicates the crucial importance of the preservation of open space:

> (a) The Congress finds that a combination of economic, social, governmental, and technological forces have caused a rapid expansion of the Nation's urban areas, which has created critical problems of service and finance for all levels of government and which, combined with rapid population growth in such areas, threatens severe problems of urban and suburban living, including the loss of valuable open-space land in such areas, for the preponderant majority of the Nation's present and future population.
>
> (b) The Congress further finds that there is an urgent need both for the additional provision of parks and other open-space areas in the developed portions of the Nation's urban areas and for greater and better coordinated local efforts to beautify and improve open space and other public land throughout urban areas to facilitate their increased use and enjoyment by the Nation's urban population.
>
> (c) The Congress further finds that there is a need for timely action to preserve and restore areas, sites, and structures of historic or architectural value in order that these remaining evidences of our past history and heritage shall not be lost or destroyed through the expansion and development of the Nation's urban areas.

251. 23 U.S.C.A. 138.

252. 23 C.F.R. 1.6(c).

253. 16 U.S.C.A. 460(1).

254. 16 U.S.C.A. 803(a).

(d) It is the purpose of this chapter to help curb urban sprawl and prevent the spread of urban blight and deterioration, to encourage more economic and desirable urban development, to assist in preserving areas and properties of historic or architectural value, and to help provide necessary recreational, conservation, and scenic areas by assisting State and local governments in taking prompt action to (1) provide, preserve and develop open-space land which is essential to the proper long-range development and welfare of the Nation's urban areas in accordance with plans for the allocation of such lands for open-space uses; (2) acquire, improve and restore areas, sites and structures of historic or architectural value; and (3) beautify and improve open space and other public urban land in accordance with programs to encourage and coordinate local public and private efforts toward this end.[255]

Through Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, Congress has attempted to coordinate the several programs of federal aid which often conflict in metropolitan areas. The act provides that all applications made after June 30, 1967, for federal loans or grants to assist in carrying out open space land projects or for the planning or construction of hospitals, airports, libraries, water supplies and distribution systems, sewage facilities and waste treatment works, highways, transportation facilities, water development and land conservation projects, shall be submitted for review to an area-wide agency designated to perform regional planning for the metropolitan area involved. The recommendations of the areawide planning agency are then attached to the proposal before it is submitted to the appropriate federal agency for consideration. The recommendations of the areawide planning agency are not conclusive, but are to be used by the federal agencies to assist in determining whether the application is in accordance with the provisions of its own enabling legislation.

Presidential concern for preservation of natural and scenic resources is shown by numerous executive orders and proclamations.[256]

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255. 12 U.S.C.A. 1500 cf.

256. These executive orders include:
Executive Order No. 11278, 1966 U.S. Code, Cong. & Admin. News 4628, created the President's Council on Recreation and Natural Beauty and the Citizens Advisory Committee on Recreation and Natural Beauty.
Executive Order No. 11278, 1966 U.S. Code, Cong. & Admin. News 4656, empowered the Secretary of Housing and Urban Development to Coordinate federal activities affecting housing and urban development.
Executive Order No. 11359A, 1967 U.S. Code, Cong. & Admin. News 3497, added the Secretary of Transportation as a member of the President's Council on Recreation and Natural Beauty.
Executive Order No. 11200, 1965 U.S. Code, Cong. & Admin. News 4364, established recreation user's fees pursuant to the Land and Water Conservation Fund Act of 1965.
Executive Order No. 11237, 1965 U.S. Code, Cong. & Admin. News 4407, prescribed regulations for coordinating planning and the acquisition of land under the outdoor recreation program of the Department of the Interior and the open space program of the Housing and Home Finance Agency.

The Proclamations include:
Proclamation No. 3759, 1967 U.S. Code, Cong. & Admin. News 3229, proclaimed the year 1967 as "Youth for Natural Beauty and Conservation Year."
Proclamation No. 3804, 1967 U.S. Code, Cong. & Admin. News 3281, Proclaimed the week beginning September 24, 1967, National Highway Week 1967. In his proclamation the President said:
. . . we must always remember that highways are for the whole society's convenience and enjoyment. We must take pains to assure that highway development proceeds with a due respect for the needs of all our people--that it become neither an end in itself, nor an isolated phenomenon, related to the orderly use of land.

By these major water and land resource programs the federal government seems to be seeking to bypass local municipal governments which control resource decisions. The federal approach is to withhold funds unless a state or regional approach is taken in the field of resource management. The funds are made available if local planning meets defined federal criteria. Thus, the federal government seems to be seeking through financial incentives to force the state's to bypass their existing governmental units.

Investigations and improvements of rivers and other waterways for flood control and allied purposes and investigations and improvements of watersheds and tributaries for flood protection and allied purposes are prosecuted by the Department of the Army and the Department of Agriculture. In the preparation of flood-control projects, many laws concerning navigation improvements are expressly made applicable. Similarly, authorizations of surveys, preparation of reports thereon, cooperation with states and other agencies, and review by the Board of Engineers for Rivers and Harbors, all substantially follow the pattern applicable to navigation improvements. Projects may be undertaken only when expressly authorized by Congress, and a number of laws have been enacted in the nature of continuing authorizations for specified types of work, many allowing varying degrees of discretion in the use of funds. Excepting dam and reservoir projects, law generally applicable to authorizations for flood-control work requires that states or other local interests provide the necessary lands and maintain local works. With few exceptions, laws concerning funds and concerning prosecution and operation of projects, including multiple uses, are substantially like those governing navigation improvements.

As an incident of expressly granted powers, the United States has certain constitutional authority to control nonfederal development of water power, or to develop such power itself. Thus, on streams subject to its jurisdiction under the Commerce Clause, Congress may grant or deny the privilege of nonfederal development. It may direct federal development of power as a part of commerce improvement or regulation in legislating for navigation and flood control.

Federal Statutes provide for the establishment of water-quality standards by the States or by the Secretary of the Interior and for administrative and judicial enforcement against discharges that reduce the quality of

the affected interstate waters below these standards. Water quality standards are established for and made applicable to the entire stretch of the interstate waters within a state. Any matter into such tributaries which reaches interstate waters and reduces the quality of interstate streams below the established water-quality standards is subject to abatement under federal laws. The Secretary of the Interior, upon request of any state or interstate water-pollution control agency, to conduct investigations, research, and surveys on any specific water-pollution problem confronting the state, interstate agency, community, municipality, or industrial plant, with a review to recommending a solution.

Laws and court decisions employ the commerce power for controlling multiple-purpose development. The Supreme Court has stated that there is no constitutional necessity for viewing each reservoir project in isolation from a comprehensive plan covering the entire basin of a particular river. In truth the authority of the United States is the regulation of commerce on its waters. That authority is as broad as the needs of commerce. Navigable waters are subject to national planning and control in the broad regulation of commerce granted the federal government.[257] It is for Congress alone to decide whether a particular project, by itself or as part of a more comprehensive scheme, will have such a beneficial effect on the arteries of interstate commerce as to warrant it. That determination is legislative in character.[258]

The inclusion of forest lands within a state of the United States does not take from Congress the power to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them, even though this may involve the exercise in some measure of what commonly is known as the police power.

The interdependence of land and water has been recognized in a number of statutes concerning use of lands. These are aimed at water and land as inseparable resources, or are adaptable to serving both. Congress has provided for a federal forest program on a national basis. Statutes recognizing the interrelations of land and water resources appear in legislation concerning national parks, Indian lands and federal grazing lands, and the national soil-conservation programs.

Comprehensive development, as applied to water resources and related land uses, may be defined as basin-wide development for optimum beneficial uses of a river system and its watershed. The natural unity between a river system and its watershed has been accorded varying and increasing recognition in legislation dating back to the latter part of the 19th century.

Since 1917, all flood-control examinations and survey must include a

257. United States v. Appalachian Electric Power Co., 311 U.S. 377.

258. Oklahoma v. Atkinson, 313 U.S. 508, 527 (1941).

comprehensive study of the watershed, and ascertain the extent and character of the area to be affected by the proposed improvement, the probable effect upon navigation, the possible development and utilization of water power, and such other uses as may be properly related to or coordinated with the project. Also in 1917, legislation was passed creating a Waterways Commission and directing it to prepare a comprehensive plan or plans for the development of waterways and the water resources of the United States for the purposes of navigation and for every useful purpose. Largely because of American participation in World War I, however, the commissioners were never appointed, and the legislation was repealed in 1920 by the Federal Power Act. Under this latter act, the Federal Power Commission has broad authority to make investigations and collect data concerning the utilization of the water resources in any region to be developed. Moreover, a condition of a license for nonfederal power development requires that the project adopted be such as will be best adapted to a comprehensive plan for improving or developing the waterway for navigation, power development, and other beneficial uses.

In 1927, the Army Engineers were authorized to formulate general plans for the most effective improvement of a large number of specified streams for the purpose of navigation and the prosecution of such improvement in combination with the most efficient development of potential water power, the control of floods and the needs of irrigation.

The Depression focused attention on a new aspect of river-basin development. Projects were undertaken as a means of putting men to work, as well as to conserve and develop water resources. Increased emphasis was placed upon the public utilization of the completed projects for the direct benefit of the greatest number of people.

Responsibility for carrying out particular aspects of river-basin development has been assigned to separate agencies without a requirement for integration of efforts under a comprehensive plan. But as the development of larger river-improvement projects was made possible by advances in engineering methods, as populations in river basins increased, as industry explanded, and as our economy grew more complex, increasing legislative recognition was given to the multiple-purpose utilization of projects. Steps were also taken to allocate primary responsibility for each of the functions served by any project to the agency traditionally responsible for that function, irrespective of which was the constructing agency. Congress also declared its policy to facilitate the consideration of projects on a basis of comprehensive and coordinated development. Generally, however, the partial implementations of this policy have been in the directions indicated above rather than complete integration of efforts for comprehensive development. Within statutory limitations, further steps toward comprehensive development have been effected through executive and administrative action directed toward coordination of efforts. Comprehensive development necessarily affects both federal and state activities. Congress has repeatedly declared its policy to recognize the rights and interests of the states in the development of water resources.

Federal law affecting the development, utilization, and conservation of water resources, including related uses of land developed in response to expressed needs arising from time to time, as to one and then another of the purposes for which water may be used or controlled: navigation,

flood control, irrigation, power, and other public purposes. Nor did this development overlook water's relationship to uses of land. For the most part, each of these needs has received separate legislative treatment as it has arisen, and separate administrative machinery for the several needs has confirmed and extended this approach. The process has continued without substantially altering the underlying bodies of separate law which are still largely articulated with the principal water-resource purposes.

CONFLICTS OF FEDERAL-STATE JURISDICTION

Viewed as a rival, the federal government is indeed formidable. If it chooses to act in the field of water development it can call upon a number of powers, varied to suit the necessities of its purposes, and its laws and activities may override any contrary state or local laws and interests, or subordinate them to the federal purpose. The state does not ordinarily see the federal government as a rival in water development. Few federal projects are locally resisted as invasions of states' rights and are often eagerly sought, by local people and governments. Congress has frequently declared certain rivers, or portions of them, to be non-navigable, thus freeing them for state control, that may take the form of destruction of whatever navigable capabilities exist in fact.

Looking at "jurisdiction" in the sense of "power to act," the federal government seems to have almost unlimited jurisdiction over water; whenever a federal interest of any sort arises, it has the power to deal with the water to further that interest. This is not limited to any concept of "territorial jurisdiction"; it is not possible to divide up the country into areas and give the states power in some and the federal government power in others. Although navigation is the most commonly used federal power, it is not possible to identify the navigable waters and the head of navigation on each and say that the federal government has jurisdiction of a particular stream, but just to a particular point. The power of the states to act in the absence of federal regulation and development, and the facts of the hydrologic cycle, the physical interdependence of water, will not permit this. Furthermore, federal navigational interests extend beyond the head of navigation, and federal proprietary and war powers may affect even ground waters. Nor is it possible to identify legal areas and say that a certain type of legislation is for the state, another is for the United States. State property rights may affect navigation, federal navigation regulation may destroy property rights. Nevertheless there is some division between things local and things national, and the states have much room left to them for state action based on what is deemed best for the state, independently of any national considerations. The federal government may be omnipotent, but it is not omnipresent. Since the federal jurisdiction is a conditional one, it may be ignored when the federal interest is not present or is not being exercised.

The procedures of the federal agencies that have water resource development programs are designed to give the states a voice in those programs. At least the states have the chance to object that a state policy is violated, and to demonstrate its values. If private rights are to be destroyed, if public rights to fishing and recreation will be lost, these procedures provide an assurance that the destroyed values will be weighed

against the federal advantages and counted as costs of the project. But local quirks and parochial laws will not be allowed to block federal projects where the federal agency's views are that these have little value or that their values can be otherwise attained. And an occasional imbalance between local costs and local benefits will not be allowed to stand in the way of large regional or national benefits. Still, considering the magnitude of the federal water program in the last half century it is surprising how few conflicts have arisen.

Some have seen the federal agencies armed with federal supremacy as the agents of the restriction of states' rights and the imposition of bureaucratic control over unwilling people. Others view the federal program as the only logical solution to national problems of security and economic welfare affecting all the people of all the United States, transcending local opposition to general welfare measures and overruling sectional rivalries. It has been argued that the states should have a stronger voice in the federal program, perhaps a vote on a regional agency. There seems to be a strong possibility that the insecurity of private water rights resulting from the existence of the navigation servitude and exercise of proprietary powers may be removed. Although the "Barret Bill" that would have subjected all federal water activity to state law had little chance of passage, milder legislation that will require payment for vested rights destroyed by the exercise of these powers is not resisted by the agencies and the administration.

As new problems arise from stepped-up state and federal activities in water projects, new methods of compromise and consultation can be expected to result. The dominance of the federal government is due only in part to its constitutional powers; most of it is due to the dominant position of the United States as financier and planner. It has been suggested that if the states wish a stronger voice in the national water development area, they will get it in proportion to the amount they increase their financial contributions, and as fast as they devise responsible state agencies capable of policy formulation and project management, free from undue pressures from local special interests.

Conflicts between the states and the federal government over the control and use of water are growing sharper and more serious. The problem is a national one. Examples of the conflicts of federal-state jurisdiction in the field of water abound. No clear line had been drawn between all areas of federal and state authority. The broadening pattern of conflicts is conclusive proof of the urgent need for clear-cut, definitive action on the part of Congress to work out with the states a redefining of federal-state powers and responsibilities for control, use, and development of water resources. The federal government should not hamstring the states in the states' efforts to develop their water resources to meet the needs of their people. Neither should the states hamstring the federal government in its efforts to fulfill its functions within the Constitution. Sweeping claims by the federal government will retard state plans and projects for development of their own water resources to meet local needs and conditions for their own citizens in accordance with their own local law and custom.

Congressional power to deal with the nation's water resources is no longer an issue. Further debate will revolve around the extent to which the federal government should exercise its powers. The logical and prac-

tical limits of federal power are not necessarily co-extensive. Congress should curtail the extent to which the federal government exercises its powers and should improve federal-state-local relations by giving the states and localities a stronger voice in federal programs. Debate over the future of the nation's water resources ought to be conducted on the basis of facts, rather than from a position of constitutional extremism, as has too often been the case, especially among the proponents of this kind of legislation. Thus, if there is a vice to the reservation theory, for instance, its cure lies not in subjecting the states to federal control either in the development of or in the allocation of water. Rather, it lies in a thoroughgoing review of states programs together with an inventory of projected future uses, made known to the federal government so that federal planning can take account of state demands.

It is time for all concerned to admit that there is a need for a national water-resources policy. Inter alia, that means that the federal government has to come to grips with criticism directed against its diversification of programs and goals and the warfare among some of its agencies. But it also means that a time may arrive when we will have to depend on extensive federal powers to re-allocate water resources among the states.

The states should assume their share of the burden. Most importantly that means, at this time in history, a reappraisal of the essentially laissez-faire philosophy underlying water allocation under state laws. What is needed, instead, are state master plans coordinating water use, land use, transportation, employment, and the other needs of an increasingly urban society. Obviously, to the extent that such state master-planning is based on assumptions of dependable supply, it becomes important that the federal government make its future demands known. That, however, is quite different from the proposition embodied in most of the so-called "clarifying" legislation which to a greater or lesser extent, simply subjects the state to the federal government.

CONCLUSIONS AND RECOMMENDATIONS

There has grown a complex arrangement for the administration of water resource activities in Minnesota (see Walton, et al, 1968). A considerable part of the administrative system remains in private and local government hands; but a larger (and increasing) share falls to state and federal governments. The trend has been toward more and more public involvement in water-resource activities through a larger and larger number of administrative agencies. The administrative system has become so large and complicated that few if any governmental officials and citizens have a clear understanding of the entire system. There are many responsible people who feel that the proper development and management of water resources is being hindered by present institutional arrangements.

Minnesota has 30 major state and federal governmental units dealing with water resource problems. There are over 50 other organizations concerned with water resources in the state. Cooperative effort and communication between these organizations could stand much improvement. Water resource activities undertaken by agencies which are not now properly unified nor integrated do not provide for the efficient development and management of water resource. An uncoordinated, piece-meal, and compartmentalized approach has been largely followed in the planning, development, and management of natural resources.

For each of the demands for governmental action in the water-resource field in Minnesota a state program can be identified (Anon. 1968). A reciprocal relationship has been developed between those who sought the service in the first instance and the public agency established to provide the service. The pattern at the state level is duplicated, in essence, at the federal level and responsibilities for the various programs at both levels are fragmented among a large number of agencies.

The institutions participating in water resources activities have various goals and look at the use and misuse of water from a variety of viewpoints. Each institution has different resources at hand to be used in pursuit of its particular goals. The institutions work with different sectors of the public and have varying amounts of influence; some have a small clientele, others are more broadly based.

In Minnesota, the planning, development, and management of water and related land resources in the past has been largely the responsibility of local units of government such as counties, cities and villages. The confusion and often contrary decisions that result from this provincial approach are reflected in the general legislation applicable to local units of government and in the special legislation adopted at each legislative session to deal with specific local problems.

There are several examples of the nullifying effect of existing water laws. Statements concerning mandatory coordination and cooperation of state, local, and federal agencies and other organizations such as commissions and compacts contained in the codified and uncodified state water laws, for the most part, are weak expressions describing piece-meal cooperation, often on a voluntary basis, between agencies and organizations.

Responsibility for comprehensive coordination and cooperation within the water and related land resources development and management field is not centralized. There is not a single entity charged specifically with the responsibility of coordinating federal, state, interstate, local, and non-governmental activities pertaining to water and related land resources planning, development and management.

The most ambitious attempt by the state legislature to require coordination has been the establishment of the Water Resources Board which was created with the declared power of resolving contradictions in the existing programs when applied in a specific proceeding and with the objective of establishing a forum where conflicting aspects of the public interest can be presented and considered, the inconsistencies resolved, and a controlling state water policy determined. The Water Resources Board has an excellent assignment, but there is no requirement imposed upon agencies to present problems to the Board. Thus, an excellent legislative objective is set forth in the state law, but by reason of the lack of any requirement to submit questions to the Board, there have been few if any state-wide water policies enunciated by the Water Resources Board since its creation in 1955.

During most recent legislative sessions there have been hearings concerning reorganization of state agencies in the field of natural resources. The last two Governors have appointed committees to study Minnesota's government and to make recommendations in part pertaining to reorganization of state agencies. During the 1967 session of the legislature, the Department of Conservation was reorganized and a Pollution Control Agency was created. Reorganization study committees have never been provided with a comprehensive document on the water-resource institutional environment and they must make recommendations without adequate information. A comprehensive compilation of information pertaining to water resources administration in Minnesota does not exist. Few have a clear understanding of the complicated influence and interactions of water-resources institutions.

For these reasons, the Water Resources Research Center plans to fund a 3-year research project, "Water Resources Administration in Minnesota," starting July 1, 1969. The results of the research will be made available during the 1971 session of the legislature to provide guidelines for policy decisions. The objectives of the proposed research project are (1) to inventory, appraise and evaluate water resource legal institutions, administrative structures, and public administrative processes and techniques in Minnesota and (2) to make recommendations which will be more conducive to achieving coordinated water resource programs. The history of water resource administration will be traced. The application of water laws, resources and methods used in working for institutional goals, the nature of each institution's involvement in water resources activities, coordination between units of government, and administrative costs will be examined. The research project will include a study of adaptability of institutional arrangements to emerging federal-state and federal-local-state efforts; utilization of community efforts; rigidities in administrative arrangements; institutional factors which have influenced water resource development and management; and interstate compacts, international commissions, federal-state planning organizations, and intrastate water resource districts. Significant issues which have been publicly debated will be examined. Legal and administrative devices used in some other states will be compared with those in use in Minnesota. The institutional effect on overall water policy

in Minnesota will be analyzed and the various constraints and problems that affect the use of water resources will be identified. Recommendations will be made for improving the water-resources institutional environment.

On May 11, 1858, Minnesota became a state, admitted to the union on the same basis and with the same rights as the original colonies. On this date, property rights and especially water rights became established. As the legal matters came before the Supreme Court after statehood, it became apparent that Minn. was committed to following the common law or riparian doctrine of England, modified somewhat to take into consideration the differences between this country and England. When water right cases continued to come before the courts, the strict application of the riparian doctrine, which permits each land owner bordering a body of water to have the flow of water past his property unimpaired in quality or undiminished in quantity, was gradually modified to make the ground of decision reasonable and beneficial use rather than trying to preserve the status quo of nature. In 1937 the Minnesota legislature passed a statute making it illegal to use any waters of the state, with a few exceptions, without first obtaining written permission from the Commissioner of Conservation.

A leading question in recent years has been whether the existing modified riparian law of water rights, with its principles of reasonable and beneficial use and elements of the appropriation system, should be radically altered or even set aside in order to deal more effectively with present and potential conflicts between water uses. A second question has been the relative merits of the riparian and appropriation systems of law in relation to the developing water-use situation in Minnesota.

There is no evidence indicating that Minnesota's water laws have been a serious deterrent to the development of the state. Furthermore, available information concerning the future (1969-2020) balance between water demands and needs and the availability of water and related land resources suggest that the efficient allocation of water resources between competitive users will not become crucial provided some changes are made in the present water permit system.

From a hydrologic viewpoint, Minnesota's system of water law seems to fit existing water resources conditions. The state's system of water law embodies features of both the riparian doctrine prevailing in the humid eastern states and the appropriation doctrine prevailing in the semi-arid and arid western states. Minnesota has both areas of natural water surplus and areas of natural water deficiency, and the water resources conditions prevailing in the state have both semi-arid and humid characteristics.

The Department of Conservation, in administering the water permit system, as it concerns appropriation and use of surface waters, has adopted the position that permits for appropriation of surface waters from public waters will be issued only to owners of riparian lands. The amount of surface water which may be allowed to be appropriated and used under the permit system is based entirely on reasonable and beneficial use with considerations as to the consumptive water requirements and the return of waste waters from a given operation to the same watercourse. Water appropriated or used under this administrative policy is generally restricted to use anywhere within the watershed of the lake or stream from which water is taken. In some instances, permits have allowed diversions of water from minor sub-

watersheds but the waste waters must be returned to the same major watershed from which they were appropriated.

The appropriation and use of surface waters for irrigation purposes, under present Conservation Department administrative practice, is restricted to a maximum annual appropriation limit of six inches per acre per year based on acreage contained only in riparian forty-acre tracts or government lots which directly abut the surface water source. The allowable surface water appropriated may be used on any lands contiguous to the riparian forty-acre tracts or government lots as long as these lands are owned by the permittee and are within the same watershed as the source of the appropriated water. This policy of limiting the appropriation and use of surface water for irrigation to a maximum allowable use of six inches per acre per year is arbitrary and provision must be made to alter this policy based on a priority of use system and an analysis of the hydrologic conditions of the lake or stream from which water will be appropriated.

The legislature has, from time to time, enacted special legislation pertaining to appropriation and use of surface waters of the state. A typical example is the law enacted in 1965 which authorized the City of Cloquet to establish, construct, operate and maintain all or any part or parts of a water supply system from Lake Superior wholly within the state or partly within and without the state if it deems to be in the public interest to do so. This law allows the City of Cloquet to appropriate and use the water of Lake Superior by diverting the water from the lake into the St. Louis River Watershed, a tributary to Lake Superior, without the need for a permit from the Commissioner of Conservation.

As the demands for water increase in the future, the need to use water by diversions and transfers from other watersheds will be felt in several areas of the state. Water should be capable of being transferred by purchase and other voluntary means. The water permit system should allow for controlled transfers and diversions of water from one watershed to another.

Permits for appropriation of ground and surface water issued by the Commissioner of Conservation may be terminated by the Commissioner, without notice, at any time he deems it necessary for the conservation of water resources of the state, or in the interest of public health and welfare, or for violation of any of the provisions of the permit. In addition, the Commissioner may prescribe any other conditions within the permit. Although the permits for appropriation of water are generally issued without any time limit, the apparent uncertainty of water rights resulting from these provisions of the law is of concern to water users in Minnesota and could impose constraints on effluent water resources development and management. Every permit issued is irrevocable for the term thereof and for any extension of such term with certain exceptions. The permit may be modified or canceled by the Commissioner at the request or with the consent of the permittee or may be modified or canceled by the Commissioner in case of any breach of the terms or conditions thereof or subject to appeal by the permittee if the Commissioner finds such modification or cancellation necessary to protect the public health or safety, or to protect the public interest. In addition, the Commissioner may suspend operations under a permit if he finds it necessary in an emergency to protect the public health or safety or to protect the public interest. It would seem logical that the rights to use water afforded the mining industry with appropriate modifications

should be extended to all water users thereby reducing the apparent uncertainty of water rights.

More certain statutory rights to use water have been afforded Minnesota's mining industry. In the case of a permit for the drainage, diversion, control, or use of waters when necessary for the mining of iron are, taconite, copper, copper-nickel or nickel, the Department of Conservation grants permits for such term as the Department finds necessary for the completion of the proposed mining operations, and the Department may allow and prescribe in the permit such time as the Department deems reasonable for the commencement or completion of any operations or construction under the permit or the exercise of the rights granted thereby. The original term of the permit or the time allowed for the performance of any condition thereof may be extended by the Department for good cause shown upon application of the permittee.

The Dept. of Conservation has not developed and published rules, regulations and criteria for evaluating water permit applications in accordance with the Administrative Procedure Code of the State although it has had the opportunity to do so since 1945 when the first code relating to promulgation of rules and regulations was established. The failure of the Department to follow these procedures may be due in part to the lack of sufficient Department personnel and funds necessary for promulgating the rules and regulations. Many restrictions are imposed by administrative action although one cannot find the printed rules and regulations which set forth the criterial for the permit restriction. Restrictions include the prohibition against assignment of the water right, limitations on what constitutes riparian lands, establishment of priorities of use lands, prohibitions on the transportation of appropriated water, and limitations on the amount appropriated for irrigation purposes.

Consideration should be given to legislative enactments which would require state and local agencies, charged with developing a water policy through the issuance or denial of resource use permits, to develop and publish within a specified time rules, regulations, and criteria that form the basis of evaluating and processing a permit application. The general public and private interests should be given the opportunity to react to the merit of the rules, regulations, and criteria before they are adopted in accordance with the Administrative Procedure Code of the state. Also, state and local agencies should be required to submit their proposed and existing rules, regulations, and criteria to some state agency for overall review and comment concerning such matters as conflicting aspects of public interest and relation to the whole water policy of the state. The objective would be to ascertain and resolve inconsistencies in rules, regulations, and criteria from a comprehensive viewpoint and enhance coordination of agencies.

To operate efficiently the water permit system should be clearly defined and have legal certainty. The water permit system must be flexible and capable of coping with use priorities, the physical uncertainty of water resources which creates problems of commonality or spillover effects of use, federal action in the field of water resources, non-use of water resources, condemnation procedures, waste of water, transfer of water resources, flexibility toward new uses, and diversions of water resources from one watershed to another.

Waters in Minnesota have been classified, largely in connection with court decisions, as follows: diffused surface waters, natural watercourses,

natural bodies of water, artificial surface water courses, underground waters in definite streams, underground percolating waters, and artesian waters. Another legal classification of waters, developed in connection with the water permit system, is as follows: public waters, including all of the above mentioned classes except diffused surface waters, and private waters, diffused surface waters. Another legal classification developed in connection with the water permit system is as follows: waters of the state - including surface and underground waters, but not specifically defined; public waters - those waters in streams or lakes within the state which are capable of substantial beneficial public use - excluding groundwaters which are considered simply as any waters of the state. There is no specific statutory reference as to which surface waters of the state may be considered to be private waters but it appears that those waters which are not capable of substantial beneficial public use, including diffused waters, are considered as private waters and not subject to control by the state.

In contrast, the hydrologist classifies water as atmospheric vapor, soil moisture, groundwater, and surface water and recognizes that these are merely phases in the continuing circulation of water in the hydrologic cycle. The interrelation and interdependance of the several phases of the hydrologic cycle are demonstrated in studies of the processes of precipitation, runoff, infiltration, deep percolation, seepage, and evapotranspiration, by which water moves from one phase to another. In the hydrologic cycle, water evaporates from the oceans, other bodies of water, and the land and becomes a part of the atmosphere. The evaporated moisture is lifted and carried in the atmosphere until it precipitates to the earth, either on land or on water bodies. The precipitated water may be intercepted or transpired by plants, may run over the ground surface and into streams to oceans, or may infiltrate into the ground. Much of the intercepted and transpired water and some of the surface runoff returns to the air through evaporation. The infiltrated water is temporarily stored as soil moisture at shallow depths or as groundwater at greater depths which may later flow out of rocks as springs, or seep into streams, or evaporate or transpire into the atmosphere to complete the cycle.

The present legal classifications of waters, necessitated in part by the meagerness of knowledge concerning the interrelationship of waters in bygone days, is hydrologically unsound and in need of revision in light of present knowledge. Modification of obsolete classifications is a difficult task because of the predilection of the legal profession for precedent and tradition. There is need for courts to:

> Apply the same rule of law to all groundwater, rather than attempt to distinguish between supposedly different kinds of groundwater which do not exist in nature; and further, apply the same rule of law to surface water, recognizing the widespread interconnection between ground and surface water and the necessity of treating the common supply as a whole where such interconnection exists.

Court decisions are generally based upon all the hydrologic evidence that could be marshalled by the disputants, and they are likely to have a logical basis in the hydrology of the specific area, even though that hydrology is not fully understood. The decisions commonly reflect also the local attitudes toward water, and these attitudes vary tremendously. When a decision is accepted as a precedent in subsequent suits, especially in jurisdiction far removed, it should be recognized that the leading decision is necessarily provincial, not only because of the specific hydrologic conditions but also because of the water philosophy at the place and time that the decision is rendered. This provincialism may not be fully recognized, particularly if the fundamental hydrology is not adequately understood.

The interconnection between waters in a watercourse and underground waters has been recognized in the public-private classification of waters. The law regarding the interconnection of other water sources, diffused surface waters and watercourses, for example, is not so clear. One major problem is the common view that diffused surface waters can be diverted and used without liability and that no right can be acquired to the use of diffused surface waters. Consideration should be given to extending the water permit system to cover at least certain aspects of diffused surface waters.

The water resources policy of the state consists not only of formal declarations and statements enunciated by the legislature, but also consists of the rules and regulations adopted by state and local agencies consistent with law, and the actions of state and local agencies. The legislative formal declarations and statements are broad and general and often conflicting in nature when considered from a comprehensive viewpoint. Considerable latitude is given to state agencies to formulate policy through the adoption of detailed rules and regulations. Little has been done to eliminate conflicts between rules and regulations formulated by special interest state agencies nor to weld together legislative formal declarations and statements and state agency detailed rules and regulations into a unified state policy for water and related land resources development and management. From the standpoint of other states and the federal government, Minnesota's policy is undefined on a detailed comprehensive basis.

There is considerable evidence that the state's annual flood losses are increasing. Part of the increase can be accounted for by rising price levels, improvements in methods of appraising and reporting flood losses, and changes in discharge-frequency and discharge-stage relations brought about by changes in land use and other factors. However, it is now recognized that a major factor contributing to the increase in flood losses is the added encroachment in our flood plains by urban and industrial developments associated with the current population growth and the trend from rural to urban areas. With the identification of the latter factor, considerable thought has gone into the development of a practical approach to reducing the increase in flood losses.

It is in the public interest and represents prudent planning to control the development of flood plain areas of the state by providing statewide guidelines to guide but not unduly restrict development within the flood plain areas compatible with the flood carrying characteristics of the streams. If the expansion into flood plain areas can be regulated through various flood plain management measures, including structural works when justified and necessary, the increasing damages from floods can be greatly reduced. Land use controls, one of the major elements of flood plain management, do not attempt to reduce or eliminate flooding but is designed to guide flood plain development in such a manner as to lessen

the damaging effects of floods. Flood plain regulations imply the adoption and use by local governmental agencies of legal tools with which to control the extent and type of development which will be permitted in river valleys. Before flood plain management regulations and controls are established, it is necessary to know which areas are subject to flooding, the frequency with which floods may occur, the flood flow capacity of waterways, maximum stages accompanying flood flows, the degree of existing flood plain development and various other hydrologic factors.

Some legislation has been passed to stimulate the orderly and controlled development of the flood plains of this state, to provide coordinated state and federal assistance and direction in the administration of sound flood plain management programs by local units of government, and to insure that property in this state is eligible for the benefits of the Flood Insurance Program established by the Congress in National Flood Insurance Act 1968, 42 U.S.C. 4001-4027.

Private rights to the use of the water in streams are generally recognized as the creatures of state law, and each state is free to choose the form that law shall take. A state's law of private water rights cannot be a self-contained unit, sealed off at the state lines, at which point the law of the adjoining state takes over. Two factors prevent this. First, water itself crosses the state lines or forms state boundaries and what is done in one state will have repercussions on its neighbor. Secondly, the federated nature of American government will not permit such isolation, since the states are only quasi-sovereign. The Constitution gives the national government interests in water and powers to implement them, powers in some respects superior to those of the states. The powers of sovereignty are divided between the government of the Union, and those of the states. They are each sovereign, with respect to the objects committed to it, and neither sovereign, with respect to the objects committed to the other.

Viewed as a rival, the federal government is indeed formidable. If it chooses to act in the field of water development it can call upon a number of powers, varied to suit the necessities of its purposes, and its laws and activities may override any contrary state or local laws and interests, or subordinate them to the federal purpose. Although navigation is the most commonly used federal power, it is not possible to identify the navigable waters and the head of navigation on each and say that the federal government has jurisdiction of a particular stream, but just to a particular point. The power of the states to act in the absence of federal regulation and development, and the facts of the hydrologic cycle, the physical interdependance of water, will not permit this. Furthermore, federal navigational interests extend beyond the head of navigation, and federal proprietary and war powers may affect even ground waters. Nor is it possible to identify legal areas and say that a certain type of legislation is for the state, another is for the United States. State property rights may affect navigation, federal navigation regulation may destroy property rights. Nevertheless there is some division between things local and things national, and the states have much room left to them for state action based on what is deemed best for the state, independently of any national considerations. The federal government may be omnipotent, but it is not omnipresent.

In Minnesota the test used to determine the waters in which common-law public rights inhere is that of navigability in fact. Thus, it appears that

in the state the test of navigability appears to means actual use or susceptibility to use of a body of water for navigation and commercial purposes when Minnesota became a state in 1858. This Minnesota test could result, if tested in court, in many lakes and streams being barred to the public even though they are entirely suitable for recreational boating and other water sports. Public rights in water in the state are described in property terms. The courts call the states owners of the beds in trust for the public, or of an easement in favor of the public. The Minnesota Courts, using this restrictive interpretation of the federal test of navigability to determine ownership of beds of watercourses, has failed to recognize the necessity to respond to current public sccial needs for recreation and may jeopardize the public's use of many surface waters of the state for recreational and other purposes.

Congressional power to deal with the nation's water resources is no longer an issue. Further debate will revolve around the extent to which the federal government should exercise its powers. The logical and practical limits of federal power are not necessarily co-extensive. Congress should curtail the extent to which the federal government exercises its powers and should improve federal-state-local relations by giving the states and localities a stronger voice in federal programs. Debate over the future of the nation's water resources ought to be conducted on the basis of facts, rather than from a position of constitutional extremism, as has too often been the case, especially among the proponents of this kind of legislation. Thus, if there is a vice to the reservation theory, for instance, its cure lies not in subjecting the states to federal control either in the development of or in the allocation of water. Rather, it lies in a thoroughgoing review of states programs together with an inventory of projected future uses, made known to the federal government so that federal planning can take account of state demands.

As new problems arise from stepped-up state and federal activities in water projects, new methods of compromise and consultation can be expected to result. The dominance of the federal government is due only in part to its constitutional powers; most of it is due to the dominant position of the United States as financier and planner. It is suggested that if Minnesota wishes a stronger voice in the national water development area, it will get it in proportion to the amount it increases its financial contributions, and as fast as it devises responsible state agencies capable of comprehensive policy formulation and project planning, development and management, free from undue pressures from local special interests.

APPENDIX A
SESSION LAWS – 1969 LEGISLATURE

During the 1969 Session of the Legislature, several Acts bearing on water and related land resources were passed. The contents of these Acts are given below. It is not intended, nor should they be used, as the official reference for the laws of the state. Publications, compiled by the Revisor of Statutes of the State of Minnesota in accordance with Minnesota Statutes, Section 648.33, are considered prima facie evidence of the enactments of the State Legislature. The material given is not intended as an original official publication of the State Acts, but merely as a compilation of Acts, the originals of which should be examined prior to official citation.

CHAPTER 134--S.F. No. 51

An act authorizing the conveyance from the state of any minerals which may be in or upon certain lands in Lake of the Woods county.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The commissioner of conservation is hereby authorized to transfer and convey by quitclaim deed, in such form as the attorney general shall approve, in the name of the state of Minnesota to Paul Mabeus and Nellie G. Mabeus, without consideration, all of the rights of the state in and to any minerals which may be in or upon the lands lying and being in Lake of the Woods county, which lands were conveyed by said parties in a land exchange between said parties and the state of Minnesota, by warranty deed dated April 29, 1968, recorded in the office of the register of deeds of Lake of the Woods county on May 13, 1968, in Book 29 of deeds, page 600.

CHAPTER 272--H.F. No. 57

An act relating to Lake Minnetonka conservation district; reducing representation of municipalities; placing limit on money participation of various municipalities; authorizing certain procedures to assist the district in carrying out its powers; providing penalties; amending Laws 1967, Chapter 907, Section 2, Subdivision 2; Sections 3, 4, 5, and 10, and by adding sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Laws 1967, Chapter 907, Section 2, Subdivision 2, is amended to read:

Subd. 2. The lake conservation district shall be governed by a board composed of members elected by the governing bodies of the municipalities included in the district. Each municipality shall elect ~~at least~~ one member ~~and additional members as provided in this subdivision. The population of each municipality shall be divided by one tenth of the total population of the district. Fractions of one half or greater shall be raised to a whole number. Fractions smaller than one half shall be disregarded. Each municipality shall elect a number of additional members equal to the product of that calculation less one.~~ The term of office of each member shall be three years.

Sec. 2. Laws 1967, Chapter 907, Section 3, is amended to read:

Sec. 3. Subject to the provisions of Minnesota Statutes, Chapters 98, 105, 106, 110, 112 and 115 and the rules and regulations of the respective agencies and governing bodies vested with jurisdiction and authority thereunder, the lake conservation district shall have the following powers:

(a) To regulate the types of boats permitted to use the lake and set service fees;

(b) To regulate, maintain and police public beaches, public docks and other public facilities for access to the lake within the territory of the municipalities, provided that any municipality by ordinance duly adopted within one year thereafter and specifically referring to such action may supersede the same within such municipality;

(c) To limit by rule the use of the lake at various times and the use of various parts of the lake;

(d) To regulate the speed of boats on the lake and the conduct of other activities on the lake to secure the safety of the public and the most general public use;

(e) To contract with other law enforcement agencies to police the lake and its shore;

(f) To regulate the construction, installation and maintenance of permanent and temporary docks and moorings consistent with federal and state law;

(g) To regulate the construction and use of mechanical and chemical means of de-icing the lake and to regulate the mechanical and chemical means of removal of weeds and algae from the lake;

(h) To regulate the construction, configuration, size, location and maintenance of commercial marinas and their related facilities including parking areas and sanitary facilities. The regulation shall be consistent with the applicable municipal building codes and zoning ordinances where said marinas are situated;

(i) To contract with other governmental bodies to perform any of the functions of the district;

(j) To undertake research to determine the condition and development of the lake and the water entering it and to transmit their studies to the water pollution control commission and other interested authorities; and to develop a comprehensive program to eliminate pollution;

(k) To receive financial assistance from and join in projects or enter into contracts with federal and state agencies for the study and treatment of pollution problems and demonstration programs related to them;

~~(l) To construct and operate water control structures as approved by~~

~~the commissioner of conservation~~.

(1) To petition a board of managers of any watershed district in which the lake conservation district may be situated for improvements under Minnesota Statutes, Section 112.48; no bond shall be required of the lake conservation district.

Sec. 3. Laws 1967, Chapter 907, Section 4, is amended to read:

Sec. 4. The duties of the district may be executed by employees of the municipalities and the expenses of the district shall be borne by the municipalities. The portion of the expenses of the district borne by each municipality shall be in proportion to its assessed valuation; provided, no municipality shall bear more than 20 percent of the total expense, and such portion shall be not less than $200 per year.

Sec. 4. Laws 1967, Chapter 907, Section 5, is amended to read:

Sec. 5. The board of directors of the district shall, on or before July 1 each year, prepare a detailed budget of its needs for the next calendar year and certify the budget on that date to the governing body of each municipality in the district together with a statement of the proportion of the budget to be provided by each municipality. The governing body of each municipality in the district shall review the budget, and the directors, upon notice from any municipality shall hear objections to the budget and may, after the hearing, modify or amend the budget, and then give notice to the municipalities of modifications or amendments. It shall be the duty of the governing body or board of supervisors of each municipality in the district to provide the funds necessary to meet its proportion of the total cost to be borne by the municipalities as finally certified by the directors, the funds to be raised by any means within the authority of the municipalities and to pay the funds into the treasury of the district in amounts and at times the treasurer of the district may require. The municipalities may each levy a tax not to exceed ~~1/10th of a mill~~ one mill on the taxable property located therein, to provide said funds. Said levy shall be within all other limitations provided by law.

Sec. 5. Laws 1967, Chapter 907, Section 10, is amended to read:

Sec. 10. A district established pursuant to this act is a public corporation and a political subdivision of the state, it is also within the definition of Minnesota Statutes, Section 466.01, and is included in the provisions of Minnesota Statutes, Chapter 466.

Sec. 6. Laws 1967, Chapter 907, is amended by adding a section to read:

Sec. 13. Subdivision 1. The lake conservation district shall have the power to adopt rules and regulations to effectuate the purposes of its establishment and the powers granted to the district. Said rules and regulations shall have the effect of an ordinance when so declared by the board of directors of the district. All rules and regulations may be enforced by the district by injunction in addition to any other penalty hereinafter provided.

Subd. 2. Every rule and regulation shall be enacted by a majority vote of all the members of the board of directors. It shall be signed by the chairman and attested by the secretary thereof and published once in the official newspaper. Proof of publication shall be attached to and filed with the rule and regulation. Every rule and regulation shall be recorded in the rule and regulation book within 20 days after its publication. All rules and regulations shall be suitably entitled and if enacted with the force and effect of an ordinance, it shall so state and be provided therein. A violation of any such rule and regulation to enacted shall be a misdemeanor and punishable by a sentence of not more than 90 days plus costs or a fine of not more than $100 plus costs.

Sec. 7. Laws 1967, Chapter 907, is amended by adding a section to read:

Sec. 14. [PROSECUTIONS, VIOLATION OF RULES AND REGULATIONS.] Subdivision 1. [COMPLAINT.] All prosecutions for violation of rules and regulations shall be brought in the name of the lake conservation district upon complaint and warrant as in other criminal cases. If the accused be arrested without a warrant, a written complaint shall thereafter be made, to which he shall be required to plead, and a warrant shall issue thereon. The warrant and all other process in such cases shall be directed for service to any police officer, court officer, marshal, constable, or sheriff of any of the municipalities in the lake conservation district.

Subd. 2. [FORM AND CONTENTS OF COMPLAINT.] It shall be a sufficient pleading of the rules and regulations of the district to refer to them by section and number or chapter, or any other way which clearly reflects the rules and regulations which are the subject of the pleading. The rules and regulations shall have the effect of general laws within the district and need not be given in evidence upon the trial of any action. Judgment shall be given, if for the plaintiff, for the amount of fine, penalty, or forfeiture imposed, with costs; and the judgment shall direct that, in default of payment, the defendant be committed to a county jail for such time, not exceeding 90 days, as the court shall see fit. The commitment shall state the amount of judgment, the costs, and the period of commitment. Every person so committed shall be received by the keeper of the jail and kept, at the expense of the county, until lawfully discharged. The committing court may release the defendant at any time upon payment of the fine and costs.

Subd. 3. [APPEAL TO DISTRICT COURT.] Appeals may be taken to the district court in the same manner as from judgments of justices of the peace in civil actions; but if taken by the defendant, he shall give bond to the district, to be approved by the court, conditioned that, if the judgment be affirmed in whole or in part, he will pay the judgment, and all costs and damages awarded against him on the appeal. In case of affirmance, execution may issue against both defendant and his sureties. Upon perfection of the appeal, defendant shall be discharged from custody.

CHAPTER 301--S.F. No. 1040

An act relating to drainage ditches; taking lands out of the drainage system; amending Minnesota

Statutes 1967, Section 106.651.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1967, Section 106.651, is amended to read:

106.651 [DIVERSION OF DRAINAGE.] After the construction of any ditch system, if waters are diverted from any lands or properties assessed for benefits from such ditch system so that the drainage therefrom no longer utilizes or affects the drainage system, or by reason of the construction of any dam authorized by law in the ditch system so that any such lands or properties above the dam can no longer utilize the system or receive benefits therefrom, then the owner or owners of such lands or properties may petition the board or court for an order setting such lands or properties out of the drainage system. If the drainage system be entirely in one county, the petition shall be filed with the auditor for consideration and determination by the county board and, if the system be in two or more counties, the petition shall be filed with the clerk for consideration and determination by the court. Upon the filing of the petition, the auditor, or the clerk, with the approval of the court, shall fix a time and place for hearing thereon and shall give notice of the hearing by publication to all persons interested in the drainage system. Upon hearing, if it appears that the waters from lands and properties of petitioners have been diverted from the drainage system, or by reason of the construction of a dam above referred to the lands and properties can no longer utilize the system, and that such lands and properties are no longer benefited thereby and no longer utilize or affect the drainage system, and further, that setting such lands and properties off from the drainage system will not prejudice the owners of lands and properties remaining in the system, the board or court shall so find and shall by order direct that the lands and properties of petitioners be set off from the drainage system. No such order shall have effect to release such lands and properties from any lien theretofore filed on account of the drainage system, nor shall it release such lands and properties from any assessment or lien thereafter filed for expenses incurred on account of such ditch prior to the date of the order. The lands and properties so set off shall be deemed no longer affected by the ditch as to any proceeding thereafter had for the repair or improvement thereof, and no lien or assessment shall thereafter be made against such lands and properties for repairs or improvements made subsequent to the date of the order.

CHAPTER 350--S.F. No. 1245

An act repealing certain laws relating to the Lac Qui Parle water control project; repealing Minnesota Statutes 1967, Sections 105.60; 105.61; and 105.62.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1967, Sections 105.60, 105.61, and 105.62 are repealed.

CHAPTER 373--S.F. No. 887

An act relating to actions involving tax titles and limiting the time in which a claim adverse to the state or its successor in interest respecting the land may be asserted; creating a tax forfeited land assurance account in the state treasury; appropriating money; amending Minnesota Statutes 1967, Section 284.28.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1967, Section 284.28, is amended to read:

284.28 [TAX FORFEITED LANDS; LIMITATIONS ON ADVERSE CLAIMS, TAX FORFEITED LAND ASSURANCE ACCOUNT.] Subdivision 1.

(a) Notwithstanding the provisions of any other law to the contrary, no cause of action or defense, claiming that the forfeiture to the state of any land for nonpayment of taxes is invalid because of any jurisdictional defect, shall be asserted or maintained upon any claim adverse to the state, or its successor in interest, respecting any lands claimed to have been forfeited to the state for taxes, unless such cause of action or defense is asserted in an action commenced with ~~15 years~~ one year after the filing of the county auditor's certificate of forfeiture, as provided by Minnesota Statutes, Section 281.23, Subdivision 8, and acts supplementary thereto, or by any other law ~~hereafter~~ enacted after the effective date of this amendatory act providing for the filing and recording of such certificates; provided, that if such certificate of forfeiture was filed before the ~~passage of this section~~ effective date of this amendatory act, such cause of action or defense may be asserted in an action commenced within one year after the ~~passage of this section or within 15 years of the date of filing of the county auditor's certificate of forfeiture, whichever is later~~ effective date of this amendatory act. ~~Any person under disability to sue when such certificate was filed or when this section was passed, as the case may be, may assert such cause of action or defense in an action commenced at any time within one year after the removal of the disability.~~

(b) Notwithstanding the provisions of any other law to the contrary, no cause of action or defense, claiming that any auditor's certificate of sale or state assignment certificate arising from the nonpayment of taxes on a parcel of land is invalid because of any jurisdictional defect, shall be asserted or maintained upon any claim adverse to the holder of the certificate or his successors in interest, or to the state or its successor in interest, respecting any such land, unless such cause of action or defense is asserted in an action commenced within one year after the filing of proof of service of the auditor's notice of expiration of the time for redemption, as provided by Minnesota Statutes, Section 281.21, and acts supplementary thereto, or by any other law enacted after the effective date of this amendatory act providing for notice of expiration of time for redemption and the filing thereof; provided, that if proof of filing of the notice of expiration of time for redemption was filed before the effective date of this amendatory act, such action or defense may be asserted in an action commenced within one year after the effective date of this amendatory act.

Subd. 2. In cases where the lands are and ever since the time of filing the auditor's certificate of forfeiture under section 281.23, subdivision 8, or filing of service of notice of expiration of redemption under section 281.21, have been in the actual, open, continuous, and exclusive possession of the owner, or his successors in interest, claiming adversely to the state or its successors in interest, the running of the period of limitations provided in subdivision 1 shall be suspended as to such owner, or his successors in interest, during the time of such possession, but no longer.

Subd. 3. Any person, partnership, corporation, or claimant failing to commence an action or assert a defense within the time prescribed by subdivision 1 shall be conclusively presumed to have abandoned all right, title, and interest in the lands described in the county auditor's certificate of forfeiture or notice of expiration of redemption, which certificate of forfeiture when filed under Minnesota Statutes, Section 281.23, Subdivision 8, or notice of expiration of redemption when filed under section 281.21, shall constitute notice of the forfeiture of the lands affected to all persons having or claiming an interest therein. If no action or defense is asserted and lis pendens recorded within the time prescribed by subdivision 1, a certificate of sale or state assignment certificate recorded with the register of deeds has the force and effect of a patent after the expiration of the period prescribed by subdivision 1, subject to the rights of persons described in subdivision 2 and any rights set forth in the certificate of sale or state assignment certificate.

Subd. 4. Subdivision 1 shall not apply to any action or proceeding pending at the effective date ~~hereof~~ of this amendatory act.

Subd. 5. ~~The limitations prescribed in subdivision 1 shall apply only to jurisdictional defects occurring in tax forfeiture proceedings.~~ Any person, partnership, corporation, or claimant who, without negligence on his part, sustains any loss or damage by reason of any omission, mistake, or misfeasance of any public officer or employee in the performance of his duties under the laws relating to forfeiture of lands for taxes which results in a jurisdictional defect and who is thereby wrongfully deprived of any land or of any interest therein, is precluded from bringing an action for the recovery of such land, or of any interest therein, or from enforcing any claim or lien upon the same, but may institute an action in the district court to recover compensation for such loss or damage out of the assurance account provided in subdivision 6. The right provided by this subdivision to institute action to recover compensation from the assurance account does not apply to persons having the right to recover compensation pursuant to Minnesota Statutes, Section 508.76.

Subd. 6. There is established in the state treasury a tax forfeited land assurance account. This account is composed of money appropriated by the legislature for this purpose and all money deposited in the state treasury and credited to the account pursuant to this subdivision. Money in the state treasury credited to the tax forfeited land assurance account from all sources is annually appropriated to the state treasurer for the purpose of paying claims ordered by the district court to be paid from the fund. At the time of sale of a parcel of tax forfeited land, the county auditor shall charge and collect in full an amount equal to three percent of the total sale price of land, which amount is in addition to the total

sale price of the land. Before filing a notice of expiration of time for redemption, in cases where an auditor's certificate of sale or a state assignment certificate has been issued, the county auditor shall charge and collect in full from the holder of the certificate an amount equal to three percent of the appraised value of the property for tax purposes. The amounts so collected by the auditor shall be deposited in the state treasury and credited to the tax forfeited land assurance account. No person shall recover from the assurance account any sum greater than the fair market value of the land or interest in land at the time of filing of the county auditor's certificate of forfeiture or notice of expiration of redemption, less the amount of all delinquent taxes, penalties, costs, and interest which would have been due and owing if the person was redeeming the parcel of land.

Subd. 7. In any action brought to recover loss or damage from the tax forfeited land assurance account, the state treasurer, in his official capacity, shall be named as defendant. If the assurance account is insufficient to pay the amount of any judgment, in full, the unpaid balance thereof shall bear interest at the legal rate and be paid out of the first money coming into the assurance fund from any legislative appropriation and the collection of money by county auditors. The attorney general or, at the attorney general's request, the county attorney of the county in which the land or a major part of it lies, shall defend the state treasurer in all such actions.

Subd. 8. Any action or proceeding to recover damages out of the assurance fund shall be commenced within six years after the expiration of the period within which claims may be asserted pursuant to subdivision 1, and not afterwards. If, within this six year period or the period within which claims may be asserted pursuant to subdivision 1, the person entitled to bring such action or proceeding is under legal disability, such person, or anyone claiming under him, may commence such action or proceeding within two years after such disability is removed.

Sec. 2. [EFFECTIVE DATE.] This act is effective January 1, 1970.

CHAPTER 374--S.F. No. 1119

An act relating to drainage; amending Minnesota Statutes 1967, Sections 106.451, Subdivision 3; and 106.471, Subdivisions 2 and 5.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1967, Section 106.451, Subdivision 3, is amended to read:

Subd. 3. All costs and expenses incurred in any drainage proceeding shall be paid out of the funds of such ditch by warrants drawn thereon. If no funds are available in the ditch fund on which the warrant is drawn, the board may, by unanimous resolution, transfer funds from any other ditch fund subject to its jursidiction or from the general revenue fund of the county to such ditch fund. In such case the county board shall thereafter cause the ~~general revenue~~ fund from which the transfer was made to be reim-

bursed from the funds of ~~such~~ the ditch to which the transfer was made, together with interest for the time actually needed at the same rate per annum as is charged on the liens and assessments.

Sec. 2. Minnesota Statutes 1967, Section 106.471, Subdivision 2, is amended to read:

Subd. 2. [AUTHORITY OF BOARD; REPAIRS.] (a) After the construction of a state, county or judicial drainage system has been completed, the county board shall maintain the same or such part thereof as lies within the county and provide the repairs required to render it efficient to answer its purpose. The board shall cause such drainage system to be annually inspected either by a committee thereof, or a ditch inspector appointed by the board, and, if the committee or inspector shall report in writing to the board that repairs are necessary on any ditch system and such report is approved by the board, it shall cause such repairs to be made within the limits hereinafter set forth. The ditch inspector may be the county highway engineer.

(b) If the board finds that the estimated cost of ~~such~~ repairs and maintenance of one ditch system for one year will be less than ~~$5,000~~ $10,000, it may have such work done by ~~day labor~~ hired labor and equipment without advertising for bids or entering into a contract therefor. ~~The county board is limited in the expenditure of money therefor as herein provided.~~ In one calendar year the board shall not ~~spend or contract to be spent~~ levy an assessment for repairs or maintenance on one ditch system in a sum greater than 20 percent of the original cost of construction thereof in that county, or the sum of ~~$5,000~~ $10,000 if the said 20 percent is less than ~~$5,000~~ $10,000, except as provided in subdivision 4. ~~In case there are sufficient funds to the credit of the drainage system to make such repairs, such funds may be expended by the county board for such purpose without further assessment.~~

(c) Before ordering the levy of an assessment for repairs, the county board, in its discretion, may give such notice of hearing thereon as it may deem necessary.

Sec. 3. Minnesota Statutes 1967, Section 106.471, Subdivision 5, is amended to read:

Subd. 5. [ASSESSMENT; BONDS.] (a) If there are not sufficient funds to the credit of the drainage system so to be repaired, the county board shall apportion and assess the costs of the repairs pro rata upon all lands, corporations, and municipalities which have participated in the total benefits theretofore determined. Such assessments may be made payable in annual instalments to be specified in the order for assessment. If the assessments do not exceed 50 percent of the original cost of the ditch, such instalments shall not exceed ten. But, if such assessments exceed 50 percent of the original cost of the ditch, the county board may order such assessments to be paid in instalments not to exceed fifteen. If such order shall provide for payment in instalments, interest from the date of the order for assessments shall be fixed by the county board in the order, at a rate not to exceed six percent per annum, on the unpaid assessments, and shall be collected with each instalment.

(b) If the assessment be not payable in instalments, no lien need be

filed, and the assessment, plus interest from the date of the order to August 15 of the succeeding calendar year, shall be entered on the tax lists for the year and be due and payable with and as a part of the real estate taxes for such year. When any such assessment is levied and made payable in instalments, the county auditor shall file for record in the office of the register of deeds an additional tabular statement in substance as provided in section 106.341, and all the provisions of sections 106.351, 106,371, and 106.381 relating to collection and payment shall apply thereto. Upon the filing of the tabular statement, the instalment and interest shall be due and payable and shall be entered on the tax lists and collected the same as the original lien.

(c) Whenever a contract for ditch repair has been entered into under this chapter, or such repair has been ordered to be constructed by ~~day labor~~ hired labor and equipment, and when the county board has ordered the assessments to be paid in instalments, the county board may issue and sell bonds, as provided by section 106.411.

(d) In the case of the repair of a state drainage system established wherein no assessment of benefits to lands was made when such system was established, the board or court shall observe the requirements of chapter 106, and appoint viewers to determine the benefits resulting from such repair and otherwise observe all requirements of this chapter in the procedure for the collection of such assessments as shall thereafter be made.

CHAPTER 434--H.F. No. 1590

An act relating to St. Louis county improvements of lakes, streams, trails, portages and marking same; repealing Laws 1927, Chapter 183, Sections 1 to 3; Laws 1929, Chapter 298, Section 1; and Laws 1941, Chapter 49, Section 1, as amended.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. In St. Louis county the board of county commissioners may appropriate and expend from the general revenue fund, such amount, not to exceed $15,000 annually, as it shall determine for the following purposes:

a. For the improvement of trails and portages on established canoe and boat routes dedicated to public use lying wholly or partially within the county.

b. For the cleaning, deepening, widening and straightening of the bed of any river or creek to prevent flooding of lands.

c. To improve navigable lakes within the county and to mark by buoys and other means, reefs and shallow places in such lakes.

Sec. 2. Laws 1927, Chapter 183, Sections 1 to 3; Laws 1929, Chapter 298, Section 1; and Laws 1941, Chapter 49, Section 1, as amended by Laws 1953, Chapter 283, Section 1, are repealed.

Sec. 3. The powers enumerated in section 1 shall be exercised in accordance with the requirements, if any, of chapter 110.

Sec. 4. This act shall become effective upon approval by the board of county commissioners of the county of St. Louis and upon compliance with Minnesota Statutes, Section 645.021.

CHAPTER 475--S.F. No. 1345

An act repealing certain laws relating to logging dams; repealing Minnesota Statutes 1967, Sections 110.19 to 110.22.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1967, Sections 110.19, 110.20, 110.21 and 110.22 are repealed.

CHAPTER 590--S.F. No. 1455

An act relating to flood plain management; specifying the powers and duties of the commissioner of conservation and local governmental units in relation thereto; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [104.01] [TITLE; LEGISLATIVE FINDINGS; POLICY AND PURPOSE.] Subdivision 1. This act may be cited as the flood plain management act.

Subd. 2. The legislature finds and declares that: (a) A large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state; and (b) The public interest necessitates sound land use development as land is a limited and irreplaceable resource, and the flood plains of this state are a land resource to be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding.

Subd. 3. It is the policy of this state and the purpose of this act not to prohibit but to guide development of the flood plains of this state consistent with the enumerated legislative findings to provide state coordination and assistance to local governmental units in flood plain management, to encourage local governmental units to adopt, enforce and administer sound flood plain management ordinances, and to provide the commissioner of conservation with authority necessary to carry out a flood plain management program for the state and to coordinate federal, state, and local flood plain management activities in this state.

Sec. 2. [104.02] [DEFINITIONS.] Subdivision 1. For the purposes of this act the terms defined in this section have the meanings given them.

Subd. 2. "Regional flood" means a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100 year recurrence interval.

Subd. 3. "Flood plain" means the areas adjoining a watercourse which has been or hereafter may be covered by the regional flood.

Subd. 4. "Floodway" means the channel of the watercourse and those portions of the adjoining flood plains which are reasonably required to carry and discharge the regional flood.

Subd. 5. "Flood fringe" means that portion of the flood plain outside of the floodway.

Subd. 6. "Local governmental unit" means a county, city, village, or borough.

Subd. 7. "Commissioner" means the commissioner of conservation.

Sec. 3. [104.03] [FLOOD PLAINS; COMMISSIONER'S DUTIES; USES OF FLOOD PLAINS.] Subdivision 1. The commissioner shall (a) collect and distribute information relating to flooding and flood plain management; (b) coordinate local, state, and federal flood plain management activities to the greatest extent possible; (c) assist local governmental units in their flood plain management activities within the limits of available appropriations and personnel in cooperation with the office of local and urban affairs and the state planning officer; (d) do all other things, within his lawful authority, which are necessary or desirable to manage the flood plains for beneficial uses compatible with the preservation of the capacity of the flood plain to carry and discharge the regional flood. In cooperation with local governmental units, the commissioner shall conduct, whenever possible, periodic inspections to determine the effectiveness of local flood plain management programs, including an evaluation of the enforcement of and compliance with local flood plain management ordinances.

Subd. 2. In places where the flood plain has been delineated by ordinance in the manner required by this act, no major alteration to a structure in existence on the effective date of the ordinance, and no new fill, structure, deposit, or other flood plain use that is unreasonably hazardous to the public or that unduly restricts the capacity of the flood plain to carry and discharge the regional flood shall be permitted after the effective date of the ordinance delineating the flood plains. As used in this subdivision, major alterations of existing structures shall not include repair or maintenance and shall not include repairs, maintenance or alterations to structures made pursuant to the authority of any other authorized agency of the state or federal government and provided further that this subdivision shall not apply to alterations, repair or maintenance reasonably done under emergency circumstances to preserve or protect life or property. This subdivision applies to alterations to existing structures and to new fill, structures, deposits, or other flood plain uses by the state and its agencies.

Sec. 4 [104.04] [FLOOD PLAIN MANAGEMENT ORDINANCES.] Subdivision 1. In accordance with the provisions of this act, the rules and regulations

which the commissioner may promulgate pursuant to this act, and applicable laws authorizing local governmental units to adopt flood plain management ordinances, local governmental units shall adopt, administer, and enforce flood plain management ordinances, which shall include but not be limited to the delineation of flood plains and floodways, the preservation of the capacity of the flood plain to carry and discharge regional floods, minimization of flood hazards, and the regulation of the use of land in the flood plain. The ordinances shall be based on adequate technical data and competent engineering advice and shall be consistent with local and regional comprehensive planning.

Subd. 2. No later than June 30, 1970, every local governmental unit shall submit a letter of intent to comply with this act, on a form provided by the commissioner including any existing flood plain management ordinances, to the commissioner for his review. The letter of intent shall list the watercourses within the boundaries of the local governmental unit in the order of the degree of flood damage potential associated with each watercourse and shall include a description of the type of information that is available for each, such as high watermarks and topographic maps.

Subd. 3. When the commissioner determines that sufficient technical information is available for the delineation of flood plains and floodways on a watercourse, he shall notify affected local governmental units that this technical information is available. As soon as practicable after receiving this notice, each local governmental unit shall prepare or amend its flood plain management ordinance in conformance with the provisions of this act, and shall submit the ordinance to the commissioner for his review and approval before adoption. The commissioner shall approve or disapprove the proposed ordinance within 120 days after receiving it. If the commissioner disapproves the proposed ordinance he shall return it to the local governmental unit with a written statement of his reasons for disapproval. Thereafter, the local governmental unit shall resubmit an amended proposed ordinance for his further review and approval before adoption. A flood plain management ordinance adopted by a local governmental unit after June 30, 1970, is invalid unless it is approved by the commissioner. A local governmental unit may adopt a flood plain management ordinance in the absence of notification by the commissioner that the required technical data is available, provided that any such ordinance is submitted to the commissioner prior to its adoption for his approval. Nothing in this act limits the power of a local governmental unit or town to adopt or continue in force a flood plain management ordinance which is more restrictive than that which may be required pursuant to this act.

Subd. 4. Flood plain management ordinances may be amended by a local governmental unit upon the approval of the commissioner.

Subd. 5 [104.05] [RULES AND REGULATIONS.] In the manner provided by Minnesota Statutes 1967, Chapter 15, the commissioner shall promulgate rules and regulations necessary to carry out the purposes of this act, including but not limited to the following: (a) criteria for determining the flood plain uses which may be permitted without creating an unreasonable public hazard or unduly restricting the capacity of the flood plain to carry and discharge the regional flood; (b) variance procedures; (c) the establishment of criteria for alternative or supplemental flood plain management measures such as flood proofing, subdivision regulations, building codes,

sanitary regulations, and flood warning systems.

Sec. 6 [104.06] [NECESSARY USE.] The commissioner in promulgating guidelines pursuant to section 5 and local governmental units in preparing flood plain management ordinances shall give due consideration to the needs of an industry whose business requires that it be located within a flood plain.

Sec. 7 [104.07] [ENFORCEMENT AND PENALTIES.] Every structure, fill, deposit, or other flood plain use placed or maintained in the flood plain in violation of a flood plain management ordinance adopted under or in compliance with the provisions of this act is a public nuisance and the creation thereof may be enjoined and the maintenance thereof abated by an action brought by the commissioner of conservation or a local governmental unit. A person who violates any of the provisions of this act is guilty of a misdemeanor. Each day during which such violation exists is a separate offense.

CHAPTER 637--S.F. No. 1245

An act relating to soil and water conservation; amending certain provisions concerned with the powers and duties of soil and water conservation districts and supervisors and counties and county boards; amending Minnesota Statutes 1967, Sections 40.01, Subdivisions 2 and 3; 40.06, Subdivisions 2 and 3; 40.07; and 40.12; and amending Chapter 40 by adding sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [SOIL CONSERVATION DISTRICTS; CHANGE NAME TO SOIL AND WATER CONSERVATION DISTRICTS.] The name of the governmental subdivision heretofore designated in Minnesota Statutes, Chapter 40, or any other law as a soil conservation district is hereby changed to soil and water conservation district. Wherever any provision of Minnesota Statutes, Chapter 40, or any other law now in force or hereafter enacted designates or refers to a soil conservation district, it shall be deemed to mean a soil and water conservation district. The revisor of statutes is directed to correct subsequent editions of Minnesota Statutes as follows to conform to Subdivision 1: Whenever the statutes refer to "soil conservation district", he shall correct the wording to read "soil and water conservation district". Any action taken by or affecting any such district under its present name without such change shall not be invalidated by the omission.

Sec. 2. Minnesota Statutes 1967, Section 40.01, Subdivision 2, is amended to read:

Subd. 2. [SOIL AND WATER CONSERVATION DISTRICT.] ~~"District"-or~~ "Soil and water conservation district" or "district" means a governmental subdivision of this state organized in accordance with the provisions of this chapter for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

Sec. 3. Minnesota Statutes 1967, Section 40.01, Subdivision 3, is amended to read:

Subd. 3. [SUPERVISORS; BOARD.] ~~"Supervisor"~~ "Supervisors", "board of supervisors", "district board", or "board" means ~~one of the members of~~ the governing body of a district, members of which are elected or appointed in accordance with the provisions of this chapter. "Supervisor" means a member of that body. "Boards" mean a joint board as described in Section 7.

Sec. 4. Minnesota Statutes 1967, Section 40.06, Subdivision 2, is amended to read:

Subd. 2. [TENURE; VACANCIES; QUORUM; COMPENSATION.] ~~The supervisors shall elect a chairman to act during their pleasure.~~ A supervisor shall hold office until his successor has been elected or appointed and has qualified. Vacancies in the office of supervisor appointed by the state commission, for an entire term or an unexpired term, shall be filled by the state commission. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination except as otherwise expressly provided. A supervisor shall receive such compensation for his services as the commission may determine, and he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties to be paid by the county of which the supervisor is a resident, upon approval by the commission, and the sum so paid shall be reimbursed by the commission out of funds available therefore; provided that a supervisor shall receive as reimbursement for the use of his own automobile in the performance of his duties, 7 1/2 cents per mile to be allowed and paid as above prescribed.

Sec. 5. Minnesota Statutes 1967, Section 40.06, Subdivision 3, is amended to read:

Subd. 3. [OFFICERS; EMPLOYEES; INFORMATION TO COMMISSION.] The supervisors shall elect or appoint officers for the district and the board of supervisors as follows: A chairman elected from their own members and a secretary and a treasurer appointed or selected from within or without such membership, all to serve at the pleasure of the supervisors. Such officers shall have the powers and duties incident to their respective offices, and such other powers and duties as may be expressly prescribed by law or directed by the supervisors for any such purpose. The supervisors may employ a ~~secretary,~~ technical experts~~,~~ and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The county attorney of the county in which the major portion of ~~said soil conservation~~ the district is located~~,~~ or one who may be otherwise employed by the board shall be the attorney for ~~said~~ the district~~,~~ and the supervisors thereof, and the necessary legal counsel and advice and service. The supervisors may delegate to their chairman or other officer, to one or more supervisors, or to one or more agents~~,~~ or employees such powers and duties as they may deem proper. The supervisors shall furnish to the state soil and water conservation commission, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or ~~employ~~ use, and such other information concerning their activities as ~~it~~ the commission may require in the performance of its duties under this chapter.

Sec. 6. Minnesota Statutes 1967, Section 40.07, is amended to read:

40.07 [POWERS OF DISTRICTS AND SUPERVISORS.] Subdivision 1. A soil and water conservation district organized under the provisions of this chapter shall constitute a governmental and political subdivision of this state, and a public body, corporate and politic, exercising public powers, and the district, and the supervisors thereof, shall have the ~~following~~ powers prescribed in this section, in addition to ~~others granted in other sections of this chapter,~~ those otherwise prescribed by law.

~~(1)~~ Subd. 2. A district may ~~to~~ conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed, ~~to~~ publish the results of such surveys, investigations, or research, and ~~to~~ disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of the state or any of its agencies, or with the United States or any of its agencies~~;~~.

~~(2)~~ Subd. 3. A district may ~~to~~ conduct ~~demonstrational~~ demonstration projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency ~~administering and having jurisdiction~~ in control thereof, and on any other lands within the district~~,~~ ~~upon obtaining~~ with the consent of the owner or occupier ~~of such lands or the necessary rights or interest in such lands~~ in control thereof, in order to demonstrate by example the means, methods, and measures ~~by which~~ for conservation of soil and ~~soil~~ water resources ~~may be conserved~~, for proper drainage, for the prevention and control of floods and pollution and for the prevention and control of soil erosion ~~in the form of soil blowing and soil washing may be prevented and controlled~~;.

~~(3)~~ Subd. 4. A district may ~~to~~ carry out constructive, preventive~~,~~ and control measures within the district, including but not limited to~~,~~ engineering operations, works of improvement for any purpose specified in this section or in section 40.02, methods of cultivation, the growing of vegetation, changes in use of land, and the measures referred to in section 40.02, on lands acquired by the district, and on other lands owned or controlled by this state or any of its agencies, with the cooperation of the agency ~~administering and having jurisdiction~~ in control thereof, and on any other lands within the district~~,~~ ~~upon obtaining~~ with the consent of the owner or occupier ~~of such lands or the necessary rights or interests in such lands, including the owner of the fee~~ in control thereof~~;~~.

~~(4)~~ Subd. 5. A district may ~~to~~ cooperate or enter into agreements with~~,~~ and , within the limits of available appropriations ~~duly made available to it by law,~~ ~~to~~ furnish financial or other aid to~~,~~ any agency, governmental or otherwise, or any occupier of lands ~~within the district,~~ in the carrying on of erosion control and prevention operations and other measures for the purposes specified or referred to in this section or section 40.02 within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter~~;~~.

~~(5)~~ Subd. 6. A district may ~~to~~ obtain options upon and ~~to~~ acquire~~,~~ by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise~~,~~ any property, real or personal, or rights or interest therein~~;~~, ~~to~~ may maintain, operate, administer, and improve any properties acquired, ~~to~~ may receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter~~;~~, and ~~to~~ may sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the

purposes and provisions of this chapter~~;~~.

~~(6)~~ Subd. 7. A district may ~~to~~ make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil and water resources, ~~and~~ for the prevention and control of soil erosion~~;~~ or for any other purpose specified in Minnesota Statutes, Chapter 40, and acts amendatory thereof.

~~(7)~~ Subd. 8. A district may ~~to~~ construct, install, improve, ~~and~~ maintain, and operate such structures and works as may be necessary or convenient for the performance of any of the operations authorized in this chapter~~;~~.

~~(8)~~ Subd. 9. A district may ~~to~~ develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion within the district, ~~which plans shall specify, in such detail as may be possible, the acts, procedures, performances, and avoidances which are~~ specifying the measures and practices deemed necessary or desirable for the effectuation ~~of such plans~~ thereof, including, ~~the specifications of~~ without limitation, engineering operations, construction, maintenance, and operation of works, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land~~;~~, and ~~to~~ may publish such plans and information and bring them to the attention of occupiers of lands within the district~~;~~, and others concerned. Such plans shall be consistent with the state plan for water and related land resources.

~~(9)~~ Subd. 10. A district may ~~to~~ take over~~,~~ by purchase, lease, or otherwise, and ~~to~~ may improve, maintain, operate and administer~~,~~ any soil or water conservation, erosion-control, ~~or~~ erosion-prevention, watershed protection, flood prevention or flood control project located within its boundaries undertaken by the United States ~~or any of its agencies~~; or by this state or any of ~~its~~ their agencies~~;~~ ~~to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil conservation, erosion control, or erosion prevention project within its boundaries; to act as agent for the United States or any of its agencies, or for this state or any of its agencies~~, for or in connection with the acquisition, construction, operation, management or administration of any ~~soil conservation, erosion control, or erosion prevention~~ such project, ~~within its boundaries~~; ~~to~~ may accept donations, gifts, ~~and~~ grants, or contributions in money, services, materials, or otherwise~~,~~ from the United States ~~or any of its agencies~~, or from this state or any of ~~its~~ their agencies~~,~~ or from any other source, may enter into any contract or agreement which may be necessary or appropriate for the purposes thereof, may comply with any applicable provisions of federal or state law, and ~~to~~ may use or expend such moneys, services, materials, or other ~~contributions in carrying on its operations~~; things in accordance with the applicable terms and conditions for any authorized purpose of the district.

~~(10)~~ Subd. 11. A district may ~~to~~ sue and be sued in the name of the district~~;~~, ~~to~~ have perpetual succession~~,~~ unless terminated as hereinafter provided~~;~~, ~~to~~ make and execute contracts and other instruments~~,~~ necessary or convenient to the exercise of its powers~~;~~, ~~to~~ and make, ~~and, from time~~

~~to time,~~ amend, ~~and~~ or repeal~~,~~ rules and regulations not inconsistent with this chapter~~,~~ to carry into effect its purposes and powers~~;~~.

~~(11)~~ Subd. 12. As a condition to the extending of any benefits under this chapter to~~,~~ or the performance of work upon~~,~~ any lands not owned or controlled by this state or any of its agencies or by the district, the supervisors may require compensation or contributions in money, services, materials, or otherwise~~, to any~~ commensurate with the cost or reasonable value of the operations or work conferring such benefits~~; but~~.

~~(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.~~

~~(13)~~ Subd. 13. A district may ~~to~~ make application to the secretary of agriculture~~,~~ or other designated authority~~,~~ for federal assistance under the provisions of Public Law 566, 83rd Congress, Chapter 656, 2d Session, or any act amendatory thereof or supplementary thereto or under any other law providing for federal assistance for any authorized purpose of the district and may enter into any agreement and take any other action required for compliance with any such law.

~~(14)~~ Subd. 14. A district may ~~to~~ enter into any agreement or contract with the secretary of agriculture~~,~~ or other designated authority~~,~~ which may be necessary or appropriate for the purpose of obtaining or using federal assistance under the provisions of said Public Law 566, or any act amendatory thereof or supplementary thereto, or under any other law providing for federal assistance for any authorized purpose of the district, or for the construction, maintenance, and operation of works of improvement as defined in said act or amendatory act or other applicable federal law; ~~to~~ may acquire without cost to the federal government such land, easements, or rights-of-way as will be needed in connection with works of improvement installed with federal assistance; ~~to~~ assume such proportionate share of the cost of installing any works of improvement involving federal assistance as may be determined by the secretary or other designated authority to be equitable in consideration of anticipated benefits from such improvements; ~~to~~ may make arrangements satisfactory to the secretary or other authority for defraying costs of operating and maintaining such works of improvement in accordance with regulations prescribed by ~~said~~ secretary of agriculture, or other designated authority; ~~to~~ may acquire or provide assurance that land owners have acquired such water rights and other rights, pursuant to state law, as may be needed in the installation, maintenance, and operation of ~~said~~ such works of improvements; ~~to~~ may obtain agreements to carry out recommended soil and water conservation measures and proper farm plans from owners of not less than 50 percent or other required percentage of the lands situated in any drainage area above any retention reservoir which may be installed with federal assistance, all as prescribed in said Public Law 566 or amendatory act or other applicable federal law, and ~~to~~ may do any and all other acts necessary to secure and use federal aid ~~under said Public Law 566, or any act amendatory thereof or supplementary thereto, subject, however, to the provisions contained in the following paragraph~~ thereunder.

~~(15) Every contract attempted to be entered into or indebtedness or pecuniary liability attempted to be incurred by any soil conservation district, or supervisors thereof, whereby a financial obligation, express or~~

~~implied, results or is created in excess of moneys or funds under the control and supervision of such soil conservation district, or supervisors thereof, available for the payment thereof, shall be null and void in regard to any obligation thereby sought to be imposed, and no claim therefor shall be allowed by the supervisors of any such soil conservation district. Every supervisor of any soil conservation district participating or authorizing any such contract or obligation shall be individually liable to the soil conservation district, of which he is supervisor, for any damages caused thereby, and shall be liable to any person furnishing any labor, services, or material, on any such contract entered into or obligation assumed.~~

Subd. 15. [FINANCES.] The district board of supervisors annually shall present a budget consisting of an itemized statement of district expenses for the ensuing calendar year to the board of county commissioners or boards of county commissioners of the county or counties in which the district is located. The county board or boards may levy an annual tax on all taxable real property in the district for such amount as the board or boards determine to be necessary to meet the requirements and obligations of the district, not exceeding a rate of two mills or $15,000 whichever is the lesser. This levy shall be allowed in addition to any other tax authorized to be levied by a county and shall not cause the amount of other taxes levied or to be levied by the county, which are subject to any such limitation, to be reduced in any amount whatsoever. The amount levied shall be collected and distributed to the district in like manner as prescribed by Minnesota Statutes, Chapter 276. This amount may be spent by the district board for any district purpose authorized by law.

Sec. 7. Minnesota Statutes 1967, Section 40.12, is amended to read:

40.12 [COOPERATION BETWEEN DISTRICTS AND OTHER PUBLIC AGENCIES.] The supervisors of any two or more districts organized under the provisions of this chapter may cooperate with one another or with any other public agency in the exercise of any or all powers conferred in this chapter. The district board may enter into contracts or other arrangements with the United States government, or any department thereof, with person, or corporations, with public corporations and the state government of this state or other states. In furtherance of any authorized purpose, a soil and water conservation district may join or cooperate by agreement as provided in Minnesota Statutes, Section 471.59, or any act amendatory thereof or supplementary thereto, with any other such district or any watershed district, or any governmental unit as defined in said section 471.59 or with any combination thereof in any operation or project for any authorized purpose in which the soil and water conservation district and the other contracting party or parties have a common interest. For all such purposes soil and water conservation districts and watershed districts shall be deemed to be governmental units under the provisions of section 471.59 and acts amendatory thereof or supplementary thereto.

Where the improvement work unit covers two districts, a joint board made up of three supervisors from each of the district boards will preside. Where the improvement work unit covers three or more districts, a joint board made up of two supervisors from each of the district boards will preside. The individual boards will appoint the supervisors who will represent them on the joint board.

The joint board will have the responsibility and authority to accept

and approve initiatory requests for improvement work units, direct the preparation of preliminary surveys and studies, establish improvement work units, and, at the direction of the boards of county commissioners, adopt programs and reports, award contracts, supervise construction, and accept completed construction work.

Sec. 8. Minnesota Statutes 1967, Chapter 40, is amended by adding a section to read:

[40.072] [SOIL CONSERVATION DISTRICTS; WORKS OF IMPROVEMENT.] Subdivision 1. [AUTHORITY.] In addition to all other powers prescribed by law and without limiting the same, the board of supervisors of a soil and water conservation district may, when directed by resolution of the board of county commissioners or boards of commissioners from the county or counties in which the district is located undertake, construct, install, maintain, and operate in the name of the district as provided in this section works of improvement for any district purpose specified or referred to in Minnesota Statutes, Chapter 40, and acts amendatory thereof. For the purposes of any such works the board may use the proceeds of tax levies, assessments, and any other available funds, may acquire necessary real or personal property by purchase or gift, and may contract, survey, plan, construct, install, maintain and operate such works, and exercise any other powers vested in it by law, so far as appropriate, subject to the further provisions hereof.

Subd. 2. [INITIATION OF PROGRAM.] A program for such works of improvement in any area within the district or districts if the project is in more than one district may be initiated upon written request submitted to the board or boards by one or more of the owners of land in the affected area. The request shall include a general description of the area proposed for inclusion in an improvement work unit, with a proposed name or number therefor, a description of the affected land owned by signer or signers, and a statement of the objectives of the proposed works in furtherance of the authorized purposes, the grounds upon which the same will be of public benefit and utility and will promote the public health, safety, and welfare, and the special benefits to property which will result therefrom, if any. As soon as practicable after receipt of such a request the board or boards shall make or cause to be made such preliminary surveys and studies as it deems necessary for action thereon, and if the board or boards thereupon determine that the works proposed thereby are feasible and will be of public utility and benefit, will promote the public health, safety, and welfare, and will be in furtherance of the authorized purposes and best interests of the district or districts, the board or boards may thereupon, in its discretion, by resolution recommend the establishment of an improvement work unit and a program for works of improvement therein to the board or boards of county commissioners of the counties in which the affected land is located for further action as hereinafter provided. By such resolution the board or boards shall give the unit an appropriate name or number, which may be the same as or different from the one proposed in the initiatory request, and shall recommend definite boundaries for the improvement work unit, which may be the same as proposed in the request or may be modified as the board or boards deem advisable. By such resolution the board or boards may also enlarge, reduce, or otherwise modify the proposed objectives of the program, but not so as to make a substantial change in the main purposes thereof as stated in the initiatory request unless consented to in writing by the signer or signers. At any time before further action is taken on the project as provided in subdivision 4 the district board or boards may amend the resolution, subject to the foregoing limitations.

Subd. 3. [PRELIMINARY PROGRAM PLANS; APPLICATION FOR FEDERAL OR OTHER AID; COOPERATION WITH OTHER AGENCIES; REPORT AND RECOMMENDATIONS TO THE COUNTY BOARD; ADOPTION OF IMPROVEMENT WORK PLAN.] After adoption of the resolution recommending the improvement work unit and program as provided in subdivision 2, with amendments thereto, if any, the board or boards, when the board or boards of county commissioners by resolution so directs, may make or cause to be made such further surveys and studies as may be necessary and thereupon make or cause to be made a preliminary general plan for carrying out the program for the improvement work unit as set forth in the resolution or any part thereof, with cost estimates therefor. The board or boards, at the direction of the county board or boards, may make application for federal aid, state aid, or aid available from any other source for the works embraced in the program or any part thereof under Public Law 566 or any act amendatory thereof or supplementary thereto or any other applicable federal or state law, and may take all steps necessary to determine whether such aid will be available and the amount thereof. The board may consider how the cost of the works of improvement or any part thereof above prospective federal or other aid may be met from the funds of the district or from the proceeds of assessments on benefited property or otherwise, and make estimates therefor. If the cooperation or joint action of any adjacent soil and water conservation district or any other public agency is desirable for any purpose under the program or in connection therewith, the board, at the direction of the county board or boards, may negotiate with the authorities concerned for such cooperation or joint action as authorized in Minnesota Statutes, Chapter 40, and acts amendatory thereof, or as otherwise provided by law. Upon completion of the foregoing steps as far as necessary, the board or boards may make and file a report, summarizing its findings thereon and its recommendations for further action on the program or any part thereof. The board or boards shall make the plan together with the preliminary general plan for the improvement work unit available to the county board or boards and to all other public agencies and persons concerned, and may give such publicity thereto as the district board deems advisable. The report shall contain substantially the same engineering information required by Minnesota Statutes, Section 112.49, Subdivisions 1 and 2. The board or boards shall transmit a copy of the report and preliminary plan to any regional development agency created by Minnesota law for the region in which each project is located, and in those cases where the plan involves a project for which a permit is required from the commissioner of conservation under Minnesota Statutes, Chapter 105, or for which proceedings will be instituted under Minnesota Statutes, Chapter 106, to the commissioner of conservation and to the water resources board. The water resources board shall review the report and plan and, if it concludes that the plan is inconsistent with systematic administration of state water policy, shall report its conclusion to the board or boards and the commissioner of conservation within 60 days after receiving the report and plan. Thereafter the board or boards may modify and retransmit the report and preliminary plan to the water resources board, or may request a hearing on the report and plan before the water resources board. The water resources board shall hear the matter in the same manner, and follow the same procedures, as provided in Minnesota Statutes, Sections 105.76 to 105.79, for the hearing of cases where it consents to intervention proceedings. Except where the water resources board concludes that the report and plan are inconsistent with the approval of the county board or boards, may adopt and sponsor the improvement work unit and a program of work for the unit.

Subd. 4. [ACTION ON WORK PROJECT PURSUANT TO REPORT; PETITION AND HEARING.] The county board or boards, acting jointly under Minnesota Statutes, Section 471.59, may take action on a project within the improvement work unit for construction or installation of works of improvement or part thereof pursuant to the recommendations in the report only upon a petition for a project signed by at least 25 percent of the owners of the land over which the proposed improvement work passes or upon which it is located, or by the owners of at least 30 percent of the area of such land, describing such land and requesting the county board or joint county board to hold a hearing on the practicability and desirability of carrying out the project in accordance with the preliminary plan and the recommendations in the report of the district board or boards. If the report specifies that any part of the cost of the project is to be paid from the proceeds of assessments on benefited property, one or more of the petitioners, upon the filing of the petition and before any action is taken thereon, shall file a bond to the county or counties acting jointly conditioned as provided by Minnesota Statutes, Section 106.041 in the case of a county drainage system, to be approved by the chairman of the board. The county board or joint county board shall set a time and place for the hearing on the petition, and cause notice thereof to be given as provided in Minnesota Statutes, Section 106.101, Subdivision 1. If upon the hearing the county board or joint county board finds that the carrying out of the project as requested in the petition will be feasible, in accordance with the recommendations of the report, and in furtherance of the objectives and purposes therein set forth, and that the estimated cost will not exceed the funds which may reasonably be expected to be available for payment thereof, the county board or joint county board may adopt a resolution so determining and directing further action on the project as hereinafter provided. By such resolution the county board or joint county board shall determine the amount to be paid from the respective sources of available or potentially available funds, including federal aid, district funds, assessments on benefited property, and other funds, if any. The amount payable from district funds may be commensurate with but shall not exceed the value of the general public benefit of the project to the district as determined by the board or boards.

Subd. 5. [ACTION ON PROJECT WITHOUT ASSESSMENTS.] If no part of the project cost is to be paid from assessments on benefited property, the county board or joint county board may proceed with complete surveys and detailed plans and specifications and make its order establishing the project. The order shall contain findings substantially conforming to those required by Minnesota Statutes, Section 106.201. Notice summarizing the findings and order shall be served upon those persons entitled to receive notice of a county drainage project pursuant to Minnesota Statutes, Section 106.171, in the manner therein provided unless such notice is waived in writing by each person entitled to receive such notice. The waiver of notice shall be filed with the county auditor. Unless an appeal is taken within 30 days after the notice is given, the county board or joint county board may proceed to acquire necessary rights or property, procure materials, let contracts, and take any other steps appropriate to complete the project. The county board or joint county board may delegate its duties and powers under this subdivision to the district board or joint district board provided that the district board or joint district board shall not exercise the power of eminent domain.

Subd. 6. [ACTION ON PROJECT WITH ASSESSMENTS.] If any part of the cost of the project is to be paid from the proceeds of assessments on benefited property, viewers shall be appointed as provided in Minnesota Statutes, Section 106.141, and shall report as required by Minnesota Statutes, Sections 106.151 and 106.161. The board or joint board of county commissioners shall direct the petitioners or, with its consent, the board or joint board of supervisors, to provide such engineering services as may be necessary to produce final plans adequate for the construction of the proposed improvement. The county board or joint county board shall then give notice of and conduct a final hearing substantially in accordance with Minnesota Statutes, Sections 106.171 to 106.191 inclusive, as in the case of a county drainage proceeding, so far as these sections are consistent with Minnesota Statutes, Chapter 40, and acts amendatory thereof. If it is determined that the total benefits to property are not as much as the amount payable from the proceeds of assessments as specified in the report of the board or boards under subdivision 3 of this section, the petition shall be dismissed and further action on the project discontinued except as hereinafter provided, unless the county board or joint county board shall determine that the deficiency may be met by increasing the amount payable from district funds or other funds, subject to the limitations hereinbefore prescribed, in which case further action for completion of the project may be taken as herein provided. If it is determined that the total benefits to property are as much as or more than the amount payable from the proceeds of assessments as specified in the report and that the other applicable requirements of law have been complied with, the county board or joint county board shall by order containing such findings establish the project as reported or amended and adopt and confirm the viewers' report as made or amended. If the total amount of benefits to be assessed upon property pursuant to the viewers' report as so adopted and confirmed is greater than the amount specified as payable from such assessments in the report of the board or boards under subdivision 3, the county board or joint county board may reduce the amounts payable from other sources of funds accordingly in such proportions as it may determine. Further action shall be taken thereon as provided in Minnesota Statutes, Chapter 106, so far as appropriate, except that each tract of land affected shall be assessed for the full amount of benefits, less damages, if any, as shown by the viewers' report as adopted and confirmed, unless the total amount of such benefits, less damages, exceeds the total actual cost of the project to be paid from the proceeds of assessments, in which case such cost shall be prorated for assessment purposes as provided in Minnesota Statutes, Section 106.341. Upon filing of the viewers' report as provided in this section the county board of each county affected shall provide funds to meet its proportionate share of the total cost of the improvement, as shown by the report and order of the county board or joint county board, and for such purposes is authorized to issue bonds of the county in such amount as may be necessary in the manner provided in Minnesota Statutes, Section 106.411.

The provision of Minnesota Statutes, Section 106.411 requiring the county board to let a contract for construction before issuing bonds shall not be applicable to bonds issued to provide the funds required to be furnished by this section.

The county board or joint county board, pursuant to agreement with the district board or boards, may by resolution direct the district to

undertake, construct, install, maintain, and operate the work of improvement upon terms mutually agreed upon. However, if it is necessary to acquire property by eminent domain, the county, or the counties acting jointly, shall exercise the power of eminent domain and shall convey the property to the district or districts pursuant to the agreement.

If, pursuant to an agreement, the responsibility for a work of improvement is vested in a district or districts, the respective county treasurers shall transmit the proceeds of all related assessments or bond issues, when collected, to the treasurer of the district, who shall credit the same to the proper funds under the direction of the district board.

Sub. 7. [PROJECT BONDS.] The county board may pledge the proceeds of any assessments on property made for the purposes of a project as hereinbefore provided, any revenues derived from such a project, and the proceeds of tax levies or funds from other sources to the payment of any bonds issued for the purposes of the project.

Subd. 8. [REINSTATEMENT OF DISCONTINUE PROJECT.] If a project is discontinued by reason of dismissal of the proceedings or otherwise at any time after action thereon has been commenced under subdivision 4 of this section, the project shall have the same status as if no such action had been commenced. The report of the district board thereon shall continue to be subject to amendment as hereinbefore provided, a new petition for further action may be made at any time as provided in subdivision 4, and further proceedings had as hereinbefore provided.

Subd. 9. [REPAIR.] The term "repair" used in this section means restoring the project works of improvement or any part thereof as nearly as practicable to the same condition as when originally constructed or subsequently improved.

After the construction of a project has been completed and accepted by the board of the county or district having authority over the project, the board shall maintain the same or such part thereof as lies within its jurisdiction and provide the repairs required to render it efficient to answer its purpose. This board shall have, exercise, and perform the powers and duties of the county board under section 106.471, except as follows. If this board is a board of a soil and water conservation district, the financing of repairs which require assessments and bond issues shall be the responsibility of the county board or joint county board in a manner similar to that provided for the financing of the cost of original construction of the project and as provided in section 106.471, so far as appropriate.

Sec. 9. Minnesota Statutes 1967, Chapter 40, is amended by adding a section to read:

[40.073] [APPEALS.] Any person aggrieved by an order of the board or joint board of county commissioners in any proceedings undertaken pursuant to section 8, subdivisions 5 or 6 of this act, may appeal to the district court upon the grounds and in the manner provided by Minnesota Statutes, Section 106.631, for a county drainage proceeding. Notices required by Minnesota Statutes, Section 106.631, to be filed with the county auditor shall also be filed with the board or joint board of supervisors. No appeal shall be permitted from an order of the board or joint board of

county commissioners or the board or joint board of supervisors made pursuant to section 8, subdivisions 5 or 6 of this act which dismisses a petition or refuses to establish a project.

Sec. 10. [EFFECTIVE DATE.] This act is effective July 1, 1969.

CHAPTER 643--H.F. No. 1300

An act appropriating money to the commissioner of conservation for the purchase of flowage easements on Cedar Lake in Wright County.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The sum of $5,000 is appropriated from the general revenue fund to the commissioner of conservation for the purchase of certain flowage easements on Cedar Lake in Wright county. The purchase of these easements arises from the raising of the water level due to dam construction at the outlet of Cedar Lake and is necessary to comply with an order of the district court directing the commissioner either to condemn these easements or to purchase them before July 1, 1969.

Sec. 2. This act is effective upon final enactment.

CHAPTER 698--S.F. No. 1729

An act appropriating money to the commissioner of conservation for a water control structure in the Lac qui Parle Wildlife Management Area.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. For the purpose of improving water for outdoor recreation at Watson Sag, in the Lac qui Parle wildlife management area, the sum of $20,000 is appropriated from the game and fish fund to the commissioner of conservation for construction of a water control structure and appurtenant works in Section 6, Township 118 North, Range 41 West, Chippewa county, capable of creating an impoundment of approximately 300 acres. Notwithstanding the provisions of Minnesota Statutes, Section 16.17, or any other provision of law relating to the lapse of an appropriation, the appropriation made by this section shall not lapse but shall continue until the project is completed.

CHAPTER 706--H.F. No. 1288

An act relating to water resources; amending Minnesota Statutes 1967, Section 105.44, Subdivisions 1, 2, and 3.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1967, Section 105.44, Subdivision 1, is

amended to read:

105.44 [PROCEDURE UPON APPLICATION.] Subdivision 1. [PERMIT.] Each application for a permit required by sections 105.37 to 105.55 shall be accompanied by maps, plans, and specifications describing the proposed appropriation and use of waters, or the changes, additions, repairs or abandonment proposed to be made, or the public water affected, and such other data as the commissioner may require. If the proposed activity, for which the permit is requested, is within a city, village, town, or borough, or is within or affects a watershed district, a copy of the application together with maps, plans and specifications shall be served on the secretary of the board of managers of the district and on the chief executive officer of the city, village, town, or borough. Proof of such service shall be included with the application and filed with the commissioner.

Sec. 2. Minnesota Statutes 1967, Section 105.44, Subdivision 2, is amended to read:

Subd. 2. [AUTHORITY.] The commissioner is authorized to receive applications for permits and to grant the same, with or without conditions, or refuse the same as hereinafter set forth. Provided, that if the proposed activity for which the permit is requested is within a city, village, town, or borough, or is within or affects a watershed district the commissioner may secure the written recommendation of the managers of said district or the chief executive officer of the city, village, town, or borough before granting or refusing the permit. Said managers or chief executive officers shall file their recommendation within a reasonable time after receipt of a copy of the application for permit.

Sec. 3. Minnesota Statutes 1967, Section 105.44, Subdivision 3, is amended to read:

Subd. 3. [WAIVER OF HEARING.] The commissioner in his discretion may waive hearing on any application and make his order granting or refusing such application. In such case, if any application be granted, with or without conditions, or be refused, the applicant, the managers of the watershed district, or the chief executive officer of the city, village, town, or borough may within ten days after mailed notice thereof file with the commissioner a demand for hearing on the application. The application shall thereupon be fully heard on notice as hereinafter provided, and determined the same as though no previous order had been made. If no demand for hearing be made, the order shall become final at the expiration of ten days after mailed notice thereof to the applicant, managers of the watershed district, or the chief executive officer of the city, village, town, or borough.

CHAPTER 723--H.F. No. 2593

An act relating to the displacement of underground waters by the underground storage of gas or liquids under pressure; amending Minnesota Statutes 1967, Section 84.58, Subdivision 5, and adding a subdivision; and Chapter 84, by adding a section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1967, Section 84.58, Subdivision 5, is amended to read:

Subd. 5. [PROCEDURE AT HEARING.] The hearing shall be public and shall be conducted by the commissioner or a referee appointed by him. All affected persons shall have an opportunity to be heard. All testimony shall be taken under oath and the right of cross-examination shall be accorded. The commissioner shall provide a stenographer, at the expense of the applicant, to take testimony and a record of the testimony and all proceedings at the hearing shall be taken and preserved. The commissioner shall not be bound by judicial rules of evidence or of pleading and procedure.

Sec. 2. Minnesota Statutes 1967, Section 84.58, is amended by adding a subdivision to read:

Subd. 7. [PUBLICATION OF FINDINGS, CONCLUSIONS, ORDERS.] The commissioner shall mail notice of any findings, conclusions, and orders made after the hearing to the following: (1) The applicant; (2) parties who entered an appearance at the hearing; (3) the county auditor, and (4) the chief executive officer of any municipality affected. The commissioner shall publish, at the expense of the applicant, notice of any findings, conclusions, and orders made after the hearing at least once each week for two successive weeks in a legal newspaper in the county in which a part or all of the project is located.

Sec. 3. Minnesota Statutes 1967, Chapter 84, is amended by adding a section to read:

[84.611] [ABANDONMENT OF PROJECT.] No underground storage project for which a permit is granted under provisions of sections 84.57 to 84.62 shall be abandoned, nor shall any natural or artificial opening extending therefrom to the ground surface be filled, sealed or otherwise closed to inspection, except upon written approval by the commissioner and in compliance with any conditions that the commissioner may impose.

CHAPTER 724--H.F. No. 2594

An act relating to the underground storage of gases or liquids; amending Minnesota Statutes 1967, Chapter 84, by adding a section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1967, Chapter 84, is amended by adding a section to read:

[84.621] [STORAGE OF GAS OR LIQUID UNDERGROUND IN NATURAL FORMATIONS.] Subdivision 1. It is unlawful for the state, any person, partnership, association, private or public corporation, county, municipality or other political subdivision of the state to store any gas or liquid, except water, below the natural surface of the ground by using naturally occurring rock

materials as a storage reservoir without first having secured a permit therefor from the commissioner of conservation.

Subd. 2. The provisions of Minnesota Statutes, Section 84.58, relating to application for a permit, notice of the hearing on the permit, time of hearing, procedures at the hearing, the authority of the commissioner of conservation to subpoena and compel the attendance of witnesses, and the production of books and documents, and the punishment of contempts, apply to this section, insofar as applicable.

Subd. 3. The commissioner shall make findings as provided in Minnesota Statutes, Section 84.60, including but not limited to a finding that the public convenience and necessity of a substantial portion of the public which consumes the product must be served.

Subd. 4. The commissioner may require the applicant to demonstrate that he is capable of paying damages resulting from the operation of the storage.

Subd. 5. Appeals shall be taken as provided in Minnesota Statutes, Section 84.59.

Subd. 6. No use shall be made of storage reservoir until a use certificate has been issued as provided in Minnesota Statutes, Section 84.62.

Subd. 7. This section is not intended to supersede sections 84.57 to 84.62, but is intended to be complementary to these sections by providing for the regulation of underground storage reservoirs which do not involve the displacement of underground waters.

Sec. 2. [EFFECTIVE DATE.] This act is effective July 1, 1969.

CHAPTER 732--H.F. No. 2919

An appropriating money to restore Lake Benton in Lincoln county as a recreational lake and in connection therewith to study the means of alleviating lake problems generally.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The legislature finds that silt, soil erosion, aquatic weeds, nuisance organisms, and insufficient water are destroying the recreational values of Lake Benton in Lincoln county.

Sec. 2. There is hereby appropriated the sum of $25,000 from the general revenue fund to the department of conservation for a demonstration program project to alleviate the problems in connection with Lake Benton referred to in section 1.

Sec. 3. There is appointed an ad hoc advisory committee to the Lake Benton project including but not limited to state soil conservation service, department of economic development, the water resources research center and limnological research center at the University of Minnesota,

the state planning agency, the water resources board, the United States geological survey, and the greater Lake Benton improvement association to aid and advise the department of conservation on this project.

Sec. 4. The department of conservation is instructed to first prepare a work program outlining a long range study in connection with this project which would identify the various inputs necessary and establish the priorities and identify those elements to be handled during the first two years under the appropriation provided herein.

Sec. 5. The appropriation provided by this act should be used for the following purposes:

(a) Basic hydrologic data collection including precipitation, evaporation, runoff, biological and chemical water changes in the lake, ground, and surface water relationships;

(b) Problems related to plant nutrients, water weeds, and algae;

(c) Problems arising from alterations of shorelines and bottom contours;

(d) Water quality problems associated with waste disposal from private and industrial sources;

(e) Preliminary plans;

(f) Specific design studies for modification of the natural watershed boundaries;

(g) Diversion of waters from Yellow Medicine River watershed;

(h) Soil conservation practices;

(i) Channel improvement studies;

(j) Construction of desilting basins;

(k) Outlet control structures;

(l) Erosion control programs; and

(m) Dredging.

Sec. 6. To carry out the provisions of this act the commissioner of conservation may enter into contracts whenever he deems it necessary in accordance with Minnesota Statutes, Section 84.025, Subdivision 5, and any other applicable law.

CHAPTER 774--H.F. No. 1207

An act relating to mining; establishing an iron range trail; granting the commissioner of conservation certain powers and duties in regard to mineland reclamation; providing penalties; appropriating money.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [DECLARATION OF POLICY.] In recognition of the effects of mining upon the environment, it is hereby declared to be the policy of

this state to provide for the reclamation of certain lands hereafter subjected to the mining of metallic minerals where such reclamation is necessary, both in the interest of the general welfare and as an exercise of the police power of the state, to control possible adverse environmental effects of mining, to preserve the natural resources, and to encourage the planning of future land utilization, while at the same time promoting the orderly development of mining, the encouragement of good mining practices, and the recognition and identification of the beneficial aspects of mining.

Sec. 2. [IRON RANGE TRAIL: ESTABLISHMENT, COMMISSIONER'S DUTIES.] Subdivision 1. In recognition of the unique combination of cultural, geological, industrial, historical, recreational, and scenic characteristics of Minnesota's iron ranges, an "Iron Range Trail" is hereby established on the Vermilion, Mesabi, and Cuyuna iron ranges and at related points on Lake Superior. The commissioner of conservation shall establish, develop, and maintain the trail, and related places of interest under his jurisdiction and control, for the purposes specified in this subdivision. The trail need not be continuous between or within ranges and related points, but shall be developed as a coordinated unit and for multiple use. The commissioner, in cooperation with other state agencies, local governments, and private organizations and individuals shall mark and, where necessary, interpret places of cultural, geological, industrial, historical, recreational, and scenic interest. In cooperation with state and local road authorities, local governments, and private organizations and individuals, the commissioner also shall mark access, where available, to these places of interest from public roads and highways.

Subd. 2. The commissioner may acquire by gift or purchase necessary trail easements and related interest in and across lands not under his jurisdiction and control. The commissioner also may enter into contracts, leases, or other agreements with the operator or the owner of active or inactive mine areas and with the person having the right of possession thereof for the use and development of these areas for iron range trail purposes. The commissioner may develop, maintain, and operate such areas or may enter into contracts with third parties for the development, maintenance, or operation of the areas. If the commissioner enters into such a contract with a third party, the contract shall provide that the operator, owner or any person entitled to possession or control of the area shall be held harmless and indemnified by the third party from and against any and all claims for injuries or damage to person or property, from such use or development. Nothing in this section prohibits a person from asserting any claim for alleged damages which may be presented to the state claims commission pursuant to Minnesota Statutes, Sections 3.66 to 3.84.

Sec. 3. [DEFINITIONS.] Subdivision 1. For the purposes of sections 3 to 8, the terms defined in this section have the meanings given to them.

Subd. 2. "Mining Area" or "Area subjected to mining" means any area of land from which material is hereafter removed in connection with the production or extraction of metallic minerals, the lands upon which material from such mining is hereafter deposited, the lands upon which beneficiating plants and auxiliary facilities are hereafter located, the lands upon which the water reservoirs used in the mining process are hereafter located, and auxiliary lands which are hereafter used or intended to be used in a particular mining operation.

Subd. 3. "Tailings basin" means that area of land upon which is hereafter deposited by hydraulic means the material which is separated from the mineral product in the beneficiation of metallic minerals including any surrounding dikes constructed to contain said material.

Subd. 4. "Stockpile" means any material including, but not limited to surface, rock, or lean ore, which in the process of mining and beneficiation has been removed from the earth and stored elsewhere on the surface thereof.

Subd. 5. "Department" means the department of conservation.

Subd. 6. "Operator" means any owner or lessee of mineral rights engaged in or preparing to engage in mining operations with respect thereto.

Subd. 7. "Person" includes firms, partnerships, corporations, and other groups.

Subd. 8. "Commissioner" means the commissioner of conservation.

Sec. 4. [DUTIES AND AUTHORITY OF COMMISSIONER.] Subdivision 1. The commissioner shall conduct a comprehensive study and survey in order to determine, consistent with the declared policy of this act, the extent to which regulation of mining areas is necessary in the interest of the general welfare.

Subd. 2. In determining the extent and type of regulation required, the commissioner shall give due consideration to the effects of mining upon the following: (a) environment; (b) the future utilization of the land upon completion of mining; and (c) the wise utilization and protection of the natural resources including but not limited to the control of erosion, the prevention of land or rock slides, and air and water pollution. The commissioner also shall give due consideration to (a) the future and economic effect of such regulations upon the mine operators and landowners, the surrounding communities, and the state of Minnesota; (b) the effect upon employment in the state; (c) the effect upon the future mining and development of metallic minerals owned by the state of Minnesota and others, and the revenues received therefrom; and (d) the practical problems of the mine operators and mineral owners.

Subd. 3. Upon completion of his study and survey and consistent with the declared policy of this act, the commissioner, pursuant to Minnesota Statutes, Chapter 15, may adopt rules and regulations pertaining to that portion of mining operations conducted subsequent to the effective date of such rules and regulations and subject to the provisions of any rights existing pursuant to any permit, license, lease or other valid existing authorization issued by the commissioner, the Pollution Control Agency or any other governmental entity, or their predecessors in office, and subject to any applicable mine safety laws or regulations now existing or hereafter adopted, for the following purposes: (a) The regulation of those tailings basins which are located in close proximity to the built-up portions of established communities and which will or might cause nuisance conditions; (b) The vegetation or other practical treatment of tailings basins upon becoming permanently inactive where substantial natural vegetation is not expected within five years and where research reveals that vegetation can reasonably be accomplished within practical limitations;

(c) The regulation of those stockpiles where land or rock slides are occurring or are likely to occur which might injure persons or cause damage to adjacent property not used or intended for use in a mining operation; (d) The regulation of those stockpiles where erosion is occurring or is likely to occur which results or may result in injury or damage to fish and wildlife, the pollution of public waters, or which is causing or might cause injury to the property or person of others; (e) The vegetation, sloping, terracing or other practical treatment of the exposed surface of any stockpile which is hereafter placed at a site then in close proximity to any state trunk highway or county state-aid road or to the built-up portion of any community; (f) The stabilization of the surface overburden banks of taconite open pits where such banks are located along the footwall side of said pits; (g) The control of surface overburden stockpiles; and (h) The clean up of plantsite and mining areas and the removal of debris therefrom upon the termination of the mining operation.

Subd. 4. The commissioner shall administer and enforce this act and the rules and regulations adopted pursuant hereto. In so doing he may (a) conduct such investigations and inspections as he deems necessary for the proper administration of the act; (b) enter upon any parts of the mining areas in connection with any such investigation and inspection without liability to the operator or landowner provided that reasonable prior notice of his intention to do so shall have been given the operator or landowner; (c) conduct such research or enter into contracts related to mining areas and the reclamation thereof as may be necessary to carry out the provisions of sections 3 to 7.

Subd. 5. For the purpose of information and to assist the commissioner in the proper enforcement of the rules and regulations promulgated under this act each operator shall within 120 days of the effective date of the act, file with the commissioner a plan map in such form as shall be determined by the commissioner showing all existing mining areas or areas subjected to mining by said operator. Annually thereafter, on or before the 15th day of March, he shall file a plan map in similar form showing any changes made during the preceding calendar year and the mining area which he anticipates will be subjected to mining during the current calendar year. The commissioner shall periodically at such times as he deems necessary ascertain the long range land environment plans of said operator.

Sec. 5. [VARIANCE.] The commissioner may, upon application by the landowner or mine operator, modify or permit variance from the established rules and regulations adopted hereunder if he shall determine that such modification or variance is consistent with the general welfare.

Sec. 6. [BOND OF OPERATOR.] The commissioner, if he has reasonable doubts as to the operator's financial ability to comply with the rules and regulations relative to actions required to be taken after the completion of such mining operations or any phase thereof, may require a mine operator to furnish a performance bond or other security or assurance satisfactory to the commissioner. The commissioner, in considering the application of this section, may postpone the bond, security or assurance required in this section to a subsequent date depending upon the life of the particular mining operation involved.

Sec. 7. [APPEAL.] Any person aggrieved by any order, ruling, or

decision of the commissioner may appeal such order, ruling, or decision in the manner provided in Minnesota Statutes, Chapter 15.

Sec. 8. [PENALTIES FOR VIOLATION.] Any person who violates or refuses to comply with any regulation, decision, order or ruling of the commissioner shall upon conviction be guilty of a misdemeanor. At the request of the commissioner, the attorney general may institute a civil action in a district court of the state for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of the terms and conditions of any rules or regulations promulgated hereunder. The district court of the state of Minnesota in which district the mining operation affected is conducted shall have jurisdiction to issue such order or injunction or to provide other appropriate remedies.

Sec. 9. [APPROPRIATION.] The sum of $40,000 is appropriated from the general revenue fund to the commissioner of conservation for the following purposes: (1) Establishing, developing, and maintaining the Iron Range Trail; (2) Conducting experiments and demonstration projects relating to the reclamation of minelands; and (3) Carrying out studies, promulgating rules and regulations relating to the regulation of mining areas. Notwithstanding the provisions of Minnesota Statutes, Section 16.17, or any other provision of law relating to the lapse of an appropriation, the appropriation made by this section shall not lapse but shall continue until the amount thereof is fully expended.

CHAPTER 777--H.F. No. 1405

An act relating to water resources; providing for the regulation of shoreland use and development; prescribing the powers and duties of state agencies and local governments in relation thereto; providing penalties; amending Minnesota Statutes 1967, Chapter 105, and 396 by adding sections ; Sections 394.25, Subdivision 2; and 396.03.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1967, Chapter 105, is amended by adding a section to read:

[105.485] [REGULATION OF SHORELAND DEVELOPMENT.] Subdivision 1. [PURPOSE.] In furtherance of the policies declared in Minnesota Statutes, Section 105.38, and Chapter 116, it is in the interest of the public health, safety, and welfare to provide guidance for the wise development of shorelands of public waters and thus preserve and enhance the quality of surface waters, preserve the economic and natural environmental values of shorelands, and provide for the wise utilization of water and related land resources of the state.

Subd. 2. [DEFINITIONS.] For the purposes of this section the terms defined in this section have the meanings given them: (a) "Shoreland" means land located within the following distances from the ordinary high water elevation of public waters: (1) Land within 1,000 feet from the normal high watermark of a lake, pond, or flowage; and (2) land within 300 feet of a

river or stream or the landward side of flood plain delineated by ordinance on such a river or stream, whichever is greater, (b) "Unincorporated area" means the area outside a city, village, or borough.

Subd. 3. [COMMISSIONER'S DUTIES.] Before July 1, 1970, the commissioner of conservation shall promulgate, in the manner provided in Minnesota Statutes, Chapter 15, model standards and criteria for the subdivision, use, and development of shoreland in unincorporated areas, including but not limited to the following: (a) The area of a lot and length of water frontage suitable for a building site; (b) the placement of structures in relation to shorelines and roads; (c) the placement and construction of sanitary and waste disposal facilities; (d) designation of types of land uses; (f) preservation of natural shorelands through the restriction of land uses; (g) variances from the minimum standards and criteria; and (h) a model ordinance. The following agencies shall provide such information and advice as may be necessary to the preparation of the rules and regulations, or amendments thereto: The state departments of agriculture, economic development, and health; the state planning agency; the pollution control agency; the state soil and water conservation commission; and the Minnesota historical society. In addition to other requirements of Minnesota Statutes, Chapter 15, the model standards and ordinance promulgated pursuant to this section, or amendments thereto, shall not be filed with the secretary of state unless approved by the executive officer of the state board of health and the director of the pollution control agency.

Subd. 4. [FAILURE OF COUNTY TO ACT; COMMISSIONER'S DUTIES; ENFORCEMENT.] If a county fails to adopt a shoreland conservation ordinance by July 1, 1972, or if the commissioner of conservation, at any time after July 1, 1972, after notice and hearing as provided in Minnesota Statutes, Section 105.44, finds that a county has adopted a shoreland conservation ordinance which fails to meet the minimum standards established pursuant to this section, the commissioner shall adapt the model ordinance to the county. The commissioner shall hold at least one public hearing on the proposed ordinance in the manner provided in Minnesota Statutes, Section 394.26, after giving notice as provided in section 394.26. This ordinance is effective for the county on the date and in accordance with such regulations relating to compliance as the commissioner shall prescribe. The ordinance shall be enforced as provided in Minnesota Statutes, Section 394.37. The penalties provided in Minnesota Statutes, Section 394.37, apply to violations of the ordinance so adapted by the commissioner.

Subd. 5. [COSTS.] The cost incurred by the commissioner in adapting the model ordinance to the county pursuant to subdivision 4 shall be paid by the county upon the submission to the county of an itemized statement of these costs by the commissioner. If the county fails to pay these costs within 90 days after the commissioner's statement is received, the commissioner may file a copy of the statement of these costs with the county auditor of the county for collection by special tax levy. The county auditor, upon receiving a statement from the commissioner, shall include the amount of the state's claim in the tax levy for general revenue purposes of the county. This additional tax shall be levied in excess of any limitation as to rate or amount, but shall not cause the amount of other taxes which are subject to any limitation to be reduced in any amount whatsoever. Upon completion of the tax settlement following this levy, the county treasurer shall remit the amount due to the state to the commissioner for deposit in

the state treasury.

Sec. 2. Minnesota Statutes 1967, Section 394.25, Subdivision 2, is amended to read:

Subd. 2. The establishment of zoning districts within which districts the use of land for agriculture, forestry, recreation, residence, industry, trade, soil conservation, water supply conservation, surface water drainage and removal, conservation of shorelands, as defined in section 1 of this act, and additional uses of land may be encouraged, regulated, or prohibited and for such purpose the board may divide the county into districts of such number, shape, and area as may be deemed best suited to carry out the comprehensive plan.

Sec. 3. Minnesota Statutes 1967, Section 396.03, is amended to read:

396.03 [OBJECT OF REGULATIONS.] These regulations shall be made in accordance with a comprehensive plan and designed for any or all of the following purposes:

(1) To protect and guide the development of non-urban areas;

(2) To secure safety from fire, flood, and other dangers;

(3) To encourage a distribution of population and a mode of land utilization that will facilitate the economical and adequate provision of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements;

(4) To lessen governmental expenditures;

(5) To conserve and develop natural resources, including but not limited to the conservation of shorelands, as defined in section 1 of this act;

(6) To prevent soil erosion;

(7) To foster the state's agricultural or other industries;

(8) To protect the food supply;

(9) To prevent waste.

These regulations shall be made with a reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses.

Sec. 4. Minnesota Statutes 1967, Chapter 396, is amended by adding a section to read:

[396.951] [SHORELAND REGULATIONS; POWERS OF TOWNS.] Notwithstanding the provisions of Minnesota Statutes, Section 396.05, the approval of town boards is not required for ordinances regulating the conservation of shorelands. However, this section does not prohibit a town from adopting or continuing in force, by ordinance, regulations of shorelands which are more restrictive than those required by the county ordinance.

CHAPTER 821--S.F. No. 1349

An act creating the Carey Lake recreation district, defining its powers and duties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Subdivision 1. [CREATION.] There is hereby created the Carey Lake recreation district for the combined territory of the city of Chisholm, the villages of Buhl and Hibbing, and the town of Stuntz, for the purpose of developing and operating recreation facilities within or without the territory of the participating governmental units.

Subd. 2. [GOVERNING BODY.] The governing body shall consist of a board of trustees consisting of two representatives of each of the participating governmental units. Such trustees shall be appointed by their respective governing bodies, and shall hold office at the pleasure of the appointing authority. In the case of the town of Stuntz, the town board is the governing body. A majority of the trustees shall be a quorum. The trustees shall select a chairman and such other officers as they shall deem necessary. They shall meet at times and places to be determined by the board of trustees. The board of trustees may employ such persons as it deems necessary to serve at its pleasure. The board shall prescribe the duties of its employees and fix their compensation.

Section 2. Subd. 1. [GOVERNMENTAL SUBDIVISION.] The Carey Lake recreation district shall be a public corporation and a governmental subdivision of the state.

Subd. 2. [GENERAL POWER.] The district may sue and be sued and may enter into any contract necessary or proper to provide recreational facilities of all sorts to people of the state.

Subd. 3. [MAY ACQUIRE AND HOLD PROPERTY.] To the extent necessary for the exercise of its powers or the accomplishment of its purposes, the district may acquire by purchase or gift, or may lease or rent any real or personal property within or without the district, or may condemn public lands within the district not being devoted to another public purpose, and may hold such property for the accomplishment of its purposes. The district may lease, rent out, sell, or otherwise dispose of any property not needed for such purposes.

Subd. 4. [GIFTS.] The district may accept gifts, grants or loans of money or other property from the United States, the state, or any person, corporation or other entity for district purposes.

Sec. 3. This act takes effect when approved by the governing bodies of the city of Chisholm, the villages of Buhl and Hibbing, and the town board of the town of Stuntz, and upon compliance with Minnesota Statutes, Section 645.021.

CHAPTER 837--S.F. No. 2612

An act relating to drainage, and the construction

of private ditches or ditch systems over and across laterals forming a part of a judicial ditch.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Persons owning property within the ditch system described as Judicial Ditch No. 1, Clearwater, Red Lake and Polk counties, may construct and thereafter maintain a private ditch or ditch system over and across their property and where necessary over and across any laterals to and forming a part of said judicial ditch.

Sec. 2. The construction authorized in section 1, insofar as it effects the crossing of any laterals shall not be undertaken until approval thereof has been obtained by the district court. The matter shall be brought before the court on petition of one or more of the persons desiring to construct the ditch. Upon filing the petition the clerk with the approval of the court shall fix a time and place for hearing thereon and shall give notice of the hearing as the court may direct, the cost thereof to be borne by the petitioner.

Sec. 3. At the hearing the court shall consider the matter and if the court approves the construction of the ditch over and across any laterals of the judicial ditch described in section 1, the court order so approving may fix such terms and conditions thereto as it deems necessary. A copy of the order of the court shall be filed with the auditor of each county affected.

REFERENCES

1. Anon. 1950. Water Resources Law. The Report of the President's Water Resources Policy Commission. Vol. 3. U.S. Gov. Printing Office.

2. Anon. 1968. Background Information for Framework Statewide Water and Related Land Resources Planning in Minnesota. Bull. 2, Water Resources Coordinating Committee, Minnesota State Planning Agency.

3. Gindler, B.J. 1967. Water and Water Rights. Vol. 3. The Allen Smith Co., Indianapolis.

4. Haber, D. and Bergen, S.W. Ed. 1958. The Law of Water Allocation in the Eastern United States. The Ronald Press Co., New York.

5. Haik, R.A. 1963. Theories of Water Law, Minn. CLE, Vol. I, No. 3, 81, 87.

6. McGuinness, C.L. 1951. Water Law with Special Reference to Ground Water. U.S. Geol. Survey Circular 117.

7. McGuinness, C.L. 1963. The Role of Ground Water in the National Water Situation. U.S. Geol. Survey Water-Supply Paper 1800.

8. Thomas, H.E. 1961. Ground Water and the Law. U.S. Geol. Survey Circular 446.

9. Walton, W.C., R.A. Haik and D.L. Hills. 1968. Codified and Uncodified State Laws and Municipal Ordinances Bearing on Water and Related Land Resources in Minnesota. Minnesota Water Resources Research Center. Bulletin 9.