

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 establishment of the uniform water level in a body of water by following the procedure outlined in section 111.65. Proceedings are taken pursuant to sections 111.66, 111.68, 111.70, 111.71, 111.76 and 111.77. If the county board considers the project in the public interest it may appropriate money for the benefit of the project under the provisions of section 475.14 and the county cannot borrow money for the project. In assessing benefits the question of how far back from the shore the property is benefited is a question of fact to be determined by the appraisers and the court. OAG Sept. 9, 1948 (273-A-23).

**CHAPTER 112****FLOOD CONTROL**

NOTE: Excepted from Rules of Civil Procedure insofar as inconsistent or in conflict therewith.

**112.02 DISTRICT COURT JUDGE MAY ESTABLISH FLOOD CONTROL DISTRICTS**

NOTE: Sections 465.64 to 465.68 apply to Winona.

The city and county are not authorized to enter into a cooperative agreement with the United States agreeing to hold and save the United States free from damages due to the construction and operation of a flood control project authorized by the congressional Flood Control Act of 1950, Section 212. OAG June 17, 1953 (205).

**112.14 APPEAL TO SUPREME COURT**

HISTORY. 1917 c 442 s 13; 1953 c 663 s 1.

**CHAPTER 113****IRRIGATION, OTHER PROVISIONS**

NOTE: Excepted from Rules of Civil Procedure insofar as inconsistent or in conflict therewith.

**113.07-113.22** Repealed, 1947 c 143 s 67.

**CHAPTER 114****DAKOTA-MINNESOTA CONTROLLED BOUNDARY WATERS****114.02 POWERS AND DUTIES**

The state's jurisdiction over boundary waters is concurrent with other states and the right of the state to regulate and control navigable bodies of water under the state's jurisdiction is limited to extraordinary high-water mark unless the water would have reached controlled elevation in a state of nature, or where water condi-

tions result from extraordinary or unprecedented rainfall and run-off. Whether the water in a state of nature would have been substantially the same as the water under regulation or control is an engineering rather than legal question. Whether rainfall and run-off conditions are unprecedented or extraordinary requires an examination of factual circumstances and comparison with prior conditions as disclosed by public records or other reliable sources. OAG April 21, 1948 (983-D).

## CHAPTER 117

### EMINENT DOMAIN, DEPOSITORIES

NOTE: Excepted from the Rules of Civil Procedure insofar as inconsistent or in conflict therewith.

NOTE: Prior to the enactment of R.L. 1905, Chapter 41, each act authorizing condemnation of land set forth its own procedure. Chapter 117 originated with the 1905 Revision. The original chapter was a general statute of procedure and did not grant any right of eminent domain in any specific instance. Since 1905 certain substantive laws have been added to the chapter.

#### 117.01 RIGHT OF EMINENT DOMAIN

"Public use" within constitutional and statutory limitations that private property may be taken by eminent domain only for public use. 31 MLR 197.

The federal government's liability to land owners on non-navigable streams upon raising the water level. 32 MLR 844.

Police power involves regulations of use of property without appropriation thereof and the power of eminent domain a taking of the property. The public authorizing, possessing both powers, may use its discretion as to which procedure to use to accomplish its purpose. State ex rel v Minneapolis-St. Paul Commission, 223 M 175, 26 NW (2d) 718.

Where a leasehold and a building on the leased premises belonging to the lessee are taken under right of eminent domain, the compensation for the taking should be the market value of the property taken as a unit and the sum of the values of the parts thereof considered separately. An offer to sell property may be proved against the owner as an admission of its value at the time of the offer. Minneapolis-St. Paul Airports Commission v Hedberg-Freidheim Co., 226 M 282, 32 NW (2d) 569.

In condemnation proceedings the value of the land is usually determined as of the date of the commissioner's award as reported; but in the instant case to acquire property for a work relief and flood control project across the Minnesota River at the south end of Big Stone Lake, the charge of the trial court directing the jury to find damages as of the date of completion of the dam and project was not prejudicial. The right of sequestration in this case is based upon constitutional rights and does not require a period of limitation other than filing a final certificate under section 117.20(4). The statute of limitations of Minnesota and South Dakota in contract action is not applicable in this case. State ex rel v Bentley, 231 M 531, 45 NW (2d) 185.

Public drainage proceedings under M.S., Chapter 106 may invoke the power of eminent domain. Private property taken or damaged is an exercise of that power. An easement for a gas pipe-line is property. Section 106.151 requires compensation to owners of private property damaged by reason of construction of a county ditch. Where a county ditch will cross easement and private right of way of gas pipe-line company, necessitating the relocation of its gas transmission lines at the points of intersection, company is entitled to damages for cost of reconstructing pipe-line to accommodate new ditch. It was error to dismiss the pipe-line company's appeal to the district court from an order of the county board establishing the county ditch and