

## CHAPTER 110

## DAMS; LAKE WATER LEVELS

- |        |                                                                            |        |                                                                    |
|--------|----------------------------------------------------------------------------|--------|--------------------------------------------------------------------|
| 110.13 | Control of shore lines; violation.                                         | 110.50 | Potentials comprehended by plan.                                   |
| 110.14 | Dams; purposes; eminent domain.                                            | 110.51 | Notice of plan; hearing.                                           |
| 110.15 | Nonuser; forfeiture; exceptions.                                           | 110.52 | Appeal.                                                            |
| 110.16 | Right to overflow, obstruct, or impair highways granted by governing body. | 110.53 | Modifications.                                                     |
| 110.17 | Repairs; servient estate; damages.                                         | 110.55 | Owners may initiate proceedings.                                   |
| 110.18 | Dams by municipal corporations on Red River of the North.                  | 110.56 | Appointment of appraisers.                                         |
| 110.31 | Water levels, regulation.                                                  | 110.57 | Duties of appraisers.                                              |
| 110.32 | Dedication of perpetual flowage easement.                                  | 110.58 | Tabular statements.                                                |
| 110.33 | Conveyance of easement to commissioner of natural resources.               | 110.59 | Filing of report; compensation.                                    |
| 110.34 | Determination of easement rights.                                          | 110.60 | Hearings.                                                          |
| 110.35 | Easements, appurtenant to dam.                                             | 110.61 | Confirmation of assessments.                                       |
| 110.36 | High water levels.                                                         | 110.62 | Judge may make orders.                                             |
| 110.37 | Abandonment of dams.                                                       | 110.63 | May demand jury trials.                                            |
| 110.38 | Limitations.                                                               | 110.64 | Construction; contracts.                                           |
| 110.39 | Application, supplemental.                                                 | 110.65 | Work to be supervised by engineer.                                 |
| 110.40 | Maintenance of action.                                                     | 110.66 | Auditors to prepare tabular statements.                            |
| 110.46 | Big Stone Lake, water control works.                                       | 110.67 | Benefits to be paramount lien.                                     |
| 110.47 | Headwater lakes of Mississippi, reason for control.                        | 110.68 | Liens to bear interest.                                            |
| 110.48 | Joint federal-state control.                                               | 110.69 | State not liable; county boards may appropriate.                   |
| 110.49 | Plan for dam operation.                                                    | 110.70 | Application.                                                       |
|        |                                                                            | 110.71 | Harmful or undesirable vegetation or organisms, municipal control. |
|        |                                                                            | 110.72 | Precipitated water, statement of policy.                           |

**110.01-110.12 [Repealed, 1947 c 123 s 7]****110.121 [Repealed, 1973 c 702 s 26]****110.122 [Repealed, 1973 c 702 s 26]****110.123 [Repealed, 1973 c 702 s 26]****110.124 [Repealed, 1973 c 702 s 26]****110.125 [Repealed, 1973 c 702 s 26]****110.126 [Repealed, 1973 c 702 s 26]****110.127 MS 1978 [Local, Hennepin County]****110.13 CONTROL OF SHORE LINES; VIOLATION.**

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 an act of the legislature. With the written approval and consent of the department of natural resources, together with the signed authority of the executive council, 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 marks. 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 section. The provisions of this section shall not apply to that portion of any proposed development for waterpower 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 waterpower 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 two 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 natural resources after investigation. The occupant shall comply with the following requirement:

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.

Any person who shall willfully or knowingly violate any of the provisions of this section or of any order made thereunder by the department of natural resources shall be guilty of a gross misdemeanor.

**History:** (6602-2, 6602-3) 1933 c 412 s 1,2; 1969 c 1129 art 3 s 1

## 110.14 DAMS; PURPOSES; EMINENT DOMAIN.

When any person in order to create or improve a water power for milling or manufacturing purposes shall desire to erect and maintain upon that person's own land a dam across any stream or other watercourse not navigable, or to raise or extend any such dam already erected, whereby lands owned by other persons shall be overflowed or otherwise damaged, the person desiring to erect the dam may acquire the right so to do by causing such damages to be ascertained and paid as prescribed in chapter 117. No such dam shall be erected, raised, or maintained to the injury of any water power previously improved.

**History:** (6579) *RL s 2543*; 1986 c 444

## 110.15 NONUSER; FORFEITURE; EXCEPTIONS.

When the right to erect, raise, or extend any such dam shall have been acquired hereunder, the improvement shall be commenced within one year, and completed and the water power applied to the purpose stated in the petition within three years after such acquisition; and if any such dam, or the machinery connected therewith, be destroyed, the rebuilding thereof shall be commenced and completed within the same periods after such destruction. Failure to comply with the foregoing requirements shall work a forfeiture of all rights so acquired and a like forfeiture shall result from a failure to operate such mill or machinery after the same is erected for one consecutive year; provided, that if the owner be an infant, or be otherwise legally disabled, the periods herein named shall be allowed after the disability is removed.

**History:** (6580) *RL s 2544*

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

When it shall be necessary in creating, improving, or operating any water power to overflow, obstruct, or impair any public street or other highway, or to dig any raceway therein, the right so to do may be granted by the town board or common council, as the case may be, of the town or municipality in which the part of such highway to be affected lies. Such grant shall be made upon petition and by an order, defining all the terms and conditions thereof, passed at a meeting of the board or council called to consider the petition, of which meeting and the purpose thereof ten days posted notice shall have been given. Testimony may be taken, and all expenses of the meeting and examination shall be paid by the petitioner, whether the petitioner's prayer be granted or refused.

**History:** (6581) *RL s 2545*; 1986 c 444

**110.17 REPAIRS; SERVIENT ESTATE; DAMAGES.**

When the right to overflow the land of another by means of a dam shall have been acquired, either by condemnation or contract, and thereafter, by reason of the breaking away of the banks on the land, the waters of the stream shall be diverted, the owner of the dam may enter upon the lands of such person and repair the banks so as to restore the previous flow of such stream. All damages caused by such entry and repairs shall be paid by the owner of the dam.

**History:** (6582) *RL s 2546*

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

Any municipality owning or permanently controlling land upon which a proposed dam is to be constructed may construct a dam thereon and across that portion of the Red River of the North that forms a part of the boundary common to the state of Minnesota and the state of North Dakota for the purpose of conserving water for municipal, commercial, and domestic use, constructing in connection therewith any appliances, fishways, raceways, sluiceways, and wasteways as may be necessary or convenient for the proper construction and utility of such dam and as may be required by law. If required by law or treaty, the consent of the United States and of the state of North Dakota shall be first obtained.

**History:** (6582-1) *1925 c 30*

**110.19** [Repealed, 1969 c 475 s 1]

**110.20** [Repealed, 1969 c 475 s 1]

**110.21** [Repealed, 1969 c 475 s 1]

**110.22** [Repealed, 1969 c 475 s 1]

**110.31 WATER LEVELS, REGULATION.**

The provisions of sections 110.31 to 110.39 shall apply in the case of any lake, including any connecting waters affected, being public waters of the state, where the following conditions now exist or shall hereafter exist:

(1) A dam, however constructed or maintained, shall have existed in the outlet of the lake, affecting the water level thereof, for a continuous period of at least 15 years;

(2) The lake shall have been used by the public for navigation, fishing, hunting, or other beneficial public purposes continuously throughout such period so far as permitted by natural conditions;

(3) The use of the dam for any lawful purpose other than regulating, controlling, or maintaining the water level of the lake in aid of navigation, propagation of fish or waterfowl, or other beneficial public purposes shall have been discontinued;

(4) Continuance of the regulation, control or maintenance of the water levels of the lake as affected by the dam during said period would be desirable and in furtherance of the public interests in navigation, propagation of fish or waterfowl, or other beneficial public uses of the lake, and discontinuance thereof through deterioration or removal of the dam or otherwise would be detrimental to such public uses.

**History:** *1951 c 667 s 1*

**110.32 DEDICATION OF PERPETUAL FLOWAGE EASEMENT.**

In any such case it shall be presumed that every owner of land or any interest in land bordering on the lake or on any connecting waters affected by such dam has dedicated to the state for the use and benefit of the public a perpetual flowage easement on such land for all overflow and other effects of water thereon resulting from the existence, maintenance, or operation of such dams during such period, which easement shall be of like extent and effect as if the state had owned and controlled such dam and had thereby regulated, controlled, and maintained the water levels of the lake, and any

connecting waters affected for the public use and benefit under the conditions existing from time to time during such period and had thereby acquired such easement for such purposes by prescription.

**History:** 1951 c 667 s 2

### **110.33 CONVEYANCE OF EASEMENT TO COMMISSIONER OF NATURAL RESOURCES.**

The commissioner of natural resources may accept a conveyance or release from the owner of any such land or interest therein granting to the state a flowage easement thereon for overflow or other effects of water resulting from the existence, maintenance or operation of such dam or any reconstruction or improvement thereof or any other dam that may be constructed in the outlet of such lake to regulate, control, or maintain the water level thereof in aid of navigation, propagation of fish or waterfowl, or any other beneficial public purpose.

**History:** 1951 c 667 s 3; 1969 c 1129 art 3 s 1

### **110.34 DETERMINATION OF EASEMENT RIGHTS.**

Subdivision 1. The extent and effect of any easement obtained by the state as herein provided and the title and rights of the state therein and in the lands affected thereby and all adverse claims thereto and the rights of all parties interested therein, respectively, may be determined by action brought in the name of the state in the district court of the county in which the lands affected are situated. Such action may be brought by the attorney general upon the attorney general's own initiative or on request of the commissioner of natural resources. On request of the attorney general the county attorney of the county in which the lands involved are situated shall assist in carrying on such action.

Subd. 2. Any or all of the lands affected bordering on any one lake and any connecting waters affected and situated in any one county may be included in one action, and any or all parties interested in such lands or any part thereof may be joined as defendants in such action.

Subd. 3. Except as herein otherwise provided, all provisions of law relating to actions for the determination of title to real estate in the district court shall govern actions hereunder, so far as applicable.

Subd. 4. Expenses of such actions may be paid from any state funds appropriated for the maintenance, operation, and control of the dam involved, or may be paid by any county in which the lake involved or any part thereof is situated.

**History:** 1951 c 667 s 4; 1953 c 490 s 1; 1969 c 1129 art 3 s 1; 1986 c 444

### **110.35 EASEMENTS, APPURTENANT TO DAM.**

Every easement obtained by the state on account of any dam as hereinbefore provided shall attach and be appurtenant to such dam if acquired or taken over and maintained or controlled by the commissioner of natural resources or any other authorized agency of the state in aid of public navigation, propagation of fish or waterfowl, or other beneficial public purposes, or if acquired or taken over and maintained or controlled for such purposes by any county or counties or other political subdivision of the state or combination thereof thereto authorized by law, and such easement shall be effective for any and all such purposes. Every such easement shall also and with like effect attach and be appurtenant to any reconstruction or improvement of such dam or to any new dam that may be constructed in the outlet of the lake affected and maintained or controlled by the commissioner of natural resources or by any other public agency hereinbefore specified for such purposes.

**History:** 1951 c 667 s 5; 1969 c 1129 art 3 s 1

**110.36 HIGH WATER LEVELS.**

In any case where the water levels maintained by a dam that shall have existed under the conditions specified in section 110.31 shall have established an ordinary high water level above the natural ordinary high water level of the waters affected, the ordinary high water level so established shall be deemed to have superseded the natural ordinary high water level of such waters, and shall have like effect for all purposes. Every owner of land affected by the ordinary high water level so established or of any interest in such land shall be presumed to have consented thereto and to have dedicated such land to the state for the use and benefit of the public for all purposes affected thereby. The commissioner of natural resources may determine the ordinary high water level so established in like manner as provided by law for the determination of natural ordinary high water levels. Such determination shall be prima facie evidence of the level involved for all purposes, and otherwise shall have like effect as a determination of natural ordinary high water level by the commissioner.

*History: 1951 c 667 s 6; 1969 c 1129 art 3 s 1*

**110.37 ABANDONMENT OF DAMS.**

In case any dam affected by the conditions specified in section 110.31 and not owned or controlled by the state or any other public agency shall not have been used or maintained by or under the authority of the owner thereof for any lawful purpose for a continuous period of at least 15 years, it shall be presumed that the owner has abandoned the dam and the site thereof, and has dedicated the same, together with any flowage easements appurtenant thereto, to the state for the use and benefit of the public. Thereupon the commissioner of natural resources shall take possession of such dam and the site thereof and such easements in behalf of the state, and shall use, maintain, operate, and control the same for public purposes, or may dispose of the same for such purposes, subject to the provisions hereof or as otherwise authorized by law, unless the commissioner of natural resources, after a hearing upon 30 days notice published in a legal newspaper in the county in which the dam is situated, shall determine that it is not in the public interest for the state to use, maintain, operate, and control the dam. If the commissioner of natural resources shall determine under authority of other provisions of law to construct other or additional control works to supplement or supplant such dam, the commissioner shall have authority so to do.

The title of the state to any such dam, site, or easements may be established and determined by action in the district court as provided by law for actions for the determination of title to real estate. The taking of possession of any such dam, site, or easements by the commissioner of natural resources shall be manifested by written certificate thereof executed by the commissioner and recorded in the office of the county recorder of the county in which the dam is situated. No responsibility for any such dam shall devolve upon the state or the commissioner or any other agency of the state until such certificate shall have been recorded or a judgment entered in an appropriate action establishing the state's title thereto. In case any county or counties or other political subdivision of the state or combination thereof shall undertake to take over such dam and easements and maintain, operate, control, or dispose of the same for public purposes as authorized by law, the commissioner of natural resources has discretion to convey the same in the name of the state to such county or counties or other political subdivision or combination thereof for such purposes.

*History: 1951 c 667 s 7; 1953 c 490 s 2; 1969 c 1129 art 3 s 1; 1976 c 181 s 2; 1986 c 444*

**110.38 LIMITATIONS.**

No action or proceeding against the state or the commissioner of natural resources or any other officer or agent of the state or against any other public agency specified in section 110.35 or any officer or agent of such agency on account of the taking over, construction, reconstruction, repair, improvement, maintenance, operation, or control of any dam specified in sections 110.31 to 110.39 or on account of the effects of any

water levels regulated, controlled or maintained by any such dam shall be maintained unless commenced within one year after such taking over or after the completion of such construction, reconstruction, repair, or improvement, as the case may be.

**History:** 1951 c 667 s 8; 1969 c 1129 art 3 s 1

### **110.39 APPLICATION, SUPPLEMENTAL.**

Subdivision 1. The provisions of sections 110.31 to 110.39 shall not apply so as to impair, prejudice, or abrogate any right or interest involved in any action pending on April 21, 1951.

Subd. 2. The provisions of sections 110.31 to 110.40 shall be supplementary to and not exclusive of other provisions of law relating to the same subject matter and no such other provision shall be superseded by these sections, except so far as may be necessary to give effect to the provisions thereof.

**History:** 1951 c 667 s 9,10

### **110.40 MAINTENANCE OF ACTION.**

No action or proceeding which affects or seeks to affect adversely a perpetual flowage easement dedicated to the state for the use and benefit of the public as provided by section 110.32 over any land or the maintaining or the right to maintain an ordinary high water level above the natural ordinary high water level of any waters for which the state holds such perpetual flowage easement shall be maintained unless such action or proceeding is commenced within one year from the date of the order of the commissioner of natural resources determining ordinary high water level of such waters pursuant to section 110.36, or the effective date of Laws 1953, chapter 490, whichever may be later.

**History:** 1951 c 667 s 11; 1953 c 490 s 3; 1969 c 1129 art 3 s 1

### **110.41 [Expired]**

### **110.46 BIG STONE LAKE, WATER CONTROL WORKS.**

Subdivision 1. **Plan for completion of works.** The legislature hereby finds and determines as follows:

Big Stone Lake, a public, navigable body of water on the boundary between the states of Minnesota and South Dakota, provides extensive and favorable habitat for valuable species of fish, waterfowl, and other wildlife, and is capable of use and is extensively used by the public of both of said states for fishing, hunting, boating, bathing, and other beneficial public purposes. The existing dam and appurtenant water control works at the outlet of said lake were constructed during the period of economic depression and drought prior to World War II by and under the authority of the state of Minnesota, the state of South Dakota, and the United States through their respective agencies in collaboration as a work project for employment of and relief for poor, needy, and destitute persons. Said works have ever since been and now are under the control of this state, in charge of the commissioner of natural resources. By reason of the onset of the war and the termination of public work relief measures, certain necessary features of said works were never completed. In consequence thereof said works in their present condition are inadequate and ineffective to properly conserve, control, and maintain the waters of said lake for the purposes aforesaid, and said works aggravate the continuing deposition of silt in the lower portion of said lake, resulting in progressive filling up of the lake bed and in permanent damage to and impairment of the lake for the purposes aforesaid. A plan for a project for the remodeling, extension, and completion of said works, including a silt barrier and an artificial outlet channel, designed, among other things, to stabilize, so far as practicable, the level of Big Stone Lake within reasonable limits at about elevation 967.0 feet, project datum, has been prepared under the direction of the commissioner of natural resources and approved by the South Dakota-Minnesota Boundary Waters Commission May 1, 1956.

The construction of said project would make said works adequate and effective to conserve, control, and maintain the waters of said lake for the purposes aforesaid, would materially reduce the deposition of silt in said lake, and would substantially enhance the value of said lake for said purposes. Said project would promote the public health and welfare and would be in furtherance of the public interest in both of said states.

**Subd. 2. Commissioner of natural resources, duties.** The commissioner of natural resources is hereby authorized and directed to construct, maintain, and operate said project in accordance with said plan, and to acquire by purchase, gift, or condemnation as provided by law all lands and other property necessary therefor.

**Subd. 3. Supplementary law.** The provisions of this section shall not supersede or abridge any existing law not inconsistent herewith, but shall be supplementary thereto.

**History:** 1957 c 749 s 1-3; 1969 c 1129 art 3 s 1

**NOTE:** See section 114.12.

#### **110.47 HEADWATER LAKES OF MISSISSIPPI, REASON FOR CONTROL.**

It is the considered judgment of the legislature of the state of Minnesota that the regulation, control, and utilization of waters in the headwater lakes in the Mississippi river, including Leech Lake, Winnibigoshish Lake, Pokegama Lake, Pine river, (the Whitefish chain), Sandy Lake and Gull Lake are of tremendous economic importance and value to the state of Minnesota. It is further the considered judgment of the legislature of Minnesota that the utility of these lakes in aid of navigation has been very greatly diminished since the time of the establishment of the reservoirs, and that the economic values in utilization of these waters for state purposes has increased tremendously. These factors require the assertion on the part of the state of Minnesota of its rights to utilization and control of these water areas.

**History:** 1961 c 459 s 1

#### **110.48 JOINT FEDERAL-STATE CONTROL.**

The commissioner of natural resources is authorized and directed to enter into cooperative agreements with the United States of America acting through the department of the army for the joint control and regulation of these reservoirs within the principles hereinafter prescribed so as to effectuate control of the water elevations and the water discharges from these lakes in the interests of the state of Minnesota, subject only to any paramount need of waters from these sources in aid of substantial navigation requirements, and subject further to any substantial requirement of providing necessary flood control storage capacity as determined by the corps of army engineers.

**History:** 1961 c 459 s 2; 1969 c 1129 art 3 s 1

#### **110.49 PLAN FOR DAM OPERATION.**

The commissioner of natural resources is hereby authorized and directed to formulate a plan for the operation of the dams controlling each of the reservoirs hereinabove named which will:

(a) Seek to establish the water elevation on each of the lakes at the most desirable height, and to stabilize the stages at that point, insofar as practicable, during the recreational season in Minnesota;

(b) Give due consideration to providing for any reasonable fluctuations when desirable for the production of wild rice in the wild rice producing areas of these lakes;

(c) Take into account the elevations most desirable for the production and maintenance of wild life resources;

(d) Give due consideration to needs of water for recreation, agriculture, forestry, game and fish, industry, municipal water supply and sewage disposal, power generation, and other purposes in the Mississippi river headwaters and downstream;

(e) Establish stages at which the water shall be maintained so far as practicable, but basically recognizing the following minimum stages in reference to present zeros on the respective government gauges:

Leech Lake .....	0.0
Winnibigoshish Lake .....	6.0
Pokegama Lake .....	6.0
Sandy Lake .....	7.0
Pine River .....	9.0
Gull Lake .....	5.0

(f) Prescribe maximum discharges at any time the elevations fall below such stages;

(g) Prescribe maximum elevations and amounts of discharge from each lake so as best to stabilize and effectuate the desired stages. Insofar as practicable, the following maximum lake stages shall not be exceeded:

Leech Lake .....	3.5
Winnibigoshish Lake .....	12.0
Pokegama Lake .....	12.0
Sandy Lake .....	11.0
Pine River .....	14.0
Gull Lake .....	7.0

**History:** 1961 c 459 s 3; 1969 c 1129 art 3 s 1

#### **110.50 POTENTIALS COMPREHENDED BY PLAN.**

The plan devised by the commissioner shall comprehend the following potentials:

(a) The necessity for changing discharges to meet any emergencies resulting from unexpected or abnormal inflows;

(b) The possibility of overriding requirements of the federal government for substantial discharges to meet reasonable and substantial navigation requirements;

(c) The overriding authority and needs as prescribed by the army engineers in discharging their functions of requiring additional storage capacity for flood control purposes.

**History:** 1961 c 459 s 4

#### **110.51 NOTICE OF PLAN; HEARING.**

Before the plan of operation for any headwater lake is put into effect, the commissioner shall publish a notice of hearing upon said plan for two weeks in a newspaper in each county in which the water areas to be affected lie. The hearing shall be conducted by the commissioner or a duly appointed referee. All interested parties shall have an opportunity to be heard, shall testify under oath, and shall be subject to cross examination by any adverse parties, and by the attorney general, or the attorney general's representative, who shall represent the commissioner at said hearing. The hearing will not be governed by legal rules of evidence, but the findings of fact and orders, to be made and formulated by the commissioner, shall be predicated only upon relevant, material, and competent evidence. The findings of fact and orders incorporating the plan determined upon by the commissioner shall be published for two weeks in the same manner as the notice of hearing was published.

**History:** 1961 c 459 s 5; 1986 c 444

#### **110.52 APPEAL.**

Any riparian land owner or water user aggrieved by such findings shall have the right to appeal within 30 days of the completion of publication to the district court of any county in which the regulated water lies, which appeal shall be determined by the



court on the record made before the commissioner of natural resources. Issues on any such appeal shall be the legal rights of the parties and the further question as to whether the findings of the commissioner are reasonably supported by the evidence adduced at the hearing.

**History:** 1961 c 459 s 6; 1969 c 1129 art 3 s 1

### 110.53 MODIFICATIONS.

It is recognized that experience may require changes in the elevations sought to be maintained on each of the headwater lakes. Consequently, once a plan has been put into effect, the commissioner is authorized to modify the stages sought to be maintained by modifying the plan with respect to any of the lakes involved to the extent of one foot in elevation according to the zeros of the present government gauges without the necessity of further or additional hearings; provided that in no event shall any departure from the elevation target be made so as to reduce any proposed stages below the minimums prescribed by section 110.49, clause (e) during the recreational season. Any modification of the plan established subsequent to the hearings herein provided which departs by more than one foot in elevation shall be placed into effect only upon further hearing proceeding upon the same formalities as the hearing hereinabove prescribed.

**History:** 1961 c 459 s 7; 1976 c 239 s 21; 1986 c 444

### 110.55 OWNERS MAY INITIATE PROCEEDINGS.

A majority of the owners of property abutting upon any lake or other body of water or the proper officials of any city 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 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 the owners and the description of the lands owned by each of the parties, including the state of Minnesota. Before the commissioner shall accept for filing any such petition the commissioner shall require the petitioners to also file 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 the petition the commissioner shall file with the court administrator 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:

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

(2) The name of the owner of each such tract of land as shown by the records in the office of the county recorder, and the names of any persons in possession thereof;

(3) 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;

(4) 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;

(5) An engineer's report fixing the high-water level of the 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;

(6) The various reasons why the project is believed to be of public advantage; and

(7) 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.

When structures are to be built affecting waters located in more than one county, the commissioner may file a petition with the court administrator 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.

When proposed improvements under sections 110.55 to 110.70 do not contemplate the raising of the elevations of the lake above ordinary high water or where no part of the costs of the improvements are to be assessed against property surrounding the lake, the petition of the court authorized by this section may be presented by the commissioner of natural resources on the commissioner's own initiative, without bond.

**History:** (6602-13) 1935 c 369 s 3; 1969 c 1129 art 3 s 1; 1973 c 123 art 5 s 7; 1976 c 181 s 2; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 239 s 138

#### 110.56 APPOINTMENT OF APPRAISERS.

Within ten days after the filing of such petition with the court administrator, as specified in section 110.55, the judge shall make an order appointing three resident freeholders of the county or counties in which the 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 the 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 the court, preparatory to commencing their duties.

**History:** (6602-14) 1935 c 369 s 4; 1Sp1986 c 3 art 1 s 82; 1987 c 239 s 138

#### 110.57 DUTIES OF APPRAISERS.

The appraisers shall qualify by subscribing to the oath provided by section 358.06. The duties of the appraisers shall be:

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

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

(3) 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;

(4) 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;

(5) 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; and

(6) 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.

**History:** (6602-15) 1935 c 369 s 5; 1987 c 239 s 138

#### 110.58 TABULAR STATEMENTS.

The 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 each tract and the estimated number of acres in each tract 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 the 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; and

(5) The total expenses incurred by them and the actual time each appraiser was engaged.

**History:** (6602-16) 1935 c 369 s 6; 1987 c 239 s 138

### 110.59 FILING OF REPORT; COMPENSATION.

The appraisers shall file their completed report with the court administrator within 30 days after their appointment. As soon as this report shall have been filed the court may issue its order directing the payment of compensation at the rate of \$5 per day for each appraiser, and their expenses, which sums may be taxed as costs by the court administrator.

**History:** (6602-17) 1935 c 369 s 7; 1Sp1986 c 3 art 1 s 82; 1987 c 239 s 138

### 110.60 HEARINGS.

Upon the filing of the engineer's and the appraisers' reports with the court administrator, it shall be the duty of the judge to fix a time and place for hearing the petition and the engineer's and the 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. The notice shall recite the filing of the 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. The notice shall be published for three successive weeks in a legal newspaper in each county containing property affected by such proceedings and described in the 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 the notice shall be mailed by the court administrator to all parties who are named in the proceedings and a certificate of such mailing filed by the court administrator in the court administrator's office.

**History:** (6602-18) 1935 c 369 s 8; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 239 s 138

### 110.61 CONFIRMATION OF ASSESSMENTS.

**Subdivision 1. Hearing, findings, order.** At the time fixed in the notice the judge shall receive and consider all evidence for and against the granting of the 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 the 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, improve the use of such bodies of water for navigation 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 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 constructed control works with reference to a permanent bench mark;

(2) Confirm the reports of the engineer and the 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; and

(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 times of payment.

**Subd. 2. Affirmance of appraisers' report.** When the appraisers shall have determined the amount of the benefits to the 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 sections 110.57, clause (6), and 110.58, the judge, in the order confirming the appraisers' report, shall direct the commissioner to pay the state's pro rata portion of the costs of the 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 the order by the court with the court administrator, it shall be the court administrator's duty to furnish to the auditor of each county affected a complete certified list giving the description of all the property affected in the proceedings in the auditor's county, 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. When it appears from the engineer's report that the total estimated cost of any improvement contemplated under the provisions of sections 110.55 to 110.70 will exceed \$2,500, or when 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 the resolution shall be filed with the court administrator of the district court where the proceedings are pending, before the court administrator shall be authorized to give notice of a final hearing.

**History:** (6602-19) 1935 c 369 s 9; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 239 s 138

## **110.62 JUDGE MAY MAKE ORDERS.**

The judge before whom any petition may be filed, under the provisions of sections 110.55 to 110.70, 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. The judge 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 the court and to promote the final completion of the works petitioned for under the provisions of sections 110.55 to 110.70.

**History:** (6602-20) 1935 c 369 s 10; 1986 c 444; 1987 c 239 s 138

## **110.63 MAY DEMAND JURY TRIALS.**

Any party interested in any proceedings brought under the provisions of sections 110.55 to 110.70, 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 that party;
- (2) The amount of damages allowed to any tract of land owned by that party.

**History:** (6602-21) 1935 c 369 s 11; 1986 c 444; 1987 c 239 s 138

#### 110.64 CONSTRUCTION; CONTRACTS.

**Subdivision 1. Bids, advertising.** At the time of the filing of the order and findings by the court, the court administrator shall furnish a certified copy thereof to the commissioner. Within 30 days of the receipt thereof the commissioner shall proceed to advertise for bids for the construction of the works ordered by such judge, as provided in section 110.61, by giving notice by publication for three successive weeks in the official newspaper of the county in which the proceedings are pending, of the letting of a contract for such works.

**Subd. 2. Contracts awarded.** 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 not less than 75 percent 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 sections 110.55 to 110.70 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.

**Subd. 3. Approval of contracts.** The contract and bond for the construction of any works in sections 110.55 to 110.70 shall be approved by the attorney general.

**Subd. 4. Payments under contracts.** Payment shall be made to the contractors as the work progresses, not exceeding 80 percent thereof, by the county board upon certificates showing the progress of such work to be furnished to the county board by the commissioner.

**Subd. 5. Filing of copy of contract.** A copy of all contracts awarded by the commissioner shall be filed with the county auditor in each county affected.

**History:** (6602-23) 1935 c 369 s 13; 1Sp1986 c 3 art 1 s 82; 1987 c 239 s 138

#### 110.65 WORK TO BE SUPERVISED BY ENGINEER.

Any and all work provided for in sections 110.55 to 110.70 shall be done under the constant supervision and inspection of the engineer designated by the commissioner.

In all proceedings instituted under the provisions of sections 110.55 to 110.70, 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.

**History:** (6602-24) 1935 c 369 s 14; 1987 c 239 s 138

#### 110.66 AUDITORS TO PREPARE TABULAR STATEMENTS.

As soon as practicable after the filing by the court administrator 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 110.61, the 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 the works as appear from the court's order on file in the proceedings;
- (2) The description of the lands as the same appears in the order;
- (3) The estimated number of acres benefited in each tract;
- (4) The estimated amount of benefits and damages to each 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; and

(5) The amount that each tract 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 the proceedings.

Such statement, signed by the auditor in the presence of two attesting witnesses and acknowledged by the auditor, shall then be duly filed with and recorded by the county recorder of each county affected and of each county containing municipalities affected and of each county in which is located any land described in the statement.

**History:** (6602-25) 1935 c 369 s 15; 1976 c 181 s 2; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 239 s 138

#### **110.67 BENEFITS TO BE PARAMOUNT LIEN.**

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 take precedence over all mortgages, charges, encumbrances, or other liens, except real estate taxes, and shall be on a parity with real estate taxes.

Payments may be made as hereinafter provided in accordance with the order of the court, as provided for in section 110.61, subdivision 1, clause (4).

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

The fees of the county recorder for such recording shall be paid by the county auditor and shall be included in such statement as a part of the costs of the improvement.

The recorded statement shall be returned to and preserved by the auditor.

**History:** (6602-26) 1935 c 369 s 16; 1976 c 181 s 2; 1986 c 444; 1987 c 239 s 138

#### **110.68 LIENS TO BEAR INTEREST.**

The amount that each tract of land, public or private, shall be liable for on account of the construction of works authorized in sections 110.55 to 110.70 shall bear interest from the date of the filing of the auditor's statement in the office of the county recorder at the legal rate until paid.

Such liens may be paid to the county treasurer at any time after the recording of the auditor's statement in the office of the county recorder.

When payment of the full amount of the 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 a certificate of such payment and the same when recorded in the office of the county recorder shall release and discharge the lien of record.

On or before November 15 next following the filing by the auditor of such statement, the 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.

The auditor of the county 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 section 106A.655.

**History:** (6602-27) 1935 c 369 s 17; 1976 c 181 s 2; 1Sp1981 c 4 art 1 s 69; 1985 c 172 s 112; 1986 c 444; 1987 c 239 s 138

#### **110.69 STATE NOT LIABLE; COUNTY BOARDS MAY APPROPRIATE.**

No proceedings shall be instituted under the provisions of sections 110.55 to

110.70 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, dikes, and other works under the provisions of sections 110.55 to 110.70 and also on projects sponsored by the department of natural resources to be constructed by the several state and federal relief agencies.

**History:** (6602-28) 1935 c 369 s 18; 1937 c 96 s 1; 1937 c 162 s 1; 1969 c 1129 art 3 s 1; 1987 c 239 s 138

#### 110.70 APPLICATION.

Nothing in sections 110.55 to 110.69 shall amend, alter, supersede, or otherwise change the provisions set forth in section 110.13. The provisions of sections 110.55 to 110.69 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 and a gross tax capacity of more than \$450,000,000, including money and credits, and in which is situated a city of the first class within a distance of 20 miles from the body of public water; and, as to such public waters, nothing contained in sections 110.55 to 110.69 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 is located.

**History:** (6602-29) 1935 c 369 s 19; 1976 c 2 s 50; 1987 c 239 s 138; 1988 c 719 art 5 s 84

#### 110.71 HARMFUL OR UNDESIRABLE VEGETATION OR ORGANISMS, MUNICIPAL CONTROL.

Subdivision 1. The governing body of any city or town may expend funds for the control or destruction of harmful or undesirable aquatic vegetation or organisms in public waters and may cooperate with other such governing bodies and any landowners in such control or destruction. No such control or destruction shall be started unless a permit therefor has been issued by the commissioner of natural resources pursuant to section 84.092 and all work shall be done in accordance with the terms and conditions of such permit.

Subd. 2. The governing body of any city or town may use any available funds and may levy a special tax of not to exceed two thirds of one mill, nor 50 cents per capita, in any year in addition to all other taxes authorized by law, to carry out the provisions of subdivisions 1 to 4.

Subd. 3. To provide funds for such activities in advance of collection of the tax levies under subdivision 2, the governing body may, at any time after the tax has been levied and certified to the county auditor for collection, issue certificates of indebtedness in anticipation of the collection and payment of such tax. The total amount of such certificates, including principal and interest, shall not exceed 90 percent of the amount of such levy and shall be payable from the proceeds of such levy and not later than two years from the date of issuance. They shall be issued on such terms and conditions as the governing body may determine and shall be sold as provided in section 475.60. If the governing body determines that an emergency exists, it may make appropriations from the proceeds of such certificates for authorized purposes without complying with statutory or charter provisions requiring that expenditures be based on a prior budget authorization or other budgeting requirement.

Subd. 4. The proceeds of any tax levied under subdivision 2 or of any issue of certificates of indebtedness under subdivision 3 shall be deposited in a separate fund and expended only for purposes authorized by subdivisions 1 to 4. If no disbursement is made from the fund for a period of five years, any money remaining therein may be transferred to the general fund.

**History:** 1959 c 472 s 1-4; 1969 c 1129 art 3 s 1; 1973 c 123 art 5 s 7; 1973 c 773 s 1; 1986 c 386 art 4 s 23; 1987 c 239 s 138

# MINNESOTA STATUTES 1988

110.72 DAMS; LAKE WATER LEVELS

2446

## 110.72 PRECIPITATED WATER, STATEMENT OF POLICY.

It is the policy of the state to promote the retention and conservation of all water precipitated from the atmosphere in the areas where it falls, as far as practicable. Except as otherwise expressly provided, all officers, departments, and other agencies of the state or any of its governmental subdivisions having any authority or means for constructing, maintaining, or operating dams or other works or engaging in other projects or operations affecting such water shall use the same, as far as practicable, so as to effectuate the foregoing policy.

**History:** 1961 c 754 s 1; 1987 c 239 s 138