

## CHAPTER 110

## DAMS; LAKE WATER LEVELS

**110.01 COUNTY BOARD MAY ESTABLISH UNIFORM WATER LEVEL IN NAVIGABLE LAKES.**

**HISTORY.** 1897 c. 88 ss. 1, 2; R.L. 1905 s. 2552; G.S. 1913 s. 5438; G.S. 1923 s. 6588; M.S. 1927, s. 6588.

The county of Hennepin has the right, under Laws 1897, Chapter 88, to maintain a dam erected by it at the outlet of Lake Minnetonka at a height which would not submerge lands on its shores above the point of demarcation between the existence and absence of vegetation, without making compensation. The report of the appraisers appointed by the district court to assess damages caused by the erection of the dam, when confirmed by the district court, must be regarded as final. *Biese v District Court*, 83 M 464, 86 NW 455.

Where the flow of a stream of water has been diverted from its natural channel or obstructed by a permanent dam, and such condition has continued for the time necessary to establish a prescriptive right, the riparian owners along such stream who have improved their property with reference to the situation, and in reliance upon the continuance thereof, acquire a reciprocal right to have the original conditions remain undisturbed. *Kray v Muggli*, 84 M 90, 86 NW 882, 1102.

As far as it relates to a uniform height of water in Lake Minnetonka, Laws 1897, Chapter 88, delegated to the board of county commissioners of Hennepin county the legislative power of exercising the power of eminent domain, and to have imposed upon the district court of Hennepin county the judicial function of determining whether such improvement was for a public use. Said law is constitutional. *McGee v Board of County Comm'rs*, 84 M 472, 88 NW 6.

The state authorized certain corporations to condemn private property by exercising the power of eminent domain when the corporation is engaged in public business such as supplying the public with water, light, heat, and power, and the corporation may construct canals and reservoirs to create and distribute electric power. Such power does not contemplate interference with the navigability of the waters of the state. *Minn. Canal v Isaiah Pratt*, 101 M 197, 112 NW 395.

The rights of riparian owners in land below the ordinary high water mark are subject to the superior rights of the public; and where a body of water is raised to a point not beyond the ordinary high water mark the riparian owner is not entitled to compensation. *State ex rel v District Court*, 119 M 132, 137 NW 298.

Round Lake was at one time of considerable depth, with well-defined banks and sandy beaches, and concededly navigable. Later its outlet was damaged and the waters receded, the lake was to some extent filled in by vegetable growth and became of less public use. The ditch proceeding provided for the draining and elimination of Round Lake. Prior to the first hearing in the ditch case, the county board by resolution fixed the level of the lake. A dam was built at the outlet, and the lake assumed the proportion of a public or navigable lake. It was held that the order of the county board was valid and it should have been given effect, and that the lake should not have been drained through the ditch procedure. *State ex rel v District Court*, 146 M 150, 178 NW 595.

Notwithstanding the evidence of technical experts, the lower court was sustained in finding that a drainage project as planned will not substantially lower the water level of Lewis Lake, a meandered lake. *Bloomquist v Sanders*, 162 M 296, 202 NW 496.

The courts take judicial notice of the topography of the state; and where the complaint in a suit for damages and an injunction alleges the fixing of a level

# MINNESOTA STATUTES 1945 ANNOTATIONS

657

DAMS; LAKE WATER LEVELS 110.07

and the construction and maintenance of a dam which raises above the high water mark the level of a navigable lake, the major part of which is outside the county, such county when it pleads that it did not construct or maintain the dam may avail itself of the defense of ultra vires, although it does not specifically plead it. *Erickson v County of Stearns*, 190 M 433, 252 NW 219.

Governmental responsibility for torts, 26 MLR 304.

While the title of a riparian owner in navigable waters extends to ordinary low water mark, his title is not absolute except to ordinary high water mark. As to the intervening space, his title is qualified by the right of the public use. The state may reclaim it during periods of low water and protect it from use even by the riparian owner. The recession of the waters of a lake must be permanent, not temporary, in order to cause the lake to lose its navigable character. OAG Jan. 30, 1934, (179).

Where the county board established a uniform height of water for Big Lake wholly within Sherburne county and raised the level of the lake by establishing a pumping station at Elk River, the statutes had not contemplated a second assessment of the property benefited. If the money raised by the first assessment is not sufficient, the additional expense falls upon the county. The statute does not authorize the county board to appropriate money for a "dredging project" unless the purpose of the drainage is to establish or maintain the water level of the lake sought to be improved. OAG Aug. 11, 1938, (278a-6).

County commissioners should not appropriate money until they have adopted a resolution for maintenance of the lake level; they have powers independent and greater than has the conservation commissioner; proceedings for maintaining the water level may be instituted either upon the petition of abutting landowners or upon motion of the board without any petition; they may receive donations of gifts to be used toward the expense of the work. OAG Aug. 8, 1940 (173).

## 110.02 RESOLUTION; FILING COPY AND MAP.

HISTORY. 1897 c. 88 ss. 3 to 11; R.L. 1905 s. 2553; G.S. 1913 s. 5439; G.S. 1923 s. 6589; M.S. 1927 s. 6589.

If any vested rights are interfered with and all parts can be restored to their original position, the board has power to rescind a resolution which established a water level. OAG Feb. 23, 1937, (273a-33).

## 110.03 ASSESSMENT OF BENEFITS AND DAMAGES.

HISTORY. 1897 c. 88 ss. 12, 17; R.L. 1905 s. 2554; 1909 c. 211 s. 1; G.S. 1913 s. 5440; G.S. 1923 s. 6590; M.S. 1927 s. 6590.

The riparian owner is not entitled to compensation where a body of water is not raised to a point beyond the ordinary high water mark. *State ex rel v District Court*, 119 M 132, 137 NW 298.

## 110.04 ASSESSMENT, HOW MADE; VACANCIES.

HISTORY. 1897 c. 88 s. 12; R.L. 1905 s. 2555; G.S. 1913 s. 5441; G.S. 1923 s. 6591; M.S. 1927 s. 6591.

## 110.05 APPLICATION TO CONFIRM.

HISTORY. 1897 c. 88 ss. 13, 14; R.L. 1905 s. 2556; G.S. 1913 s. 5442; G.S. 1923 s. 6592; M.S. 1927 s. 6592.

## 110.06 REVISION AND CONFIRMATION OF ASSESSMENTS.

HISTORY. 1897 c. 88 ss. 14, 15; R.L. 1905 s. 2557; G.S. 1913 s. 5443; 1917 c. 395 s. 1; G.S. 1923 s. 6593; M.S. 1927 s. 6593.

## 110.07 COST OF MAINTENANCE OF IMPROVEMENTS; MANAGEMENT.

HISTORY. 1897 c. 88 s. 19; R.L. 1905 s. 2558; G.S. 1913 s. 5444; G.S. 1923 s. 6594; M.S. 1927 s. 6594.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 110.08 DAMS; LAKE WATER LEVELS

658

The county board may appropriate money for operating a pumping plant and may maintain a water level without payment of damages to the riparian owner so long as the water level is not raised above high water mark. OAG Sept. 13, 1938 (273a-14).

## 110.08 LAKES IN TWO OR MORE COUNTIES; WATER BOARDS.

HISTORY. 1903 c. 379; R.L. 1905 s. 2559; G.S. 1913 s. 5445; G.S. 1923 s. 6595; M.S. 1927 s. 6595; 1935 c. 99.

## 110.09 ORGANIZATION; SPECIAL PROVISIONS.

HISTORY. 1903 c. 379; R.L. 1905 s. 2560; G.S. 1913 s. 5446; G.S. 1923 s. 6596; M.S. 1927 s. 6596.

## 110.10 COUNCIL MAY ACQUIRE TITLE TO NAVIGABLE OR MEANDERED LAKES.

HISTORY. 1897 cc. 187, 275; R.L. 1905 s. 2561; 1909 c. 163 s. 1; G.S. 1913 s. 5447; 1917 c. 395 s. 2; G.S. 1923 s. 6597; M.S. 1927 s. 6597.

The state may legally delegate to a village council authority to supervise the operation of a dam in connection with water level. OAG June 14, 1935 (400L).

## 110.11 LOGGING DAMS AND WATERS EXEMPT.

HISTORY. 1897 c. 161; 1897 c. 187 s. 3; R.L. 1905 s. 2562; G.S. 1913 c. 5448; G.S. 1923 s. 6598; M.S. 1927 s. 6598.

## 110.12 IMPROVEMENT OF LAKES IN CERTAIN COUNTIES.

HISTORY. 1917 c. 338 ss. 1 to 4; G.S. 1923 ss. 6599 to 6602; M.S. 1927 ss. 6599 to 6602.

## 110.13 CONTROL OF SHORE LINES; VIOLATION.

HISTORY. 1933 c. 412 ss. 1, 2; M. Supp. ss. 6602-2, 6602-3.

The department of conservation has power to repair or rebuild existing dams. OAG June 17, 1936 (273b).

A law permitting the perpetual lease of land for dam purposes is invalid. OAG Aug. 7, 1933.

## 110.14 DAMS; PURPOSES; EMINENT DOMAIN.

HISTORY. May 23, 1857; P.S. 1858 c. 129 s. 11; G.S. 1866 c. 31 ss. 1, 16, 18; 1871 c. 43; 1876 c. 120 s. 1; G.S. 1878 s. 31 ss. 1, 16, 18; G.S. 1894 ss. 2353, 2368, 2370; R.L. 1905 s. 2543; G.S. 1913 s. 5429; G.S. 1923 s. 6579; M.S. 1927 s. 6579.

If the petition in proceedings under Public Statutes 1858, Chapter 129, providing for the erection of mill dams, states facts which make a case within section 1, the court has jurisdiction. Certiorari will lie in a proceeding not known to the common law if no appeal is provided by statute. *Faribault v Hulett*, 10 M 30, No. 15.

Whenever an owner on a stream has to any extent made improvements in his water power with the bona fide intention to turn it to use, his power is "a water power previously improved" within General Statutes 1866, Chapter 31, Section 16, so that a lower proprietor cannot afterwards acquire the right to impair his power by proceedings under the statute. The right to be acquired under the statute dates from the time of commencing the proceedings and is governed by the condition of the upper proprietor's power at that date. *Miller v Troost*, 14 M 365 (282).

A state possesses the eminent domain as a necessary attribute of sovereignty. The legislature, representing the state, is competent to enact laws under which the eminent domain may be exercised by a private corporation. A railroad corporation organized under General Statutes 1866, Chapter 34, having proceeded in

# MINNESOTA STATUTES 1945 ANNOTATIONS

659

DAMS; LAKE WATER LEVELS 110.17

accordance with the provisions of that chapter, may take private property for its use. *Weir v St. Paul, Stillwater R. R. Co.* 18 M 155 (139).

In proceedings under General Statutes 1866, Chapter 31, to obtain the right to maintain a dam across a non-navigable stream after there had been an appeal to a trial and judgment in the district court, this court will presume, in the absence of any showing to the contrary, that it appeared to the court below that the Blue Earth river was not navigable. *Simon v Rhodes*, 24 M 25.

In proceedings to maintain a dam across a non-navigable stream, the district court may correct the judgment entered after a trial on appeal so as to make it what the parties were entitled to have it as the result of the trial. *Siman v Rhodes*, 24 M 25.

The erection and maintenance of a dam across a natural watercourse for the purpose of utilizing a water power is not a nuisance nor is the owner thereof the insurer of its safety. However, he is bound to exercise a degree of care proportionate to injuries likely to result to others if it proves insufficient. The dam must be sufficient to resist such extraordinary floods as may reasonably be anticipated. *City Water Power v Fergus Falls*, 113 M 33, 128 NW 817; *Willie v Minnesota Power*, 190 M 95, 250 NW 809.

The power of eminent domain rests exclusively in the legislature and may by law be granted to public service corporations. Such corporation cannot divert water from navigable streams of one drainage basin into another drainage basin if such diversion will impair the navigability of the stream from which the water is taken. Private property can be condemned only when it can be made to subserve some public use. The burden of showing such public purpose is upon the petitioner. *Minnesota Canal v Fall Lake Boom*, 127 M 23, 148 NW 561.

The measure of damages for overflowing land where the flooding is to be permanent is the diminution in the value of the land; where the flooding is not to be permanent, it is the diminution in the rental value of the land. *Welch v Elk River Power*, 157 M 451, 196 NW 649.

The gates in a dam are a structural part thereof. The circumstances under which they give way, as stated in the opinion, warranted the jury in drawing the same inference as if a portion of the dam itself had given away. The right of the public to use a navigable river includes the right of moorage by vessels. The owner of the steamboat wrecked the consequence of the giving away of the gates in the dam may recover. *Wynans v Northern States Power*, 158 M 62, 196 NW 811.

The Rivers and Harbors act of March 3, 1899, did not establish the common law right to build a dam across a navigable stream. It suspended the right until the consent of congress was first obtained and plans approved. *Pike Rapids Power v Minneapolis*, 99 F(2d) 902.

Procedural effect of *res ipsa loquitur*, 20 MLR 241.

## 110.15 NON-USER; FORFEITURE; EXCEPTIONS.

HISTORY. May 23, 1857; P.S. 1858 c. 129; G.S. 1866 c. 31, s. 22; G.S. 1878 c. 31 s. 22; G.S. 1894 s. 2374; R.L. 1905 s. 2544; G.S. 1913 s. 5430; G.S. 1923 s. 6580; M.S. 1927 s. 6580.

Section 541.07, limiting the time to sue for damages "caused by a mill dam" to two years after the cause of action accrues, applies to an action to recover damages for flooding caused by a dam erected by a public service corporation. *Zamani v Otter Tail Power*, 182 M 355, 234 NW 457.

## 110.16 RIGHT TO OVERFLOW, OBSTRUCT, OR IMPAIR HIGHWAYS GRANTED BY GOVERNING BODY.

HISTORY. 1868 c. 64 ss. 1 to 8; G.S. 1878 c. 31 ss. 23 to 30; G.S. 1894 ss. 2375 to 2382; R.L. 1905 s. 2545; G.S. 1913 s. 5431; G.S. 1923 s. 6581; M.S. 1927 s. 6581.

## 110.17 REPAIRS; SERVIENT ESTATE; DAMAGES.

HISTORY. 1879 c. 74 ss. 1, 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 31 ss. 31, 32; G.S. 1894 ss. 2383, 2384; R.L. 1905 s. 2546; G.S. 1913 s. 5432; G.S. 1923 s. 6582; M.S. 1927 s. 6582.

### 110.18 DAMS BY MUNICIPAL CORPORATIONS ON RED RIVER OF THE NORTH.

HISTORY. 1925 c. 30; M.S. 1927 s. 6582-1.

### 110.19 COUNTY BOARD MAY LICENSE LOGGING DAMS.

HISTORY. May 23, 1857; P.S. 1858 c. 129; G.S. 1866 c. 32 ss. 41, 42, 45; 1877 c. 39 s. 1; G.S. 1878 c. 32 ss. 83, 84, 87; G.S. 1894 ss. 2474, 2475, 2478; R.L. 1905 s. 2547; G.S. 1913 s. 5433; G.S. 1923 s. 6583; M.S. 1927 s. 6583.

General Statutes 1866, Chapter 32, does not make it unlawful for the owner, without license, to construct across a stream a dam which does not obstruct the free passage of logs, timber, and lumber down such streams. A contract between the owner of such dam and the owner of logs, for sluicing them over the dam, is valid. *Lamprey v Nelson*, 24 M 304.

The owner of a sluice dam erected and operated under a license granted by the county commissioners pursuant to General Statutes 1878, Chapter 32, is not required by statute to perform the labor of driving the logs or lumber through the sluiceways. Such driving is no part of the "operation". 29 M 414.

The corporation attempted to be organized under General Statutes 1894, Section 2633, to improve a stream for driving logs, but it is not empowered by its charter to drive or handle logs so cannot collect the tolls provided for in that section; the power to drive or handle logs not being incidental to the power to improve the stream. *Boom Co. v Wm. O. O'Brien*, 75 M 335, 77 NW 989.

Public statutes which authorized boards of county commissioners to grant licenses for the construction of dams across streams navigable for logs and lumber, are intended for the benefit and protection of the public and do not have the effect of limiting the easement to that purpose as to the owners of the submerged land. Title to lands by adverse possession may be acquired by the maintenance of such a dam causing the lands to be continuously submerged for the statutory period. *Simon v Munch*, 107 M 370, 120 NW 373, 121 NW 378.

### 110.20 NOTICE; FORM OF LICENSE; BOND.

HISTORY. May 23, 1857; P.S. 1858 c. 129; G.S. 1866 c. 32 ss. 43 to 45; G.S. 1878 c. 32 ss. 85 to 87; G.S. 1894 ss. 2476 to 2478; R.L. 1905 s. 2548; G.S. 1913 s. 5434; G.S. 1923 s. 6584; M.S. 1927 s. 6584.

### 110.21 TOLLS; LIEN.

HISTORY. May 23, 1857; P.S. 1858 c. 129; 1861 c. 50 s. 6; G.S. 1866 c. 32 ss. 46, 47; 1877 c. 39 s. 2; G.S. 1878 c. 32 ss. 88, 89; G.S. 1894 ss. 2479, 2480; R.L. 1905 s. 2549; G.S. 1913 s. 5435; G.S. 1923 s. 6585; M.S. 1927 s. 6585.

### 110.22 LOGGING STREAMS; BOUNDARY WATERS.

HISTORY. 1903 c. 128 ss. 1 to 3; R.L. 1905 ss. 2550, 2551; G.S. 1913 ss. 5436, 5437; G.S. 1923 ss. 6586, 6587; M.S. 1927 ss. 6586, 6587.