

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and
amendatory, and notes showing repeals, together with annotations from the
various courts, state and federal, and the opinions of the Attorney
General, construing the constitution, statutes, charters
and court rules of Minnesota together with digest
of all common law decisions.



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MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1940

time not being affected. Improvement of Third St., 177 M159, 225NW92.

Lease was not terminated by condemnation by city of part of building so as to exclude lessee from asserting right to share in compensation, notwithstanding covenant in lease that in case building should become untenable, lessee shall be relieved of rent and lease shall terminate unless lessor rebuilds within reasonable time. *Siggelkow v. A.*, 187M395, 245NW629. See Dun. Dig. 5412.

In action for conversion of personal property, question whether city's conduct in entering upon condemned property was in contravention of forcible entry and unlawful detainer statute, held not presented by record. *Dow-Arneson Co. v. C.*, 191M28, 253NW6. See Dun. Dig. 386.

City taking possession of condemned real property held to create relationship in nature of constructive bailment of personal property thereon and to have become gratuitous bailee liable only for failure to exercise good faith as regards care of property. *Id.* See Dun. Dig. 728.

6578-3. Commissioner of conservation to acquire certain lands.—Authority is given to the Commissioner of Conservation to acquire and to use the procedure set forth in Chapter 52 of the Laws of 1935 [§§5620-29, 5620-30], as far as applicable, in acquiring the land necessary for the Talcot Lake Project in Murray

and Cottonwood Counties, such land to be paid for from any available funds of the Department of Conservation or from money provided by the United States government. (Act Apr. 1, 1935, c. 105, §1.)

Preamble.

Whereas, the federal government has allocated \$75,000 for the improvement of Talcot Lake in Murray and Cottonwood Counties and the lands in the vicinity thereof as a public hunting ground and game refuge on condition that the state acquire title to the necessary land on great advantage to the state, and

Whereas, the acquisition of such lands and the improvement thereof for said public purposes will be of great advantage to the state, and

Whereas, other projects of a similar character are pending in which the federal government may provide funds for improvement in case the state promptly acquires title to the necessary land:

6578-4. Authority of commissioner.—Authority is likewise given to the Commissioner of Conservation to acquire and to use the procedure set forth in said Chapter 52, so far as applicable, in acquiring any land necessary for other projects of a similar character in which the United States shall provide the funds for necessary improvements. (Act Apr. 1, 1935, c. 105, §2.)

CHAPTER 42

Water Powers

MILLS AND DAMS

6579. Dams—For what purposes—Eminent domain.

The common law riparian right to build a dam across a navigable stream was not abolished by the Rivers and Harbors Act of March 3, 1899 (Mason's U. S. C. A. title 33, §401), but merely suspended until consent of Congress was obtained and plans approved. *Pike Rapids Power Co. v. M.*, (CCA8), 99F(2d)902.

Rights and liabilities arising out of construction of dam under license issued by Federal Power Commission resulting in injuries to piers of railroad bridge constructed under authority of an Act of Congress are determined by the laws of the state, as the shores of navigable waters, the soil thereunder, and the rights appurtenant thereto were not granted to the United States by the constitution, but were reserved to the states. *Id.*

Power company constructing dam held liable for damages to those piers of railroad bridge which were constructed in the river bed on the west side where the railroad was the equitable owner of the abutting land on that side of the river, but it was not liable for damages to piers constructed in river bed on the east side where the power company owned the abutting land on that side and the railroad was a trespasser. *Id.*

Owner and operator of a dam for industrial purposes in a river or natural water course is not an insurer of its safety, but is bound to exercise a degree of care in its construction, maintenance, and operation proportionate to injuries likely to result to others; care commensurate with danger. *Willie v. M.*, 190M95, 250NW 809. See Dun. Dig. 10191, n. 78.

Doctrine of *res ipsa loquitur* applies where a dam is wholly within control of defendant and its failure or operation results in injury to others such as could reasonably be anticipated. *Id.* See Dun. Dig. 7044.

Negligence of owner and operator of dam in flooding river valley, held for jury, notwithstanding rainfall was unusually heavy and other flood water came into valley and contributed to flood and notwithstanding there were obstructions in river below dam. *Id.* See Dun. Dig. 10191.

Procedural effect of *res ipsa loquitur*. 20MinnLawRev 241.

UNIFORM STAGE OF WATER IN LAKES AND STREAMS

6588. County board may establish—Eminent domain.

Section confers no authority upon a county board to fix levels or erect dams on lakes, major parts of which lie outside county, and, where there is no adoption or ratification by county of acts of board in fixing a level above high-water mark or furthering erection of a dam which so raises water in such a lake, defense of ultra vires is available to county. *Erickson v. C.*, 190M433, 252 NW219. See Dun. Dig. 10187-10189.

Right of riparian owners does not prevent raising of lake level to natural highwater mark, though lake is temporarily dry. *Op. Atty. Gen.*, Jan. 30, 1934.

Statute does not authorize county board to make an appropriation for a "dredging project" in connection with improvement of a lake, unless purpose of dredging is to establish or maintain the water level thereof. *Op. Atty. Gen.* (273a-6), Aug. 11, 1938.

6589. Resolution—Filing of copy, map, etc.

Board has power to rescind resolution establishing water level if no vested rights are thereby interfered with and all parties concerned are stored to same position they were before adoption of resolution. *Op. Atty. Gen.* (273a-33), Feb. 23, 1937.

6594. Cost of maintenance, etc.—Management.

There cannot be a second assessment for benefit. *Op. Atty. Gen.* (408b), May 6, 1935

County board may appropriate money for purpose of maintaining and operating pumping plant and may maintain water level in a lake without payment of any damages to riparian owners of lake or stream as long as water level is not raised above natural high water mark. *Op. Atty. Gen.* (273a-14), Sept. 13, 1938.

6595. Lakes in two or more counties—water boards.—Whenever any such navigable lake lies partly within two or more counties having fewer than one hundred and fifty thousand inhabitants each, the chairman of the county boards thereof shall constitute a water board for said counties, and, as such, shall have all the powers and be subject to all the duties in respect to the waters of such lake that are conferred and imposed upon the county board by Sections 6588-6594. And except as otherwise provided in Section 6596, all the provisions aforesaid relating to the raising and retention of the waters in navigable lakes, the acquiring of property therefor, and the assessment and collection of benefits arising therefrom, shall apply to cases wherein such water boards are formed. (R. L. '05, §2559; G. S. '13, §5445; Apr. 1, 1935, c. 99.)

6597. Council given right to acquire title to navigable lakes.

Cities of fourth class having population of 6,000 to 8,000 and valuation of \$2,000,000 to \$2,250,000, may dredge lakes within their boundaries. Laws 1939, c. 261.

State may legally delegate to village council authority to supervise operation of dam in connection with control of water level. *Op. Atty. Gen.* (4007), June 14, 1935.

6602-2. Control of shore lines.—That in order to preserve shore lines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature, no dam and no addition to any existing dam shall hereafter be constructed in or across any public stream or body of water within or bordering upon those portions of the area of Cook, Lake, and

St. Louis Counties designated in the Act of Congress of July 10, 1930 (Chapter 880), and no alteration of the natural water level or volume of flowage of any such stream or body of water shall be made and no easement for flooding or overflowing or otherwise affecting lands of the State of Minnesota adjacent thereto shall be granted, unless and until specific authority shall have first been obtained by Act of the Legislature of the State of Minnesota: Provided, that with the written approval and consent of the Department of Conservation, together with the signed authority of the Executive Council of the State of Minnesota, dams for public recreational uses or dams essential for logging or for logging reservoirs that do not exceed 100 acres in extent may be constructed to maintain temporarily water levels not higher than the normal high water mark: Provided, however, that every such approval shall be subject to suitable charges, time limitation, and other conditions designed fully to protect the public interest in the intent of this Act. Provided further, that the provisions of this Act shall not apply to that portion of any proposed development for water power purposes now or heretofore actually occupied and maintained by any applicant for license to make such development under the terms of the Federal Water Power Act if the application for such license was pending on or before January 1, 1928. Such occupancy is hereby legalized and confirmed and such occupant is hereby granted the right to occupy and use for water power purposes, and so long as required and used for such purposes, the state lands and waters now or heretofore so occupied and used up to an elevation not exceeding 2 feet above the lowest crest of the spillway or overflow dam of such occupant as now constructed; provided that no water control structures shall be used higher than those now or heretofore used. The occupant shall pay to the state annually reasonable compensation for the use of the state lands affected, to be determined by the Commissioner of Conservation after investigation. The occupant shall comply with the following requirements: (1) to pay the State within ninety days after the passage of this Act for all merchantable timber heretofore killed by such development at treble prevailing stumpage prices at the time such timber was killed; (2) to pay the State promptly reasonable compensation for any further damage to state lands or timber heretofore or hereafter caused by such development, other than such as is covered by the compensation paid for the use of the lands as hereinbefore provided; (3) within one year after the passage of this Act to clear all state lands subject to flooding of all timber and brush so far as not already cleared. (Act Apr. 22, 1933, c. 412, §1.)

Provision permitting perpetual lease of land for dam purposes is invalid. Op. Atty. Gen., Aug. 7, 1933.

Statute does not prevent Department of Conservation from repairing or rebuilding existing dams. Op. Atty. Gen. (273b), June 17, 1936.

6602-3. Violations a misdemeanor.—Any person who shall wilfully or knowingly violate any of the provisions of this Act or of any order made thereunder by the Department of Conservation shall be guilty of a gross misdemeanor. (Act Apr. 22, 1933, c. 412, §2.)

6602-11. Definitions.—When used in this act—

(a) "Commission" shall mean the conservation commission of the state of Minnesota.

(b) "Commissioner" shall mean the commissioner of conservation of the state of Minnesota.

(c) "Court" shall mean the district court of the district wherein the proceedings are pending.

(d) "Judge" shall mean the judge of the district court wherein the proceedings are pending.

(e) "Clerk" shall mean the clerk of the district court of the county in which the proceedings are pending.

(f) "Engineer" shall mean the engineer designated by the commissioner of conservation to act as engineer in the proceedings.

(g) "Appraisers" shall mean the persons appointed by the judge of the district court and the commissioner of conservation to ascertain and report the benefits and damages arising from the proposed work. (Act Apr. 29, 1935, c. 369, §1.)

This act does not have any bearing upon power of county board to rescind resolution establishing water level, adopted long before its passage. Op. Atty. Gen. (273a-33), Feb. 23, 1937.

6602-12. Commissioner may construct dams, etc.

—The commissioner, in order to improve navigation, protect and improve domestic water supplies, protect and preserve fish and other wild life, protect the public interest in shores and shore lines and promote public health, shall have power to construct and maintain as hereinafter provided all necessary dikes, dams, sluiceways and other structures or devices necessary and essential to maintain such uniform water levels as may be established under authority of this act. He shall have the power to appoint competent and experienced civil engineers and assistants whose duties it shall be to make surveys and estimates as are required to secure the information and data the commissioner may deem necessary. Provided, however, that the wages and salaries of any engineer, assistant or other person, together with the expense incurred by such appointee or employe, under the provisions of this section, shall be included as a part of the costs of such proceedings and included in the assessments against the property benefited, when approved by the district court in the county where said engineering work is done and performed. (Act Apr. 29, 1935, c. 369, §2.)

State may not concentrate waters of public lake in an area smaller than natural area without consent of riparian owners or condemnation proceedings. Op. Atty. Gen. (273c-6), Nov. 17, 1936.

6602-13. Owners may initiate proceedings.—A majority of the owners of property abutting upon any lake or other body of water and/or the proper officials of any city or village authorized by resolution of the council thereof liable to be affected by or assessed for the cost of the proposed improvement, may initiate a proceeding for the establishing of a uniform water level in any lake or other body of water by filing with the commissioner a petition signed by a majority of such owners of property, asking the commissioner to take steps for the establishment of such water level. The said petition shall set forth the desired levels and, where the costs of the improvement are to be paid for by the state of Minnesota or by an owner or group of owners, the petition shall so state, and shall further set out the names of said owners and the description of the lands owned by each of said parties including the state of Minnesota. Before the commissioner shall accept for filing any such petition he shall require the petitioners to file with him a surety bond conditioned for the payment, in case the court shall deny such petition, of all the costs of the necessary surveys and of the court proceedings. Upon receipt of said petition the said commissioner shall file with the clerk of the district court of the county containing such lake or other body of water or portion of any such lake or other body of water likely to be affected, in whole or in part, by such improvement a petition addressed to the court setting forth the following information:

(a) The legal description of each tract of land bordering on such lake or other body of water.

(b) The name of the owner of each such tract of land as shown by the records in the office of the register of deeds and the name of any persons in possession thereof.

(c) A declaration that the number of signers appearing on the petition constitutes a majority of the owners of property abutting on the lake or other bodies of waters to be improved.

(d) A map showing the lake or other body of water affected and the tracts of land bordering on

such lake or other body of water and the area of each tract.

(e) An engineer's report fixing the high water level of said lake and recommending a permanent uniform level and also the elevation of the original natural outlet to be maintained by suitable dams or other structures.

(f) The various reasons why the project is believed to be of public advantage.

(g) Which of the following parties, in the opinion of the commissioner, should share the expense of the project: Riparian owners, the state, the county or counties, other interested municipalities. Provided, that when structures are to be built affecting waters located in more than one county, the commissioner may file a petition with the clerk of the district court in any one of the counties affected and thereafter that court shall have jurisdiction of all proceedings, subject to the statutes providing for a change of venue.

Whenever proposed improvements under this act do not contemplate the raising of the elevations of the lake above ordinary high water or where no part of the costs of said improvements are to be assessed against property surrounding the lake, the petition to the court authorized by this section may be presented by the commissioner on his own initiative without bond. (Act Apr. 29, 1935, c. 369, § 3.)

6602-14. Appointment of appraisers.—Within 10 days after the filing of such petition with the clerk as specified in section 3, the judge of said court shall make an order appointing three resident free holders of the county or counties in which said construction is proposed, not interested in the proposed works and not related by blood or marriage within the fourth degree, according to the rules of the common law, to any party known to be interested therein, to act as appraisers to ascertain and report to said court the amount of benefits and damages that will result to any lands or other property affected or to be affected by reason of the proposed works. Such appraisers shall meet at a time and place to be specified by said court, preparatory to commencing their duties. (Act Apr. 29, 1935, c. 369, § 4.)

6602-15. Duties of appraisers.—The said appraisers shall qualify by subscribing to the oath provided by Mason's Minnesota Statutes of 1927, Section 6964. The duties of said appraisers shall be as follows:

(a) To assemble in the vicinity of the lake, lakes or bodies of water in question within 15 days after their appointment.

(b) Upon being furnished a copy of the petition, engineer's report, maps and plans, to examine all property around said lake, lakes or bodies of water and all lands included and described in the engineer's report.

(c) To ascertain and determine the amount of benefits and damages, respectively, that will result to each parcel of property included within the area described by the engineer and shown on the map.

(d) To ascertain and determine the value of each parcel of the lands or other property to be acquired for the construction of dams, sluiceways, and other necessary structures and devices and the amount of injury to all property to be damaged by the construction of the improvements petitioned for by the commissioner.

(e) To ascertain and determine the amount of benefits or damages to municipalities and corporations because of an increased or more dependable water supply, or both.

(f) To ascertain and determine whether the proposed improvements of such lake, lakes or bodies of water will be of advantage for the preservation, propagation and protection of fish and other forms of wild life. (Act Apr. 29, 1935, c. 369, § 5.)

6602-16. To make tabular statements.—(a) The said appraisers shall prepare a tabular statement showing as far as practicable:

(1) The names of the owners of each tract of land to be benefited or damaged, including lands owned by the state of Minnesota or any department thereof; a description of each tract to be benefited or damaged and the total number of acres of said tracts and the estimated number of acres in each of said tracts to be benefited or damaged.

(2) The names of municipalities and corporations and the amount that each will be benefited or damaged.

(3) The amount of benefit, if any, that will accrue to the state by reason of the improvement of said lake, lakes or bodies of water as a place for the propagation, protection and preservation of fish and other forms of wild life assessable against the state of Minnesota.

(4) The total estimated benefits and damages of every kind and nature ascertained and determined by them.

(5) The total expenses incurred by them and the actual time each appraiser was engaged. (Act Apr. 29, 1935, c. 369, § 6.)

6602-17. Filing of report—Compensation.—The appraisers shall file their completed report with the clerk within 30 days after their appointment. As soon as said report shall have been filed the court may issue its order directing the payment of compensation at the rate of Five Dollars per day for each appraiser, and their expenses, which sums may be taxed as costs by the clerk. (Act Apr. 29, 1935, c. 369, § 7.)

6602-18. Hearings.—Upon the filing of the engineer's and appraisers' reports with the clerk, it shall be the duty of said judge to fix a time and place for hearing said petition and said engineer's and appraisers' reports, and such evidence as interested parties may present, which hearing shall be set for a date not less than 30 nor more than 60 days from the date of the notice thereof and shall be held in the county where the proceedings are pending. Said notice shall recite the filing of said petition, the appointment of the appraisers and the filing of their reports; shall give a description of all lands and properties affected and the amount of benefits and damages assessed against each parcel described in the appraisers' report. Said notice shall be published for three successive weeks in a legal newspaper in each county containing property affected by such proceedings and described in said appraisers' report, but it shall be necessary to publish in each county only the description of lands or property affected within such county. A copy of such notice shall be mailed by the clerk of court to all parties who are named in the proceedings, and a certificate of such mailing filed by him in his office. (Act Apr. 29, 1935, c. 369, § 8.)

6602-19. Confirmation of assessments.—(a) At the time fixed in the notice the judge shall receive and consider all evidence for and against the granting of such petition and may revise, correct, amend or confirm such assessments, in whole or in part, or may order a new assessment, in whole or in part. If, after a hearing, such court shall find that the fixing and maintenance of the stage of water in said lake, lakes or bodies of water or streams connecting the same as prayed for or as recommended by the engineer will promote the public health and general welfare and secure better public use of such lake, lakes or bodies of water, and/or improve the use of such bodies of water for navigation and/or for the propagation, preservation and protection of fish and other forms of wild life, and that the benefits resulting will exceed the cost of the construction of the improvement prayed for, and damage, the said court may so find and by order:

(1) Set the normal high water level and fix the elevation of the original natural outlet, which elevation shall be the minimum elevation below which the level may be lowered by operation of artificially con-

structed control works with reference to a permanent bench mark.

(2) Confirm the reports of said engineer and appraisers as originally filed or as subsequently amended.

(3) Direct the construction of the improvements prayed for or as much thereof as shall be found to be necessary.

(4) Direct that all property described in the appraisers' report, as finally confirmed, that is benefited by such proceedings, shall be assessed for its proportionate share of the cost of construction of such improvement in proportion to the benefits received.

(5) Make an equitable allotment of the costs incurred in proportion to the benefits accruing to the separate counties, persons, corporations and municipalities and as to improved facilities for the propagation, preservation and protection of fish and other forms of wild life, to the state of Minnesota and determine the amount thereof and fix the manner and terms of payment.

(b) When the appraisers shall have determined the amount of the benefits to said lake, lakes or bodies of water from the construction of the improvements and works authorized herein which will accrue to the state of Minnesota through increased or improved facilities for the propagation, preservation and protection of fish and other forms of wild life, as provided in sub-section (f) of section 5 and section 6 of this chapter, the judge, in his order confirming the appraisers' report, shall direct the commissioner to pay the state's pro rata portion of the costs of said improvement represented by such benefits, and the commissioner shall have authority to pay such portion of the costs out of state funds which are available therefor.

Upon the filing of such order by the court with the clerk, it shall be his duty to furnish to the auditor of each county affected a complete certified list giving the description of all the property affected in said proceedings in their respective counties, the names of the owners as shown in the appraisers' report, the amounts of benefits or damages as to each tract and a copy of the order of the court confirming the report of the engineer and appraisers and directing the construction of the improvement; provided, that whenever it appears from the engineer's report that the total estimated cost of any improvement contemplated under the provisions of this act will exceed \$2500.00 or whenever the funds to defray the cost of such improvements are to be provided by the issuance of warrants or other evidences of indebtedness by the counties affected, the board of county commissioners in each county affected thereby shall approve such project by resolution, and a certified copy of such resolution shall be filed with the clerk of the district court where such proceedings are pending, before such clerk shall be authorized to give notice of a final hearing as herein provided. (Act Apr. 29, 1935, c. 369, §9.)

6602-20. Judge may make orders.—The judge before whom any petition may be filed, under the provisions of this act, shall have power to make such orders as may be necessary from time to time in any proceeding hereunder and to modify the same as justice may require at any time during the pendency thereof. He shall not lose jurisdiction of the proceedings by reason of failure to give proper notice or failure to hold any hearing noticed or ordered to be held for the consideration of any matter connected with the proceedings or committed to them, and may make such new and additional orders in the premises as justice may require, to bring the parties interested before them and to promote the final completion of the works petitioned for under the provisions of this act. (Act Apr. 29, 1935, c. 369, §10.)

6602-21. May demand jury trials.—Any party interested in any proceedings brought under the provisions of this act, whether a petitioner, an owner of land affected, an interested municipality or the state, may at any time prior to the commencement of the

hearing demand a jury trial with respect to the following questions:

(1) The amount of assessed benefits to any tract of land owned by him.

(2) The amount of damages allowed to any tract of land owned by him. (Act Apr. 29, 1935, c. 369, §11.)

6602-22. Act to be liberally construed.—This act shall be liberally construed so as to promote public health, improve navigation, protect and preserve fish and other forms of wild life, and protect the general public interest in shore lines, lakes and waters. (Act Apr. 29, 1935, c. 369, §12.)

6602-23. Certified copy to be delivered to commissioner.—(a) At the time of the filing of the order and findings by the court, the clerk shall furnish a certified copy thereof to the commissioner. Within 30 days of the receipt thereof said commissioner shall proceed to advertise for bids for the construction of the works ordered by said judge as provided in section 9 hereof, by giving notice by publication for three successive weeks in the official paper of the county in which the proceedings are pending, of the letting of a contract for such works.

(b) At the time and place fixed in the notice the commissioner shall proceed to award the contract to the lowest responsible bidder. Such bidder shall furnish good and sufficient bond, to be approved by the court in an amount of not less than 75 per cent of the total amount of the contract, guaranteeing the faithful performance of the contract and payment of all labor, material and supplies furnished in the performance of the contract; provided, that wherever a dam or other improvement authorized under this act is to be included within a state or federal public emergency relief project and where the costs of such improvements are to be provided from state or federal emergency relief funds, the provisions of this section with reference to the award of contract shall not apply.

(c) The contract and bond for the construction of any works in this chapter shall be approved by the attorney general.

(d) Payment shall be made to the contractors as the work progresses, not exceeding 80 per cent thereof, by the county board upon certificates showing the progress of such work to be furnished to the county board by the commissioner.

(e) A copy of all contracts awarded by the commissioner shall be filed with the county auditor in each county affected. (Act Apr. 29, 1935, c. 369, §13.)

6602-24. To be under supervision of engineer.—

(a) Any and all work provided for in this chapter shall be done under the constant supervision and inspection of the engineer designated by the commissioner.

(b) In all proceedings instituted under the provisions of this act, the engineer and the assistant, and the appraisers and their assistants shall have the right to enter upon any lands for the purpose of making the survey, examining the property and estimating the benefits and damages, but in so doing they shall commit no unnecessary damages. (Act Apr. 29, 1935, c. 369, §14.)

6602-25. Auditors to prepare tabular statements.—(a) As soon as practicable after the filing by the clerk of the certified copy of the court's order and findings with the auditor or auditors, as the case may be, and as provided in section 9, the said auditor or auditors shall prepare a tabular statement showing:

(1) The names of the owners of all lands and the names of public or private corporations and municipalities (except the state of Minnesota) benefited by the construction of said works as appears from the court's order on file in the proceedings.

(2) The description of said lands as the same appears in such order.

(3) The estimated number of acres benefited in each such tract.

(4) The estimated amount of benefits and damages to each such tract of land; the estimated amount of benefits to each public or private corporation and municipality, as the same appears in the court's order.

(5) The amount that each of said tracts of land and each public and private corporation and municipality so benefited must pay into the treasury of each county for the establishment and construction of the structures as shown by the order of the court on file in said proceedings.

(b) Such statement or statements signed by the auditor in the presence of two attesting witnesses and acknowledged by him shall then be duly filed with and recorded by the register of deeds of each county affected and of each county containing municipalities affected and of each county in which is located any land described in said statement. (Act Apr. 29, 1935, c. 369, §15.)

6602-26. Benefits to be paramount lien.—(a) The amount of benefits assessed against each tract of land, and the interest thereon as hereinafter provided shall be and remain a first and paramount lien on such land until fully paid and shall take precedence over all mortgages, charges, incumbrances or other liens whatsoever, except real estate taxes, and shall be on a parity with real estate taxes.

(b) Payments may be made as hereinafter provided in accordance with the order of the court as provided for in subdivision (4), sub-section (a) of section 9.

(c) Such filing shall be deemed notice to all parties of the existence of such lien.

(d) The fees of the register of deeds for such recording shall be paid by the county auditor and shall be included in said statement as a part of the costs of the improvement.

(e) Such recorded statement shall be returned to the auditor and preserved by him. (Act Apr. 29, 1935, c. 369, §16.)

6602-27. Liens to bear interest.—(a) The amount that each tract of land, public or private, shall be liable for on account of the construction of works authorized in this chapter, shall bear interest from the date of the filing of the auditor's statement in the register of deed's office at the legal rate until paid.

(b) Such liens may be paid to the county treasurer at any time after the recording of said auditor's statement in the office of the register of deeds.

(c) When payment of the full amount of said liens, with interest, shall at any time be made, the county auditor, upon presentation of a receipt from the county treasurer to that effect, shall issue under his hand a certificate of such payment and the same, when recorded in the office of the register of deeds, shall release and discharge such lien of record.

(d) On or before November 15 next following the filing by the auditor of such statement, said auditor shall enter on the tax lists of the county the amount of the lien against each tract of land, all of which shall be payable as directed by the court on such tract which shall be subject to and be collected with like penalties as all other taxes.

(e) The county auditor of the county or counties wherein the proceedings are held is hereby authorized upon order of the court to issue warrants of the county to pay the official costs of such proceedings and when the costs are assessed against the lands in more than one county such costs are to be determined and apportioned between the counties affected in proportion to the benefits assessed against the lands and property in such county. The issued warrants are to draw interest at the legal rate, subject to their payment as provided under Mason's Minnesota Statutes of 1927, Section 6840-108. (Act Apr. 29, 1935, c. 369, §17.)

6602-28. State not liable—county boards may appropriate.—No proceedings shall be instituted under the provisions of this act whereby the state of Minnesota shall be assessed or charged for a portion or the whole of the cost of such improvement unless at the time of the institution of such proceedings, funds are available for the payment of the same. The boards of county commissioners may appropriate money to purchase such materials and supplies and to rent such equipment as may be necessary for the construction of dams, dykes and other works under the provisions of this act, and also on projects sponsored by the conservation department to be constructed by the several state and federal relief agencies. (Act Apr. 29, 1935, c. 369, §18; Mar. 24, 1937, c. 96, §1; Apr. 5, 1937, c. 162, §1.)

Sec. 2 of Act Apr. 5, 1937, cited, provides that the Act shall take effect from its passage.

Authority of county to participate in Works Progress Administration project and to purchase materials to restore water levels of lake is not limited to \$300. Op. Atty. Gen. (273a-23), Nov. 22, 1937.

County board may appropriate money for purpose of maintaining and operating pumping plant and may maintain water level in a lake without payment of any damages to riparian owners of lake or stream as long as water level is not raised above natural high water mark. Op. Atty. Gen. (273a-14), Sept. 13, 1938.

6602-29. Inconsistent acts repealed.—All acts and parts of acts inconsistent herewith are hereby superseded, modified, or amended so far as necessary to give effect to the provisions of this act except that nothing in this act shall amend, alter, supersede, or otherwise change the provisions set forth in Chapter 412, Session Laws of Minnesota 1933, or Amendments thereto or Mason's Minnesota Statutes of 1927, Sections 751, 6588, 6589, 6590, 6591, 6592, 6593, 6594, 6595, 6596, and 6597; Provided, further that the provisions of this act shall in no manner apply to public waters of an area of more than 10,000 acres, situated wholly or partially within counties now or hereafter having a population of more than 450,000 inhabitants, and an assessed valuation of more than \$450,000,000, including moneys and credits, and in which is situated a city of the first class within a distance of 20 miles from said body of public water, and provided further that as to such public waters nothing herein contained shall be construed to authorize the diversion of any water from any stream, river or lake located in any county adjoining or abutting in part upon the county wherein a major portion of such public waters are located. (Act Apr. 29, 1935, c. 369, §19.)

6602-30. Provisions severable.—The various provisions of this act are declared to be severable. If any provision thereof shall be declared unconstitutional the remaining provisions shall remain in full force and effect. (Act Apr. 29, 1935, §369, §20.)

TRI-STATE AREA

6602-41. Tri State waters commission created.—The State of Minnesota does hereby enter into a compact with the states of North Dakota and South Dakota whereby it agrees to cooperate with said states in carrying out the following terms and conditions:

ARTICLE I

Each of the states of North Dakota, South Dakota and Minnesota undertake to cooperate with the other two states 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.

ARTICLE II.

To that end the said three states do hereby create a district to be known as the Tristate Waters Area, which shall comprise that portion of the drainage basin of the Red River of the North lying within the boundaries of the said states.

ARTICLE III

The said three states do hereby create the Tristate Waters Commission, which shall be a body corporate and shall have the powers, duties and jurisdiction herein set forth and such other powers, duties and jurisdiction as shall hereafter be conferred upon it by acts of the legislatures of each of said three states concurred in, when of a character to require such concurrence, by act of Congress.

ARTICLE IV

The Tristate Waters Commission, hereafter in this compact called the Commission, shall consist of nine Commissioners, three from each state, appointed by each state in such manner and for such length of term as may be determined by the legislature thereof. Each Commissioner shall be a citizen of the state from which he is appointed, and at least one Commissioner from each state shall be a resident of the drainage area of the Red River of the North. Each Commissioner may be removed or suspended from office in such manner as shall be provided by the law of the state from which he shall be appointed. Each Commissioner shall receive such compensation as may be provided by the legislature of the state he represents, which compensation shall be paid by such state. Each Commissioner shall be paid actual expenses necessarily incurred in the performance of his duties as such Commissioner.

ARTICLE V

The Commission shall elect from its number a chairman and vice-chairman and shall appoint and at its pleasure remove an executive secretary and such other officers and assistants as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation.

It shall adopt a seal and suitable by-laws and shall promulgate rules and regulations for its management and control.

A majority of the members from each state shall constitute a quorum for the transaction of business, the exercise of any powers, or the performance of any duties, but no action of the Commission shall be binding unless at least two of the members from each state shall vote in favor thereof.

The Commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report to the governor of each state setting forth in detail the operations and transactions conducted by it pursuant to this compact, and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the said states which may be necessary to carry out the intent and purpose of this compact, and such changes in the area of the district as may seem desirable.

The Commission shall not incur any obligations for salaries, office or other administrative expenses prior to the making of appropriation adequate to meet the same; nor shall the Commission pledge the credit of any of the said states except by and with the authority of the legislatures thereof. Each state reserves the right to provide hereafter by law for the examination and audit of the accounts of the commission by its comptroller or other official.

The Commissioner shall meet and organize within thirty days after the effective date of this compact.

ARTICLE VI

It shall be the duty of the Commission to study the various water problems relating to water supply within the Tristate Waters Area.

ARTICLE VII

Plans for works on boundary waters in said drainage areas prepared by the state, municipal or industrial agencies shall receive the approval of the Commission before construction is begun.

It shall be the duty of the Commission to maintain and control lake levels and stream flow on boundary waters within the area, but such action shall be taken only with the approval of the authorized county or state agencies, in which such lake or stream is located, but said Commission shall have no power or jurisdiction over water levels or stream flow in the Otter Tail River which is known as that portion of the Red River originating in Becker and Otter Tail counties extending and flowing through in a southerly and southwesterly direction through the counties of Becker, Otter Tail and Wilkin, and emptying into the Red River of the North at the junction of the Bois de Sioux at Breckenridge, Minnesota and its chain of lakes and its tributaries.

The Commission shall have power to cooperate with any duly authorized federal, state or municipal agency in studies and surveys, construction, maintenance and operation of water projects within the scope of its jurisdiction.

The Commission shall be authorized to exercise the power of eminent domain, to acquire such real and personal property as may be reasonably necessary to effectuate the purposes of this compact, and to exercise all other powers not inconsistent with the constitutions of the States of North Dakota, South Dakota and Minnesota, or with the constitution of the United States, which may be reasonably necessary or appropriate for or incidental to the effectuation of its authorized purposes, and generally to exercise in connection with its property and affairs and in connection with property within its control any and all powers which may be exercised by a private corporation in connection with similar property and affairs.

ARTICLE VIII

The Commission shall study the methods of financing the construction, control, maintenance and operation of projects and shall recommend for enactment to the legislatures of the states concerned such legislation as will effectuate the purposes and ends of the Commission.

ARTICLE IX

Each state shall bear its proportionate share of the expense of the Commission based on the pro rata value to such state of the activities of the Commission, which expense shall be provided for by appropriation by the legislature.

ARTICLE X

Should any part of this compact be held to be contrary to the constitution of any of said states or of the United States such part of said compact shall become inoperative as to each state but all other severable provisions of this compact shall continue in full force and effect.

ARTICLE XI

This compact shall become operative immediately after the passage of an act substantially conforming to the compact provisions of this act by the legislatures of each of the three states which are parties hereto, or, as to such state, in the event that either or both of the other two states parties hereto shall provide for the consummation of this compact by action of the governor, upon the entering into a compact signed by the governor of said state or states and the governor of this state substantially embodying the provisions of this compact. The governor of this state is hereby authorized to enter into such a compact. (Apr. 15, 1937, c. 234, §1.)

Preamble. The preamble to Act Apr. 15, 1937, cited above reads: "Whereas, the states of North Dakota, South Dakota and Minnesota share the drainage basin of the Red River of the North and have a common interest in the most advantageous utilization of the waters of this drainage basin, in the control of the flooded waters of this area, and in the prevention of pollution of these public waters, and

Whereas, action by individual states is inadequate to effectuate these purposes in a manner most advantageous

to the common welfare of the people living in this drainage basin, and

Whereas, the only manner in which effective action can be taken with reference to these purposes is to create by compact between the said three states an interstate authority vested with sufficient power, and

Whereas, such an authority can best be created by the passing by the legislatures of each of said states of substantially identical bills providing for the creation of such an interstate authority.

6602-42. Membership of commission.—The three Commissioners from this state on the Tristate Waters Commission shall be appointed as follows: two of said Commissioners shall be appointed by the governor from residents of the Tristate Waters Area and shall serve for a term of two years. The third shall be the Commissioner of conservation. (Apr. 15, 1937, c. 234, §2.)

6602-43. Commissioners to receive per diem and expenses.—Each Commissioner shall be reimbursed for actual expense in attending the meetings of the Commission and in performing his duties as such Commissioner and ten dollars per diem for each day of actual service. (Apr. 15, 1937, c. 234, §3.)

6602-44. Appropriations.—There is hereby appropriated to pay this state's share of the expenses of the Commission for the period commencing with the passage of this act and ending June 30, 1938, the sum of \$1500 and for the fiscal year ending June 30, 1939, the sum of \$1500. (Apr. 15, 1937, c. 234, §4.)

6602-45. County board may expend money to improve navigable waters.—The board of county commissioners in any county in the state of Minnesota now or hereafter having a population of more than 150,000 and not more than 225,000 inhabitants and an assessed valuation of more than \$250,000,000, exclusive of money and credits, is hereby authorized to appropriate and expend out of the revenue fund of said county a sum not exceeding \$25,000 for the improvement of navigable lakes lying wholly or partly within such county. (Apr. 21, 1937, c. 330, §1.)

Sec. 2 of Act Apr. 21, 1937, repeals inconsistent acts. Sec. 3 provides that the act shall take effect from its passage.

6602-46. County boards may appropriate money for water improvements.—The board of county commissioners in any county in the State of Minnesota now or hereafter having a population of more than 150,000, and not more than 240,000, inhabitants, and an area of more than 5,000 square miles, is hereby authorized to appropriate and expend out of the revenue fund of said county a sum not exceeding \$10,000 annually in addition to any unexpended appropriation heretofore authorized for the improvement of navigable lakes and streams lying wholly or partly within such county, which improvement may include the marking of dangerous reefs and shallow places in said lakes with proper buoys. (Act Mar. 4, 1939, c. 42.)

Sec. 2 of Act Mar. 4, 1939, c. 42, cited, repeals inconsistent laws.

WATER CONSERVATION

6602-51. Declaration of purpose.—In order to conserve, protect and utilize the water resources of the state, in accordance with the best interests of the people of the state, it is hereby declared to be the policy of the state that, subject to existing rights, all waters in streams and lakes wholly within the state and such portions of all boundary streams and lakes as lie within the state, whether meandered or non-meandered which are navigable in fact shall be public waters and that the state, so far as practicable, shall control the appropriation and use of surface and underground waters of the state. It is also declared to be the policy of the state for the purpose of promoting the public safety and welfare, to control and supervise so far as practicable, the construction, reconstruction, repair, removal and abandonment of dams, reservoirs and all other control structures in

any of the waters of the state. (Apr. 26, 1937, c. 468, §1.)

6602-52. Commissioner of conservation to make investigation.—For the purpose of enforcing the provisions of this act the commissioner of conservation of the State of Minnesota hereinafter referred to as the commissioner, by and with the approval of the conservation commission, shall be authorized and empowered to cause to be made investigations into the extent, value, conservation and control, in the general public interest, of the state's water resources, to receive and hear applicants for permits to use and appropriate the surface and underground waters of the state; to control and supervise, so far as practicable, the construction, reconstruction, repair, removal and abandonment of dams, reservoirs, and other control structures in any of the waters of the state and to make or cause to be made all surveys, maps, investigations and studies necessary to effectually perform these functions and to do such other acts as are specifically provided in this act. (Apr. 26, 1937, c. 468, §2.)

Commissioner may delegate some of the duties and functions imposed upon him to deputy and director of drainage and waters. Op. Atty. Gen. (983d), Aug. 3, 1938.

6602-53. Shall develop water conservation program for state.—The commissioner shall devise and develop a general water resources conservation program for the state. This program shall contemplate the proper conservation, allocation and development of all of the waters, surface and underground, of the state for the best interests of all of the people of Minnesota, and shall guide the commissioner in the issuing 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 appurtenant structures as hereinafter provided. The commissioner is hereby authorized and empowered to make, or cause to be made, all such surveys, maps, investigations and studies of the water resources of the state as he may deem necessary to provide him with sufficient information to formulate a program, and to perform his duties under this act. He is also authorized to cooperate with any department, bureau or body of the federal government, state agency, county board, town board, city or village council, private corporation or organization or individual in carrying out the provisions of this act. (Apr. 26, 1937, c. 468, §3.)

Commissioner of conservation has authority under §6602-51, et seq., to construct, reconstruct, repair, remove and abandon dams, reservoirs, and control structures in waters of Thief Lake conservation project area established in proceedings under §5630 pursuant to a district court order restoring Thief Lake to elevation 1163 ft. above sea level and abandoning judicial ditch No. 21. Op. Atty. Gen. (273b), May 25, 1938.

Unauthorized drainage of meandered lakes is a violation of §10437 and may be subject of inquiry and order of commissioner under §6602-51, et seq. Op. Atty. Gen. (273c-1) July 29, 1938.

6602-54. Must have written permission from commissioner.—From and after July 1, 1937, except as hereinafter provided, it shall be unlawful for the state or any agency thereof, any person or persons, partnership, 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 consent or permit of the commissioner, previously obtained upon written application therefor to the commissioner as hereinafter provided. 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 the use of water for any purpose originating within the geographical limits of any municipality; nor shall it apply to beneficial uses in existence on July 1, 1937, or interfere with or infringe upon existing rights as provided in Section 17 of this Act. (Apr. 26, 1937, c. 468, §4.)

Permit is not required for use of water for any purpose originating within geographical limits of any municipality. Op. Atty. Gen. (983d), Feb. 16, 1938.

6602-55. Must have permission to construct dams.—From and after July 1, 1937, it shall be unlawful for the state or any agency thereof, any person or persons, partnership, association, private or public corporation, county, municipality or other political subdivision of the state, to construct, reconstruct, remove or abandon any reservoir, dam or water-way obstruction; or to make or construct, or permit to be made or constructed, any change therein or addition thereto; or to make, or permit to be made, any change in, addition to, remove or abandon any existing dam, reservoir or waterway obstruction; or in any manner other than in the course of usual operation of dams beneficially using water prior to July 1, 1937, to change or diminish the course, current, or cross-section of any stream or body of water, wholly or partly within this state, without a written permit from the commissioner previously obtained, upon written application on forms to be furnished by the commissioner therefor to said commissioner as provided in section 4 of this act. Nothing in this section shall be construed to apply to any dam or obstruction in a stream or other body of water which has less than one square mile of drainage area or a normal flow of less than two cubic feet per second or to the erection, use or control of structures operated or to be operated for the production of water power. Nothing in this section shall be construed to apply to the construction of any highway, public road, bridge or culvert thereon by the State Highway Department, railroad, or by any county, town, city or village, provided that any data available or secured by the authorities having charge of the construction of any such highway, public road, railroad, bridge or culvert and which pertains to the topography, flowage and volume of water and water shed areas shall be transmitted, as soon as practical, to the Commissioner of Conservation. (Act Apr. 26, 1937, c. 468, §5; Mar. 31, 1939, c. 125.)

A bridge and its piers and abutments; or a culvert, are "water-way obstructions" for which counties are required to secure permits. Op. Atty. Gen. (642a-10), Aug. 6, 1938.

A bridge and its piers and abutments, or a culvert, are "water-way obstructions" for which counties are required to secure permits. Op. Atty. Gen. (642a-12), Sept. 6, 1938.

Bridges and abutments are water-way obstructions. Op. Atty. Gen. (148a-14), Sept. 19, 1938.

Public drainage ditches do not come within provisions of act except where they affect navigable streams, or lakes. Id.

6602-56. Applications.—Each application for a permit required by this act shall be accompanied by maps, drawings, and specifications describing the proposed appropriations and use of waters or of the changes, additions, or repairs, proposed to be made, and such other data and information as the commissioner may require. (Apr. 26, 1937, c. 468, §6.)

6602-57. Hearings.—Subdivision (a). As soon as convenient after the filing with the commissioner of any application for a permit to appropriate or use any waters of the state, or to construct or reconstruct or remove or abandon any reservoir, dam or water-way obstruction, in any waters of the state under the provisions of this act, or upon his own initiative for any of the above reasons in the interests of conserving, utilizing or protecting the water resources of the state, the commissioner shall set a day for a public hearing upon said application. The applicant shall give notice to the public of such application and hearing, either in the manner prescribed by the commissioner, or by the publication once in each week for two successive weeks prior to said hearing in a legal newspaper published within the county within which a part or all of the proposed appropriation or use, or construction, reconstruction, removal or abandonment is located; provided, nothing in this Act shall apply to ordinary or usual repairs or replacements or any

necessary emergency repairs or replacements. The county commissioners of each such county, the mayor or chief executive officials of each such city and the proper officials or any interested agency of the state, or political subdivision thereof, designated by the Commissioner, shall also be notified by the applicant by mail and satisfactory evidence of such notices filed with the commissioner. The published notice of such application shall recite the date, place and time fixed by the commissioner for the public hearing on said application, and shall recite the levels sought to be established by said application, any control structures requiring modification, change, or construction, and any proposed plan of operation to effectuate the purpose of the application. At such public hearing, the applicant and all other affected persons or corporations, municipal or private, shall be given an opportunity to be heard for or against the granting of said application.

Subdivision (b). Hearings herein provided for shall be so conducted as to afford all affected persons a full and complete opportunity to be heard. All testimony shall be taken under oath and the right of cross-examination shall be accorded. A record of all testimony shall be preserved together with all exhibits entered and all objections to evidence shall be recorded in the record together with rulings thereon. The commissioner shall make findings of fact upon all issues necessary for determination of the matters before him. He shall not be bound by common law or statutory rules of evidence or by technical or formal rules of pleadings or procedure, except as herein provided, but shall make his investigation and inquiries and conduct his hearings so as to ascertain the substantial rights of all parties. All orders of the commissioner shall be based upon findings of fact made only upon competent evidence. Notice of any orders made after any hearing hereunder shall be given by publication of such order once each week for two consecutive weeks in a legal newspaper in the county where the hearing was held. (Apr. 26, 1937, c. 468, §7; Apr. 20, 1939, c. 327, §1.)

6602-57a. All papers to be filed.—All applications or petitions, all orders, proof of publication or service of notices or orders and all other papers and documents required to be made and kept hereunder shall be filed by the commissioner and shall be open for inspection by any interested person or his attorney. (Act Apr. 20, 1939, c. 327, §2.)

6602-57b. Summoning of witnesses.—The commissioner shall have power to subpoena and compel the attendance of witnesses and to examine them under oath, to be administered by him, to subpoena and compel the production of all books, papers, and documents, whether in official or private custody, material to the purposes of the hearing or investigation being conducted. Disobedience of any such subpoena, or refusal to be sworn, or to answer as a witness, shall be punishable as a contempt in like manner as a contempt of the district court upon proceedings instituted by the attorney general on complaint of the commissioner before the district court of the county where such disobedience or refusal occurred. (Act Apr. 20, 1939, c. 327, §3.)

6602-57c. Commissioner to keep complete record.—The commissioner shall cause a complete record of all proceedings on said hearings to be made and shall provide a stenographer to take the testimony and record of proceedings at said hearings and said stenographer shall furnish a transcript of such testimony or proceedings to any person requesting it upon payment to him of a reasonable charge therefor to be fixed by the commissioner. (Act Apr. 20, 1939, c. 327, §4.)

6602-57d. Owners to cap artesian wells.—For the conservation of the underground water supplies of the state, the Department of Conservation is hereby

authorized to require the owners to cap artesian wells not in continuous use. (Act Apr. 20, 1939, c. 327, §5.)

6602-58. Shall investigate evidence.—Before acting on any application the commissioner shall weigh all of the evidence offered in behalf of and in opposition to the action prayed for in the application and if he deems it necessary shall make appropriate investigations of his own. If the commissioner shall be of the opinion from all of the evidence submitted that, in pursuance of the policy of the state for the conservation of its water resources in the general public interest as herein declared, that the plans of the applicant provide for the greatest practicable utilization of the waters of the state and will adequately protect public safety and will promote the general public welfare he shall grant the permit to appropriate or to use the waters, or to construct, reconstruct or remove or abandon the proposed reservoir, dam, or water-way obstruction, or to accomplish any combination of these objects. But if the commissioner is of the opinion, from the evidence before him, that the proposed appropriation or use of state waters or that the proposed construction is inadequate, wasteful, dangerous, impracticable, or will be detrimental to the best public interest, the commissioner may reject such application or he may order such modifications of the proposed plans as he deems sufficient to protect the public welfare and safety. In granting a permit authorizing the use or appropriation of water, or the construction or alteration or the removal or abandonment of any reservoir, dam or water-way obstruction, the commissioner may include in said permit such reasonable conditions, terms and reservations with respect to the character, amount means and manner of such use or appropriation of water or method of construction reasonably necessary to preserve the proper control in the state of the waters to be affected and to insure the safety and welfare of the people of the state. It shall be unlawful to construct or begin construction, or to make or begin any change or addition, or reconstruct, abandon or remove any reservoir, dam or water-way obstruction, except in accordance with the terms, conditions, regulations and restrictions of a written permit or permits first obtained therefor from the commissioner, and such rules and regulations, with regard to said construction, changes, or additions, as may be prescribed by the commissioner. The commissioner may determine and specify in each permit granted for the construction of a dam or other water works what provisions, if any, should be made for the passage of fish, low water flows and flood water discharges and that the elevation of the control sill of said dams shall at no time be lower than the elevation of the natural outlet in the state of nature. The Commissioner shall approve, modify or disapprove applications within sixty days after filing of application or within sixty days after date of hearing if any be deemed necessary. (Apr. 26, 1937, c. 468, §8.)

6602-59. Shall investigate dams and reservoirs.—Upon complaint, or upon his own initiative, the commissioner shall have power to cause an investigation or examination to be made of any reservoir, dam, or water-way obstruction now existing or hereafter constructed. If the commissioner shall determine that such reservoir, dam or water-way obstruction is unsafe or needs repair, the commissioner shall, in writing, notify the owner or owners thereof to repair or remove the same, as the exigencies of the case may require; such work to be commenced and prosecuted to completion within such reasonable time as may be prescribed in such notice by the commissioner. (Apr. 26, 1937, c. 468, §9.)

6602-60. May set time limit.—The commissioner shall prescribe a time limit of not more than two years from the granting of any permits within which the construction, or reconstruction, must be begun.

The commissioner shall also fix the time within which all construction, reconstruction of reservoirs, dams, or waterway obstruction authorized in the permit must be completed, or the appropriation or use of water must be made which time shall in no instance exceed five years from the date of the granting of said permit, provided, that the commissioner shall have authority, for good cause, to extend the time for commencing and completing the work authorized under a permit for the use of water in connection therewith. (Apr. 26, 1937, c. 468, §10.)

6602-61. Shall make rules and regulations.—The commissioner, with the advice and approval of the Attorney General, is hereby authorized and empowered to make such reasonable rules and regulations and issue such orders as may be proper for effecting the purposes of this act. (Apr. 26, 1937, c. 468, §11.)

Rules and regulations approved. Op. Atty. Gen. (983j), Aug. 27, 1938.

6602-62. Appeals to district court.—Any party in interest may appeal from any determination of the commissioner to the district court of the county in which the project is wholly or partially located or to the district court of Ramsey County. Appeals may likewise be taken from the judgments of the District Court to the Supreme Court of the state. Such appeal may be taken and the rules of pleading and procedure on such appeal shall be the same as now provided by law for appeals from orders of the Railroad and Warehouse Commission of this state and on the trial or appeal the Judge of the District Court having jurisdiction, or the Supreme Court, may set aside, modify or confirm such determination as the evidence or law may require. The pendency of any such appeal shall not of itself stay or suspend the operation of the order or determination of the Commissioner, but the District Court, or the Supreme Court, in their discretion may restrain or suspend, in whole or in part, the operation of the Commissioner's determination pending the final hearing and determination of the appeal by requiring the filing of an appropriate bond or other undertaking by the appellant conditioned that the appellant shall answer for all damages caused by the delay in the enforcement of the determination of the Commission. The Court may, in lieu of such bond, require or permit of such other security as it may deem proper. (Apr. 26, 1937, c. 468, §12.)

6602-63. Violation a misdemeanor.—Any person or persons, partnership, association or corporation, public or private, that shall do or cause to be done, any act or thing contrary to or required by the provisions of this act, or that shall fail, neglect or refuse to do or cause to be done any act required by the provisions of this act; or that shall violate or fail to comply with any order of the commissioner of which due notice shall be given; or that shall violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof, shall be sentenced to pay a fine of not more than \$1000.00, or, in the discretion of the court, such person or persons, or the members of such partnership or association, or the officers and directors of such corporation, public or private, as the case may be, may be sentenced to imprisonment for a period not exceeding one year, either or both, in the discretion of the court. In the case of the state or any agency thereof, counties, municipalities, and other political subdivisions of the state, the officials responsible for the violation shall, after hearing, be subject to removal from office by the governor of the state. (Apr. 26, 1937, c. 468, §13.)

6602-64. May enforce orders of commissioner.—Upon application of the commissioner, verified by oath or affirmation, the district court of any county in which the project is wholly or partially located, or the district court of Ramsey County, may, by injunction, enforce the compliance with, or restrain the violation of any order or notice, or rule or regulation

of the commissioner made pursuant to the provisions of this act, or restrain the violation or attempted violation of any of the provisions of this act. The Attorney General of Minnesota shall act as legal advisor to the commissioner. (Apr. 26, 1937, c. 468, §14.)

6602-65. Commissioner to appear for state in federal hearings.—The commissioner may appear, and represent and act for the state in any matter relating to any application to be made to the federal government or to any of its officers, boards or commissioners for permit to develop or use water power in the state and may do and perform such acts in connection therewith as he deems proper to protect the interests of the people of the state consistent with the provisions of the act. (Apr. 26, 1937, c. 468, §15.)

6602-66. Dams to be maintained by state.—All dams owned by the state or erected upon lands owned by the state or for which the state has acquired permanent easement shall be maintained by the state from funds appropriated by the legislature directly for such purpose or from such other sources as may be provided by law. The commissioner is authorized to accept from local governmental and civic agencies, or persons, funds for the purpose of maintaining such dams and appurtenant or control structures. (Apr. 26, 1937, c. 468, §16.)

6602-67. Not to affect existing contracts.—Nothing herein shall apply to existing contracts with or permits, grants, or other authorizations by this state, any other state or the federal government for the appropriation, use or diversion of public waters, nor shall apply to existing dams, reservoirs, or control structures, owned, leased, or operated by municipalities, individuals, private corporations or commercial companies operated for the production of power, except as may be necessary in emergencies to protect the health and safety of the people of the state. (Apr. 26, 1937, c. 468, §17.)

6602-68. Inconsistent acts repealed.—All acts and parts of acts inconsistent herewith are hereby superseded, modified, or amended, so far as necessary, to give effect to the provisions of this act except that nothing in this act shall be construed so as to inter-

fere with the exercise of the lawful jurisdiction of the government of the United States or its duly constituted agencies over the waters of the state and provided that nothing in this act shall in any way supersede, alter, or amend the provisions of Mason's Minnesota Statutes, 1927, Chapter 40, Section 6463, and Chapter 412, Laws 1933. (Apr. 26, 1937, c. 468, §18.)
This section did not repeal §10437. Op. Atty. Gen. (273c-1), July 29, 1938.

6602-69. Provisions severable.—The various provisions of this act are declared to be severable. If any provisions thereof shall be declared unconstitutional the remaining provisions shall remain in full force and effect. (Apr. 26, 1937, c. 468, §19.)

COMMON LAW DECISIONS RELATING TO WATERS AND WATER COURSES IN GENERAL

1. Use of water.

Use made of water of lake by golf club for sprinkling golf course, maintained by it on its premises bordering on lake solely for pleasure and recreation of its members, was not for any commercial or artificial use or purpose, and was not unlawful or unreasonable. *Meyers v. L.*, 197 M241, 266NW861. See Dun. Dig. 10177.

2. Riparian rights.

Riparian rights exist before premises are improved or occupied, and cannot be infringed without compensation by anyone other than the state or the United States in the exercise of its paramount right to make improvements in aid of navigation. *Pike Rapids Power Co. v. M.*, (CCA8), 99F(2d)902.

Riparian rights include right to use of water and of access, right to build and maintain wharves, piers and landings extending into the river to point of navigability, and right to unobstructed flow of water in front of owner's premises. *Id.*

Riparian rights are subordinate to the rights of the public for the purposes of navigation, fishing, skating and all other public uses. *Id.*

Railroad authorized to build bridge over the Mississippi River by the Soo Bridge Act (34 U. S. Stat. 868) held not to stand in the same position as the government with respect to using the bed of the river without compensating riparian owners. *Id.*

At common law owner of land bordering on a navigable stream has exclusive appurtenant riparian rights to the use of the bed of the stream adjacent to his land and to the use of the water flowing thereover. *Id.*

Congress is without power to destroy riparian rights unless necessary to regulate commerce. *Id.*

What can a riparian proprietor do? 21MinnLawRev 512.

CHAPTER 43

Logs and Lumber

6604. Duty of surveyor general.

Authority to scale state timber is still vested in the surveyor general of logs and lumber, but is now subject to supervision of commissioner of conservation and director of division of forestry instead of state auditor. Op. Atty. Gen., June 27, 1933.

6613. Posting scales—Scribner's rule, etc.

Scribner rule prescribed by statute and not revised Scribner Decimal C log rule is to be used by surveyor general when not otherwise agreed on. Op. Atty. Gen., Dec. 4, 1933.

Contracting private parties need not consider legal rule in purchase or sale of logs, law not requiring official scaling in private sale. *Id.*

In private sale of logs, in case log rule has not been agreed upon, true quantity and log scales made by competent persons would be best available evidence, but any scaling done by surveyor general would constitute strong showing to court. *Id.*

6627. Transfers—Logs, etc., when deemed abandoned.

Surveyor general of logs and lumber may need to remove the dead-head logs and other timber endangering navigation, using funds provided therefor by the state emergency relief administration. Op. Atty. Gen. (429), Aug. 19, 1935.

CHAPTER 44

Drainage

STATE DRAINAGE COMMISSION [DEPARTMENT OF DRAINAGE AND WATERS]

6634. Department of drainage and waters.

Laws 1931, c. 186, ante, §§53-23a to 53-23i, creates the Department of Conservation and transfers to it the powers of the Department of Drainage and Waters.

6635. Powers of commissioner of drainage and waters.—Subd. (a). The commissioner of drainage and waters established by this act, shall have power to con-

struct as hereinafter provided, any ditch, drain or other watercourse within the State of Minnesota, and such ditch, drain or other watercourse may in whole or in part follow and consist of the bed of any creek, stream or river, whether meandered or not, and he may widen, deepen, straighten, change, lower or drain the channel or bed of any creek, river, lake or other natural watercourse, whether navigable or whether meandered or not, and may construct new and addi-