

WATERS

CHAPTER 417

H. B. No. 540

(Mueller, Christensen (Ward), Winge, Breum, Wilkie)

MISCELLANEOUS WATER LAWS

AN ACT

To create and enact sections 61-01-25, 61-02-24.1, 61-02-75, and 61-04-27 of the North Dakota Century Code; to amend and reenact sections 61-01-02, 61-01-23, subsection 2 of section 61-02-02, sections 61-02-04, 61-02-12, subsections 1, 2, 6, and 7 of section 61-02-14, subsection 1 of section 61-02-23, sections 61-02-24, 61-02-28, 61-02-30, 61-02-31, 61-02-38, 61-02-46, 61-03-21, 61-04-02, 61-04-15, 61-14-03, 61-15-04, 61-15-08, 61-16-08, and 61-20-06 of the North Dakota Century Code, as amended, relating to the appropriation and beneficial use of water, the authority and duties of the state water conservation commission, state engineer, and state geologist in the regulation thereof, rights of entry, water permits, compensation of members of the water conservation commission, information filed by water users with state engineer, easements on state lands, drainage of meandered lakes, cooperation of state political subdivisions with the water conservation commission in conducting water surveys, and to provide for a penalty for the violation of the provisions of chapter 61-01; and to repeal sections 61-14-02, 61-14-04, and 61-15-07 of the North Dakota Century Code, relating to the riparian ownership of water, the status of water used for irrigation purposes, the value of land as affected by water and wildlife conservation projects, and the reversion of unused water rights to the public.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 61-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-02. Right to Use Water—Basis—Waters Appropriated for Irrigation Purposes—Priority in Time.) Beneficial use shall be the basis, the measure, and the limit of the right to the use of water. All waters appropriated for irrigation purposes shall be appurtenant to specified lands owned by the person claiming the right to use the water, so long as the water is used beneficially thereon unless such rights to use water have been severed for other beneficial uses as provided by section 61-04-15. Priority in time shall give the better right.

§ 2. **Amendment.)** Section 61-01-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-23. Removal of Obstructions in Channel of Non-navigable Streams.) In order to remove obstructions, such as logs, fallen trees and brush from the channel or bed of a nonnavigable river or stream and thus prevent ice from gorging therein and to prevent flooding or pollution of such stream or river, the state water commission, any municipality, any board of county commissioners and any federal agency authorized to construct works for prevention of damage by floods or for abatement of stream pollution, may enter upon lands lying adjacent to such nonnavigable stream to remove, or cause to be removed from the bed, channel or banks of such stream obstructions which prevent or hinder the free flow of water or passage of ice therein. However, such entry upon adjacent lands shall be by the most accessible route and the entering agency shall be responsible to the landowner for any damage.

§ 3.) Section 61-01-25 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-01-25. Penalty.) Any person violating any of the provisions of this chapter or any rule or regulation of the state engineer for which another penalty is not specifically provided is guilty of a misdemeanor and shall be punished for each offense by a fine of not more than five hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

§ 4. **Amendment.)** Subsection 2 of section 61-02-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Works" shall be deemed to include:

- a. All property rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation;
- b. All water rights acquired and exercised by the commission in connection with such works;
- c. All means of conserving and distributing water, including without limiting the generality of the foregoing two subdivisions, reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units, mains, pipelines, treatment plants, and waterwork systems; and
- d. All works for the conservation, development, storage, treatment, distribution, and utilization of water including, without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, watering stock, supplying water for public,

domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization;

§ 5. **Amendment.)** Section 61-02-04 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

61-02-04. State Water Conservation Commission—Members—Terms—Qualifications.) The state water conservation commission shall consist of the governor, commissioner of agriculture and labor, and five other members to be appointed by the governor. The governor may appoint a representative to serve in his stead at such meetings as he may be unable to attend. The five appointive members of the commission shall be appointed for a term of six years each with their terms of office so arranged that one term and not more than two terms shall expire on the first day of July of each odd numbered year. Each appointive member shall be a qualified elector of the state and shall be subject to removal by judicial procedure. In case of a vacancy, the vacancy shall be filled by appointment by the governor. Before entering upon the discharge of his official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers. The state water conservation commission may also be known and referred to as the "State Water Commission".

§ 6. **Amendment.)** Section 61-02-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-12. Compensation and Expenses of Appointive Members of Commission.) Each appointive member of the commission shall receive as compensation for his services the sum of fifteen dollars per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the place at which he performs such duties, together with actual traveling and maintenance expenses while away from his home in the performance of such duties.

§ 7. **Amendment.)** Subsections 1, 2, 6, and 7 of section 61-02-14 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. To investigate, plan, regulate, undertake, construct, establish, maintain, control, operate, and supervise all works, dams, and projects, public and private, which in its judgment may be necessary or advisable:
 - a. To control the low-water flow of streams in the state;

- b. To impound water for the improvement of municipal, industrial, and rural water supplies;
- c. To control and regulate flood flow in the streams of the state to minimize the damage of such flood waters;
- d. To conserve and develop the waters within the natural watershed areas of the state and, subject to vested rights, to divert the waters within a watershed area to another watershed area and the waters of any river, lake or stream into another river, lake or stream;
- e. To improve the channels of the streams for more efficient transportation of the available water in the streams;
- f. To provide sufficient water flow for the abatement of stream pollution;
- g. To develop, restore and stabilize the waters of the state for domestic, agricultural and municipal needs, irrigation, flood control, recreation, and wildlife conservation, by the construction and maintenance of dams, reservoirs and diversion canals;
- h. To promote the maintenance of existing drainage channels in agricultural lands and to construct any needed channels;
- i. To provide more satisfactory subsurface water supplies for the municipalities of the state;
- j. To finance the construction, establishment, operation, and maintenance of public and private works, dams, and irrigation projects, which in its judgment may be necessary and advisable;
- k. To provide for the storage, development, diversion, delivery, and distribution of water for the irrigation of agricultural land and supply water for municipal and industrial purposes;
- l. To provide for the drainage of lands injured by or susceptible of injury from excessive rainfall or from the utilization of irrigation water, and subject to the limitations prescribed by law, to aid and cooperate with the United States and any department, agency, or officer thereof, and with any county, township, drainage district or irrigation district of this state, or of other states, in the construction or improvement of such drains;
- m. To provide water for stock; and
- n. To provide water for the generation of electric power and for mining and manufacturing purposes;

2. To define, declare, and establish rules and regulations:
 - a. For the sale of waters and water rights to individuals, associations, corporations, municipalities, and other political subdivisions of the state, and for the delivery of water to users;
 - b. For the full and complete supervision, regulation, and control of the water supplies within the state; and
 - c. For the complete supervision and control of acts tending to pollute watercourses, for the protection of the health and safety of all the people of the state;
 - d. Establish rules and regulations governing and providing for financing by local participants to the maximum extent deemed practical and equitable in any water development project in which the state participates in cooperation with the United States or with political subdivisions or local entities.
6. To acquire, own and develop lands for irrigation and water conservation and to acquire, own and develop dam sites and reservoir sites and to acquire easements and rights-of-way for diversion and distributing systems;
7. To cooperate with the United States and any department, agency or officer thereof in the planning, establishment, operation, and maintenance of dams, reservoirs, diversion and distributing systems, for the utilization of the waters of the state for domestic, municipal and industrial needs, irrigation, flood control, water conservation, generation of electric power and for mining, agricultural and manufacturing purposes, and in this connection the state water conservation commission is hereby authorized, within the limitations prescribed by law, to acquire, convey, contribute or grant to the United States moneys, real and personal property, including land or easements for dams and reservoir sites and rights-of-way and easements for diversion and distribution systems or participate in the cost of any project.

§ 8. Amendment.) Subsection 1 of section 61-02-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. To institute, maintain, and prosecute to final determination in any of the courts of this or any other state, or in any of the federal courts, any and all actions, suits, and special proceedings that may be necessary:
 - a. To enable it to acquire, own, and develop lands for irrigation and water conservation, water distribution

and other necessary purposes. The commission may sell such lands upon such terms and conditions as it may prescribe, and may own and hold title to lands for dam sites, reservoir sites, water rights, easements, and rights-of-way for diversion and distributing systems, lateral ditches, and other means for the distribution of waters in this state, and for any other necessary purposes;

- b. To adjudicate all water rights upon any stream, watercourse, or source of water supply from which are derived the waters for such reservoir, diversion and distributing systems, lateral ditches, and other means of distribution;

§ 9. **Amendment.)** Section 61-02-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-24. Cooperation and Coordination with All Existing Agencies.) The commission may investigate, plan, cooperate, and make all contracts or compacts necessary or requisite:

1. With the United States and any department, agency, or officer thereof;
2. With the states of Minnesota, South Dakota, Montana, and Wyoming, and with any other state, and with any department or officer of any state; and
3. With the Dominion of Canada or any of its provinces, and with any agency, department, or officer of the Dominion or any of its provinces.

The powers granted by this section shall extend to all waters, whether considered as intrastate, interstate, or international. The commission is specially authorized and empowered to cooperate with the United States or any of its agencies concerned with investigating, planning, conserving, utilizing, developing, and handling water in any form for purposes of water conservation, flood control, prevention of water pollution, or soil reclamation, or with any other resources of the state, and concerned with the administration of the public works program of the state or any part thereof. The commission is authorized to act and to contract fully with the United States, or with any department, agency, or officer thereof, with full power of purchase, sale, or lease to carry out, develop, or administer any federal project within this state or partly within the state, and also to accept and to use any funds provided by the United States or any agency thereof for any such purposes.

§ 10.) Section 61-02-24.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-02-24.1. Cooperation and Participation of Political Subdivisions.) All political subdivisions, including but not limited to, counties, townships, cities, villages, park districts, and water management districts may separately or jointly with other political subdivisions, the state or federal departments or agencies, investigate, plan and do all things necessary for participating in or undertaking underground or surface water surveys, development, construction, reconstruction and maintenance of works, dams, and projects for the beneficial utilization and control of water resources.

§ 11. Amendment.) Section 61-02-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-28. Plans, Investigations, and Surveys Concerning Use of Waters—Special Powers of Commission.) The commission may make plans, investigations, and surveys concerning the use of any and all waters, either within or without this state, for purposes of establishing, maintaining, operating, controlling, and regulating systems of irrigation, municipal, industrial, recreational, and fish and wildlife works and projects in connection therewith within the state. The commission shall have all necessary powers of purchasing and selling, leasing and assigning, rights and interests in the use or in the appropriation of waters concerned with such systems of irrigation projects or works in connection therewith, and shall possess full authority and jurisdiction to exercise and assert actual possession over the corpus of all of such waters, and to secure control and regulation of the diversion thereof subject to rules and regulations and methods prescribed by the commission. This power and authority shall include full right to contract and agree with any person, association, agency, or entity concerning water rights possessed by such person, association, agency, or entity through which the commission may be given full authority and jurisdiction over such water and water rights. In connection therewith the commission may coordinate, subordinate, supplement, and act jointly or subordinately with the United States, and any agency or department thereof, covering or concerning any federal project affecting water use, works, or projects in connection therewith.

§ 12. Amendment.) Section 61-02-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-30. Commission Acquiring Water Rights and Administering Provisions of Chapter—Declaration of Intention.) In acquiring the rights and administering the terms of this chapter, the commission shall not be limited to the terms of

the statutes of this state relating to water rights heretofore enacted, but, in addition thereto, the commission may initiate a right to the waters of this state by executing a declaration in writing of the intention to store, divert, or control the unappropriated waters of a particular body, stream, basin, or source, designating and describing in general terms the waters claimed, means of appropriation, and location of proposed use, and shall cause said notice to be filed in the office of the state engineer, which right shall vest in such commission on the date of the filing of such declaration. The commission also shall file in the office of the state engineer copies of its plans and specifications involved in completing any project for the appropriation of water which it intends to construct. The state engineer, subject to the approval of the commission, may grant water rights to any person, association, firm, or corporation, or to any municipality or to any state or federal agency, department or political subdivision in the manner provided by law.

§ 13. Amendment.) Section 61-02-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-31. Priority of a Water Right Dates from When.) The priority of a water right shall date and continue from the time of the filing or recording provided for in section 61-02-30. Change in means or place of diversion or control shall not affect the right of priority, if others are not injured thereby.

§ 14. Amendment.) Section 61-02-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-38. Holder of Water Right on Natural Stream May Turn Control Over to Commission.) Any holder of a water right on a natural stream may agree with the commission that it shall have control of the diversion of waters due under such right. In such an event, the commission, through its officers and agents, may exercise the same authority over the waters due said appropriator and may cause them to be delivered to him in the same manner as in case of waters appropriated by the commission.

§ 15. Amendment.) Section 61-02-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-46. Commission May Issue Bonds for Acquiring Lands for Irrigation — Limitation — Principal and Interest — How Paid.) The commission, in order to participate with state agencies, political subdivisions or the federal government, may provide by resolution, at one time or from time to time,

for the issuance of state water commission revenue bonds not exceeding a total of three million dollars, for the purpose of paying the cost of any one or more of the works authorized by this chapter and for the purpose of acquiring lands and preparing and developing the same for irrigation. The principal and interest of such bonds shall be payable from the special fund provided for in this chapter for such payment.

§ 16.) Section 61-02-75 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-02-75. Hearing Witnesses—Subpoena—Oath—Fees.) The state engineer, or any person designated by him, may administer oaths and issue subpoenas for the attendance of witnesses at any hearing necessitated by this title. He shall have access to, and may order the production of all books, accounts, papers, and property material to such hearings. Witnesses, other than those in the employ of the state, shall be entitled to the same fees as witnesses in civil cases in district courts in accordance with section 31-01-16. Such fees shall be paid by the state water commission.

§ 17. **Amendment.)** Section 61-03-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-03-21. State Engineer May Require Plan of Operation—Adequate Structure.) Every operator of a water storage reservoir in North Dakota having a capacity of more than one thousand acre-feet shall annually, between the first and fifteenth day of February, file with the state engineer an operating plan for such reservoir for the calendar year in which the same is filed. The operator of any such reservoir shall be required to cooperate with the state engineer to the end that all water releases shall be compatible with the best interests of the greatest number of downstream water users and affected landowners. In the event that the state engineer declares an emergency to exist in connection with the operation of any such reservoir, the operator thereof shall promptly submit to the state engineer a separate interim operating plan therefor in addition to the annual reservoir operating plan herein required. Such interim operating plan shall then be coordinated and integrated with the suggestions and plans of the state engineer to best serve the affected interests during such emergency. The state engineer may also require such operators to maintain adequate structures and to operate them in a manner that will prevent waste, promote the beneficial use of water and not endanger the general health and welfare of persons affected thereby. In the event such operator fails to maintain and operate adequate structures in the manner provided in this section, the state engineer shall set a place and

time for hearing and shall serve notice upon such operator to show cause at such time and place why his water permit should not be declared terminated and canceled. A copy of any order terminating or canceling such water right shall be filed in the office of the register of deeds in the county or counties where the land to which the right is appurtenant is located. An appeal may be taken from the decision of the state engineer in accordance with the provisions of chapter 28-32.

§ 18. Amendment.) Section 61-04-02 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

61-04-02. Application for Beneficial Use of Water Required.) The United States, any department or agency thereof and any person, association or corporation intending to acquire the right to the beneficial use of any waters, before commencing any construction for such purpose or before taking the same from any constructed works, shall make an application to the state engineer for a permit to appropriate.

§ 19. Amendment.) Section 61-04-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-15. Assignment of Permit or License to Appropriate Water—Regulations Governing.) Any permit or license to appropriate water may be assigned, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the state engineer. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, in like manner shall be filed in the office of the state engineer, upon assignment. A right to appropriate water for irrigation purposes shall be assigned only upon approval by the state engineer of an application for such assignment. If such change can be made without detriment to existing rights, the water right shall be simultaneously severed and transferred from such land without losing priority of any right previously established. Before the approval of such application the applicant must give notice thereof by publication once a week for two weeks in a newspaper of general circulation in the county in which the tracts of land are located, in the form required by the state engineer. Upon receipt of the proof of publication, the state engineer shall render his decision thereon in writing, which shall be final unless some party interested in the same source of water supply shall within sixty days bring appropriate action in the district court of the county in which the land is located appealing such decision. The transfer of title to land

in any manner whatsoever shall carry with it all rights to the use of water appurtenant thereto for irrigation purposes unless such rights to use water have been severed as provided in this section.

§ 20.) Section 61-04-27 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-27. Information Filed with State Engineer—Installation of Measuring Devices.) On or before the first day of February of each year all water users holding a water permit, including irrigation districts, federal agencies, and political subdivisions, shall file with the state engineer, on forms supplied by the state engineer, topographic, mapping, foundation test borings, design, water use and such other information as the state engineer shall require. The state engineer may also require any such water users to install measuring devices, which shall conform to the state engineer's specifications, at all points specified by the state engineer.

§ 21. **Amendment.)** Section 61-14-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-14-03. Amount of Water for Irrigation.) In the issuance of a permit to appropriate water for irrigation or in the adjudication of the rights to the use of water for such purpose, the amount allowed shall not be in excess of the rate of one cubic foot of water per second for each eighty acres, for a specified time in each year, or the equivalent thereof, delivered on the land. Provided, that the state engineer may allow a higher rate of diversion where the method of irrigation stipulated in the permit or the type of soil to which the water is to be applied so requires, but in such event, the total amount allowed shall not be in excess of two acre-feet per acre delivered to the land for any one irrigation season, and in no case more than can be used beneficially, except that during periods of sufficient water supply the state engineer, with the approval of the state water commission and in accordance with the method of irrigation being used, the type of soil to which the water is to be applied, and other criteria established by the state engineer, may increase the amount of water allowed to three acre-feet per acre, per irrigation season, for a specified period of time which in no event shall be of greater duration than the period of sufficient water supply.

§ 22. **Amendment.)** Section 61-15-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-15-04. Easements to United States of America for Water and Wildlife Conservation.) An easement may be granted to

the United States, its instrumentalities or agencies, over all lands now owned or hereafter acquired by the state of North Dakota for rights-of-way for ditches, dams, dikes, fills, spillways, or other structures now constructed or to be constructed for the purpose of water or wildlife conservation.

§ 23. Amendment.) Section 61-15-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-15-08. Drainage of Meandered Lake—Penalty.) Any person without written consent of the state engineer who shall drain or cause to be drained, or who shall attempt to drain any lake or pond which shall have been meandered and its metes and bounds established by the government of the United States in the survey of public lands, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than ninety days, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

§ 24. Amendment.) Section 61-16-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-08. Eligibility for Appointment to Board—Term of Office—Filling Vacancies—Compensation of Commissioners.) When a water management district has been created any resident freeholder in the district shall be eligible for appointment to the board of commissioners thereof. The terms of office of commissioners appointed to the first district board shall be determined by lot and shall be as herein provided. If such district board shall consist of three commissioners, one commissioner shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years. When a district board consists of five commissioners, two commissioners shall hold office for the term of two years, one for three years, one for four years and one commissioner a term of five years. And when a board shall consist of seven commissioners, two commissioners shall hold office for two years, two for three years, two for four years and one for five years. When the term of office of a district commissioner has expired, his successor shall hold office for five years. The term of office of a commissioner shall commence on the date of his appointment. In case the office of any district commissioner shall become vacant, the commissioner appointed to fill the vacancy shall serve the unexpired term of the member of the board whose office became vacant. Members of the board of commissioners shall receive the same per diem as members of a board of county commissioners and shall be reimbursed for expenses incurred

in the performance of their duties on a like basis. The term of office of any member of such board of commissioners shall be deemed to have commenced on the date of his appointment to such board.

§ 25. Amendment.) Section 61-20-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-20-06. Duties of State Geologist.) The state geologist shall advise the citizens of the state as to the practicability of measures affecting the underground waters of this state. The state geologist shall:

1. Counsel and consult with the owner and assist him to work out the most desirable control and use of his well;
2. Select at least three representative flowing wells in each county having that number, and as many more as he may deem advisable;
3. Cause the record of their flows and pressures to be taken, from time to time, to learn as much as possible of the decline, fluctuations, and permanence of the artesian supply;
4. Plan and conduct such other investigations as he may find advisable to ascertain the best method of prolonging the utility of the same;
5. Keep a record of the location, size, depth, flow, size of flow, character of water, construction, and history of all artesian wells of the state, and keep it on file for public reference;
6. Secure the enforcement of all laws pertaining to artesian and phreatic waters of the state;
7. Publish from time to time, as he may deem advantageous, bulletins containing information concerning the artesian wells and phreatic waters of the state.

The state geologist, the state engineer, and the chairman of the board of county commissioners of any county in which an artesian well is located may make such additional reasonable rules and regulations governing such well as a majority shall determine.

§ 26. Repeal.) Sections 61-14-02, 61-14-04, and 61-15-07 of the North Dakota Century Code are hereby repealed.

Approved March 9, 1963.

CHAPTER 418

H. B. No. 539

(Mueller, Christensen (Ward), Winge, Breum)

(Wilkie, Davis (Dickey), Tweten)

(From LRC Study)

COMMISSION APPROVAL OF DAMS

AN ACT

To amend and reenact section 61-02-20 of the North Dakota Century Code, relating to the necessary approval of the state water conservation commission before constructing certain size dams and the inspection of such dams by the commission.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 61-02-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-20. Approval of Commission Necessary Before Constructing Certain Size Dams—Inspection During Construction.)

No dam capable of impounding more than twelve and one-half acre-feet of water, shall be constructed in this state, either in a watercourse or elsewhere, without the prior written approval of the commission. Before granting such approval, the commission may require the person or organization proposing to construct such dam to file plans and specifications satisfactory to its chief engineer. The commission may inspect such work during construction and may require any changes necessary to insure its safety and the safety of life and property.

Approved March 14, 1963.

CHAPTER 419

S. B. No. 32

(Kee, Trenbeath, Morgan, Saumur)
(From LRC Study)

WATER RIGHTS

AN ACT

To create and enact sections 61-04-23, 61-04-24, 61-04-25, and 61-04-26 of the North Dakota Century Code, relating to the acquisition of water permits necessary to the use of water under a municipal water right and the acquisition, cancellation, and recording of orders of cancellation of water rights; to amend and reenact sections 61-01-01.1 and 61-04-22 of the North Dakota Century Code, relating to priority of water rights and definitions thereof and the filing of prescriptive water rights, and to repeal sections 47-01-13, 61-04-18, 61-04-19, 61-04-20, and 61-04-21 of the North Dakota Century Code, relating to the ownership of water and the methods of acquiring such ownership.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 61-01-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-01.1. Priority of Water Rights—Definitions.) In all cases where the use of water for different purposes conflict such uses shall conform to the following order of priority:

1. Domestic use.
2. Livestock use.
3. Irrigation and industry.

As between appropriators for the same use, priority in time shall give the better right. For purposes of this section:

- (1) "Domestic use" shall mean the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including, but not limited to heating, drinking, washing, sanitary and culinary uses; irrigation of land not exceeding one acre in area for noncommercial gardens, orchards, lawns, trees or shrubbery; and for household pets and domestic animals kept for household sustenance whether the water is supplied by the individual, a municipal government or by a privately-owned public utility or other agency.
- (2) "Livestock use" shall mean the use of water for drinking purposes by herds, flocks or bands of domestic animals.

A water permit shall not be required of a landowner or his lessee to appropriate water for domestic and livestock uses.

§ 2. Amendment.) Section 61-04-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-22. Prescriptive Water Right.) Any person, firm, corporation or municipality which used or attempted to appropriate water from any watercourse, stream, body of water or from an underground source for mining, irrigating, manufacturing or other beneficial use over a period of twenty years prior to the effective date of this Act, shall be deemed to have acquired a right to the use of such water without having filed or prosecuted an application to acquire a right to the beneficial use of such waters if such user shall, within two years from the effective date of this Act, file with the state engineer an application for an appropriation permit in the form required by the rules and regulations of the state engineer, and substantiated by such affidavits and other supporting information as the state engineer may require. If the state engineer finds that the application and supporting documents substantiate the claim he shall approve such application, which shall thereupon become a permit to appropriate water with a priority date relating back to the date when water in the quantity stated in the application was first appropriated. In the event the prescriptive user shall fail to file with the state engineer an application for an appropriation permit within two years from the effective date of this Act such prescriptive water right shall be declared abandoned and forfeited. The decision of the state engineer in rejecting an application made under the provisions of this section may be appealed to the district court in the manner prescribed by section 61-04-07. Within sixty days after the effective date of this Act the state engineer shall cause to be published in all official county newspapers within the state notice of the deadline of filing for an appropriation permit by prescriptive users. Any such prescriptive water right acquired under this section shall be subject to forfeiture for nonuse as prescribed by sections 61-04-23 through 61-04-25.

§ 3.) Section 61-04-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-23. Forfeiture of Water Rights—Inspection of Works.)

All appropriations of water must be for a beneficial or useful purpose, and when the appropriator or his successor in interest ceases to use it for such purpose for three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the right

ceases. The state engineer shall, as often as necessary, examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water appropriation, and all ditches and other works constructed or partially constructed thereunder.

§ 4.) Section 61-04-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-24. Forfeiture of Water Rights — Notice — Contents.)

If it shall appear that any water appropriation or portion thereof, whether issued prior or subsequent to the effective date of this Act, has not been used for a useful or beneficial purpose, or having been so used at one time has ceased to be used for such purpose for more than three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer shall set a place and time for a hearing. Any owner of a water permit using water from a common source of supply, any applicant therefor or any interested party may request the state engineer to conduct such a hearing, the purpose of which shall be the cancellation of any unused water rights to such common source of supply. Any decision of the state engineer in denying a request for such a hearing may be appealed to the district court in the manner prescribed by section 61-04-07. Prior to the hearings the state engineer shall serve notice upon the owners of such water appropriation or works and upon the owners of land benefited by such appropriation or works to show cause by such time and at such place why the water appropriation or a portion thereof should not be declared forfeited and canceled.

In addition to the time and place of hearing, such notice shall contain:

1. A description of the water appropriation;
2. The permit number upon the records of the state engineer;
3. The date of priority;
4. The point of diversion;
5. A description of the lands benefited by such appropriation as indicated on the application for a water permit on file in the office of the state engineer; and shall call upon the owners of such appropriation or works, the owners of land benefited by such appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation to show cause why such appropriation, or a portion thereof, should not be canceled.

The notice shall be served personally or sent by registered or certified mail at least thirty days before the date of hearing to those owning or controlling the appropriation or works and to the owners of land benefited by such appropriation as indicated on the application for a water permit on file in the office of the state engineer, or works as they appear from the records of the county treasurer or the register of deeds. In addition, such notice shall be published in a newspaper of general circulation in the county in which the point of diversion is located for two consecutive weeks prior to the date of hearing.

§ 5.) Section 61-04-25 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-25. Forfeiture of Water Rights — Hearing — Appeal.)

At such hearing the verified report of the state engineer or engineers of the state water commission shall be prima facie evidence for the forfeiture and cancellation of such water appropriation or portion thereof. If no one appears at the hearing, such water appropriation or portion thereof shall be declared forfeited and canceled. If interested parties shall appear and contest the cancellation, the state engineer shall hear the evidence and if it appears that such water has not been put to a beneficial use or, having been so used at one time, has ceased to be used for such purpose for more than three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the same, or a portion thereof, shall be declared forfeited and canceled. An appeal may be taken from the decision of the state engineer in accordance with the provisions of chapter 28-32.

§ 6.) Section 61-04-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-26. Register of Deeds to Record Order Canceling Water Right.) A copy of any order declaring any water right forfeited, canceled or abandoned shall be filed by the state engineer in the office of the register of deeds in the county or counties where the land to which the affected water right is appurtenant is located and shall be listed in the index of the property affected as provided in section 11-18-07.

§ 7. **Repeal.)** Sections 47-01-13, 61-04-18, 61-04-19, 61-04-20, and 61-04-21 of the North Dakota Century Code are hereby repealed.

Approved March 9, 1963.

CHAPTER 420

H. B. No. 536

(Mueller, Christensen (Ward), Winge, Breum, Wilkie)
(Davis (Dickey), Tweten)
(From LRC Study)

IRRIGATION DISTRICTS

AN ACT

To amend and reenact subsection 1 of section 61-05-01, sections 61-06-10, 61-06-12, 61-06-21, 61-06-22, 61-07-19, and 61-08-31 of the North Dakota Century Code, relating to irrigation districts.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 1 of section 61-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Elector" shall mean any landowner owning not less than five acres of land whose land will be or is subject to assessments for construction or other costs, within a proposed or existing irrigation district, and who is a resident of this state. As herein used the term "owner" shall mean an owner in fee simple and shall also include:
 - a. An entryman of government land;
 - b. A purchaser of land under contract;
 - c. A guardian, executor, administrator, or trustee;
 - d. A corporation organized and existing under the laws of this state; and
 - e. The United States of America and the state of North Dakota;

§ 2. Amendment.) Section 61-06-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-10. Notice of Election After District Is Organized—Contents—Form—Failure to Give.) Not less than fifteen days before any election is held in an irrigation district under this chapter, subsequent to the election for the organization of the district, the secretary of the board of directors shall cause to be posted in at least three public places in each division of the district, a notice of election specifying when the polls will be open, when the polls will be closed, and the polling place or places. The board of directors also may direct that such notice be published in a newspaper of general circulation in the district not less than fifteen days before the date of

the regular election. Such notice shall be in substantially the following form:

"NOTICE hereby is given that on the.....day of....., 19....., an election will be held at..... (here designate the polling place) for the purpose of electing.....members of the board of directors and for the purpose of voting upon such questions as shall be submitted by the directors of the district. Polls will be opened at one o'clock p.m. and will be closed at five o'clock p.m. of that day."

§ 3. **Amendment.)** Section 61-06-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-12. Candidates at Election—Filing Names.) Any person desiring to be a candidate at an irrigation district election shall file his name with the secretary of the board not less than ten days before such election. The secretary shall contact each candidate for the purpose of verifying his willingness to be a candidate at such election.

§ 4. **Amendment.)** Section 61-06-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-21. Meetings of Board—Regular and Special—Quorum—Records of Board—Publication of Proceedings.) The board shall hold regular meetings in its office or usual place of meeting on the first Tuesday of January, March, July, and November in each year at two o'clock p.m. of that day, and may by regulation or bylaw authorized by section 61-07-03 fix dates for such additional regular meetings as it shall deem needed. The board also may hold such special meetings as may be required for the transaction of the district's business. Special meetings shall be called by the secretary upon the order of the chairman of the board or upon the request in writing of two members. Such order must be entered of record on the minutes of the meeting and notice of such special meeting shall be delivered or mailed to each member of the board at least five days prior to the date of such special meeting. A special meeting of the board may be called at any time by the chairman without notice and the meeting thus called shall be legal and valid if all members of the board of directors are present. A majority of the members of the board shall constitute a quorum for the transaction of business, but upon all questions requiring a vote there shall be a concurrence of at least a majority of the board. All records of the board must be open to the inspection of any elector during business hours. The board may publish in one news-

paper of general circulation in the district a brief statement of the proceedings of each regular or special meeting if such publication can be made at an expense not exceeding one-third of the legal rate for advertising notices.

§ 5. **Amendment.)** Section 61-06-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-22. Directors and Officers—Salary, Mileage, and Expenses.) Each director shall receive compensation, mileage and actual and necessary expenses when attending meetings or while engaged in official business under order of the board not to exceed the compensation per day, mileage and expenses paid to a county commissioner. The salary of the secretary, assessor, and treasurer shall be determined by the board of directors.

§ 6. **Amendment.)** Section 61-07-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-19. Petition for Specific Orders or Changes in Canals—Methods.) Upon the filing of a petition in the office of the board of any irrigation district, signed by electors who own a majority of the total number of acres subject to assessment for construction or other costs, requesting that rules and regulations be adopted by the board permitting and providing for any of the following specific orders or changes in the method of operating its canal, such board immediately shall provide for the adoption and enforcement of the same:

1. That a measuring device of a type approved by the state engineer be placed in or near the headgate of any main diverting gate of the main canal, in order that a continuous record shall be kept by such district of the amount of water received into the canal for the use of the lands in such district; and
2. That a measuring device of a type approved by the state engineer be placed in the headgates of all main laterals and distributing laterals within the district from and by which water is diverted to tracts or units of twenty acres, or more, for the purpose of determining at all times the amount of water going to or being received upon any and all such tracts of land, and that it be made the duty of the superintendent of the canal to keep a separate and correct record of the amount of water delivered through each of such headgates at all times, and to file the same in the office of the board for public inspection.

§ 7. **Amendment.)** Section 61-08-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-08-31. County Treasurer to Make Report to Board Monthly.) The county treasurer shall report in writing to the district on the second Monday in each month the amount of money belonging to the district in the county treasury, the amount of receipts for the month preceding, and the amount of the moneys paid out and assessments against each tract or parcel of land within the district which were paid in the preceding month. Such report shall be verified and filed with the secretary of the board.

Approved March 6, 1963.

CHAPTER 421

H. B. No. 535

(Mueller, Christensen (Ward), Winge, Breum, Wilkie)
(Davis (Dickey), Tweten)

(From LRC Study)

WATER MANAGEMENT DISTRICTS

AN ACT

To create and enact sections 61-16-19.1, 61-16-26.1, 61-16-28.1, 61-16-46, 61-16-47, 61-16-48, 61-21-43.1, 61-21-65 and 61-21-66, and to amend and reenact section 61-16-01, subsection 11 of section 61-16-11, sections 61-16-12, 61-16-28, 61-16-42, subsection 4 of section 61-21-01, sections 61-21-04, 61-21-19, 61-21-24, subsections 1 and 2 of section 61-21-39, sections 61-21-45, and 61-21-56 of the North Dakota Century Code, relating to the organization, operation, consolidation, expansion and dissolution of drainage and water conservation and flood control districts, and to repeal section 61-16-41 and chapters 61-22 and 61-25 of the North Dakota Century Code, relating to township drainage projects and reclamation districts.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 61-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-01. Definitions.) In this chapter, unless the context or subject matter otherwise provides:

1. "District" shall mean a water management district provided for in and under this chapter; wherever the term "water conservation and flood control district" appears, it shall mean "water management district";

2. "Commission" shall mean the state water conservation commission;
3. "Board of commissioners" shall mean the board of commissioners of a water management district provided for in this chapter;
4. The term "project", as used in this chapter, shall mean, and include, any undertaking for water conservation, flood control, watershed improvement and drainage of surface waters, including incidental features of any such undertaking.

§ 2. **Amendment.)** Subsection 11 of section 61-16-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. To have all of the powers conferred by statutes upon a board of county drain commissioners provided that when the board of commissioners shall undertake the construction of any drainage project, the provisions of sections 61-21-10 through 61-21-18 relating to the petition, hearing, voting rights, and appeal shall govern;

§ 3. **Amendment.)** Section 61-16-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-12. District Budget—Tax Levy—Financing by Special Assessment.) When a water conservation and flood control district has been created and the board of commissioners thereof has been organized, the board shall estimate the expenses of the district from the date of its establishment until the end of the ensuing fiscal year and before July first in each year thereafter shall estimate district expenses for the fiscal year ensuing. Estimates of district expenses may include costs of rights-of-way, easements or other interest in property deemed necessary for the construction, operation and maintenance of any water conservation or flood control projects therein. Upon completion and adoption of a budget covering necessary expenses, the board of commissioners shall send a copy of such budget or apportionment thereof to the county auditor of each county in the district. If a district is situated in more than one county, the estimates shall be apportioned to counties affected. Such county auditor shall transmit the same to the board of county commissioners of his county. The board of county commissioners of each county in which the district is situated shall by resolution levy, authorize and direct their county auditor to extend and spread upon the tax roll of his county a tax of not to exceed three mills on each dollar of taxable valuation in the district or part of district situated in the county in the same manner, and with the same effect,

as general property taxes are extended and spread. Funds produced each year by such tax levy shall be available until expended, and if such tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the same may be accumulated. The acquisition of rights-of-way, easements, and the construction, operation and maintenance of a project in a district may, in the discretion of the board of commissioners, be financed in whole or in part by special assessments against property benefited by such project or the board may provide for the payment of such expenses from revenues realized in part from tax collections and in part from such special assessments.

If the project is one involving the maintenance of a drain, and it is desired to finance such project in whole or in part by means of special assessments, the levy in any year for such maintenance shall not exceed fifty cents per acre on any agricultural lands benefited by the drain. Agricultural lands which carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of fifty cents per acre. The assessment of other agricultural lands in the district shall be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full fifty cents per acre. Nonagricultural property shall be assessed such sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment. In case the maximum levy of fifty cents per acre for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, the board of commissioners may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for two years. In the event the water conservation and flood control district is dissolved all unexpended assessments collected for the maintenance of the drain shall be returned to the owners of the assessed property by the board of commissioners on a pro rata basis in proportion with the amount originally assessed.

§ 4.) Section 61-16-19.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-16-19.1. Contracts for Construction or Maintenance of Project.) If the cost of construction or maintenance of a project does not exceed three thousand dollars, such work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of such con-

struction or maintenance exceeds three thousand dollars, the lowest and best bid shall be accepted. The board of commissioners shall give at least ten days' notice of the time and place where contract will be let. Such notice shall be published at least once in a newspaper of general circulation in a county in which the work is to be carried on and shall be mailed to any prospective bidders known to the board of commissioners.

Any person receiving a contract for construction or maintenance of a project shall give a performance bond in an amount set by the board of commissioners conditioned upon the proper performance of the contract within the time specified by such contract. The board shall reserve the right to reject any or all bids and may postpone the letting of contracts from time to time or to such other time and place as the board may publicly announce. Any contracts not let at the original contract letting may be let by the board at a later time after notice and in accordance with the provisions of this section.

§ 5.) Section 61-16-26.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-16-26.1. Reassessment of Benefits.) The board of commissioners may at any time, or upon petition of any affected landowner after a project has been in existence for at least one year shall hold a hearing for the purpose of determining the benefits of such project to each tract of land affected. At least ten days' notice of such hearing shall be given by publication in a newspaper having general circulation in the county and by mailing notice thereof by ordinary mail to each owner of land affected by the project as determined by the records of the register of deeds or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs shall apply to any reassessment of benefits carried out under this section. The board shall not be forced to make such reassessment more than once every ten years, nor shall any assessment or balance thereof supporting a project fund be reduced or impaired by reassessment or otherwise so long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest. Costs of maintenance shall be prorated in accordance with any plan for reassessment of benefits that has been adopted.

§ 6. **Amendment.)** Section 61-16-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-28. Certification of Assessments to County Auditor.) When a district board of commissioners has by resolution

levied, or caused to be levied, special assessments to cover the cost of constructing a water conservation or flood control project, the board shall determine the rate of interest unpaid special assessments shall bear, which rate shall not exceed seven percent per annum and shall not be less than the warrant rate. Interest on unpaid special assessments shall commence on the date the assessments are finally confirmed by the board. Special assessments may be certified and made payable in equal annual installments, the last of which shall be due and payable not more than thirty years after date of the warrants to be paid. The secretary of the district shall certify to the county auditor of the county in which the district is situated, or if the district embraces lands situated in more than one county, to the county auditor of each county in which district lands subject to such special assessments are situated, the total amount levied against such lands in his county and the proportion or percentage of such amount assessed against each piece, parcel, lot or tract of land. The secretary of the district shall also file with the county auditor of each county in which district lands lie a statement showing the cost of the project, the part thereof, if any, which will be paid out of general taxes and the part to be financed by special assessments. Funds needed to pay the cost of maintaining a water conservation or flood control project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments the board of commissioners shall prorate the costs of maintaining projects in the same proportion as were the original costs of construction or, in the event a reassessment of benefits has been adopted, the costs shall be prorated in accordance with the reassessment of benefits as authorized by section 61-16-26.1.

§ 7.) Section 61-16-28.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-16-28.1. Removal of Obstructions to Drain — Notice and Hearing—Appeal—Injunction.) If the board shall determine that an obstruction to a drain has been caused by the negligent act or omission of a landowner or his tenant, the board shall notify such landowner by registered or certified mail at his post office of record. A copy of such notice shall also be sent to the tenant, if any. Such notice shall specify the nature and extent of the obstruction, the opinion of the board as to its cause, and shall state that if such obstruction is not removed within such period as the board shall determine, but not less than thirty days, the board shall procure removal of said obstruction and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice shall also state that the affected land-

owner may, within fifteen days of the date the notice is mailed, demand in writing a hearing upon the matter. Upon receipt of such demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may immediately apply to a court of proper jurisdiction for an injunction prohibiting such a landowner or his tenant from maintaining such an obstruction. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. Any landowner aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for by sections 61-16-36 through 61-16-39. A hearing as provided for in this section shall not be a prerequisite to such appeal.

§ 8. **Amendment.)** Section 61-16-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-42. How District May Be Dissolved or Boundaries Altered.) 1. If the board of commissioners of a water management district shall file with the state water conservation commission its petition requesting that the district be dissolved, or its boundaries altered by the exclusion of present territory or the inclusion of additional territory, together with a certified copy of the board's resolution authorizing the signing of such petition, or if the commission is presented with such petition signed by more than fifty percent of the freeholders in a district, the commission shall fix a time and place for a public hearing on the petition. At least ten days prior to the date of the hearing, notice thereof shall be published in a newspaper of general circulation in the district. Any interested person may appear at such hearing and show cause why the petition should or should not be granted, and any interested person may, before such hearing is held, file with the commission his reasons in writing why the district should or should not be dissolved.

2. If, after the hearing the commission shall find that the reasons for establishing the district no longer exist, or that the boundaries of the district should be altered by excluding therefrom or adding thereto the territory described in the petition, the commission shall make and issue its order granting the petition subject to such conditions as the commission

may impose. An appeal from such order of the commission may be taken to the district court of the county in which the district or a part thereof lies in the manner provided in this chapter. Members of the board of commissioners and officers and employees of the district shall continue to act until the property of the district has been disposed of and district obligations settled and paid. None of the provisions of this chapter shall be construed to limit or impair obligations of the district nor the rights of owners thereof. If a district has undertaken and agreed to operate and maintain flood control facilities or works constructed by, or with the aid of, the federal government, such district shall not be dissolved unless consented to in writing by the United States or its appropriate agency or department.

3. After the state water conservation commission issues an order permitting dissolution of a water management district, the board of commissioners thereof shall cause to be published in a newspaper of general circulation in the district a notice to creditors, except holders of district special assessment warrants, requiring any person having a claim against the district to file such claim with the secretary thereof within six months after the first publication of such notice. Such notice shall be published once each week for three consecutive weeks. The secretary of the district shall mail a copy of such notice to each creditor, except holders of district special assessment warrants. After such notice has been given as herein provided, a copy thereof together with an affidavit of publication and an affidavit of mailing shall be filed in the office of the state water conservation commission. No district shall be dissolved until its obligations, including improvement warrants, have been settled and paid, and until the property of the district has been disposed of.

4. When the property to be disposed of is estimated by the board of commissioners to be of less value than one hundred dollars it may be sold at private sale. When the property to be disposed of is estimated at a greater value than one hundred dollars it shall be sold at public sale in the county where it is located after notice of sale has been published at least once in a newspaper of general circulation in such county. The sale shall be held not less than three nor more than six days after publication of notice of sale has been completed. If the district comprises an entire county, any balance remaining in the treasury of the district shall be paid into the general fund of the county; and if the district includes more than one county, any balance in the district's treasury shall be paid into the general fund of each county in the ratio or proportion that the assessed valuation of property therein bears to the assessed valuation of property in the dis-

trict. If the district comprises one or more counties, and one or more townships, cities or villages not situated in any such county or counties, any balance remaining in the treasury of the district shall be paid into the general fund of each such county and into the treasury of each township, city or village in the ratio or proportion that the assessed valuation in each county, township, city or village bears to the assessed valuation in the district. If the district includes one or more townships, cities or villages in a county, but does not include the entire county, any balance remaining in the district's treasury shall be paid to each township, city and/or village in the proportion that the assessed valuation thereof bears to the assessed valuation of the district. And if a part only of a township is embraced within the district, any balance in the district treasury shall be paid to the township in which a part of the district lies in the ratio or proportion that the assessed valuation of property in such part of the district bears to the assessed valuation of the district. When obligations of the district have been paid, and its property disposed of, the board of commissioners shall file with the state water conservation commission, and with the auditor of each county in which district territory is located, a report stating that the district has disposed of its property and that all obligations of the district have been paid. Thereupon the commission shall issue its order declaring the district dissolved. A certified copy of such order shall be filed with the secretary of state and with the auditor of each county in which territory in the district was located.

§ 9.) Section 61-16-46 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-16-46. Drains Along and Across Public Roads and Railroads.) Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of such road. In instances where it shall be necessary to run a drain across a state or federal highway, the state highway department, when notified by the board of commissioners to do so, shall make necessary openings through such road or highway at its own expense, and shall build and keep in repair all such culverts or bridges. In instances where drains are laid along or within the limits of such roads or highways, such drains shall be maintained and kept open by and at the expense of the water management district concerned. A drain may be laid along any railroad when necessary, but not to the injury of such railroad, and when it shall be necessary to run a drain across such railroad, the railroad company, when notified by the board of commissioners to do so, shall make the necessary opening through such railroad, shall build the required bridges and culverts and keep them in repair.

§ 10.) Section 61-16-47 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-16-47. Construction of Bridges and Culverts — Costs.)

The board of commissioners shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by such drain. The cost of construction thereof shall be charged as part of the cost of constructing such drain, and such bridge or passageway shall be maintained under the authority of the board of commissioners, and the necessary expense thereof shall be deemed a part of the cost of maintenance. Whenever any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, and the cost thereof shall exceed five hundred dollars, the cost of constructing such bridge or culvert shall be shared in the following manner: the state water commission may, if funds are available therefor, participate in the portion of the cost thereof that exceeds five hundred dollars in accordance with such rules and regulations as it may prescribe. The remaining cost thereof shall be borne on the basis of fifty percent by the county and fifty percent by the water management district which has created the need for such construction. If, however, moneys have not been made available to the commission for such participation, then and in that case, fifty percent of the cost of a bridge or culvert costing in excess of one hundred dollars shall be paid by the county and fifty percent shall be charged as cost of the drain to the water management district. Whenever any bridge or culvert costing one hundred dollars or less is needed on any such road the cost of such bridge or culvert shall be charged on the basis of fifty percent to the water management district and fifty percent to the township in which such bridge or culvert is located.

In the case of such bridge or culvert construction where there is federal financial participation, if there are costs exceeding the amount of such federal participation then the excess balance shall be borne by the water management district, or township, according to the provisions of this section, as the case may be.

§ 11.) Section 61-16-48 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-16-48. Consolidation of Water Management Districts.)

Any two or more water management districts may be consolidated into a single district upon the filing with the state water commission of the petition provided for in section 61-16-02. Such petition shall be signed by a majority of the commissioners of each of the districts. In addition to the other

requirements imposed by this chapter, the petition shall contain a detailed plan for the disposition of property, assets, and liabilities of each of the districts, which plan shall be as equitable as practicable to every landowner within the districts and shall fully protect creditors and the holders of improvement warrants of the petitioning districts. The plan may provide for a continuance of assessments upon properties in the petitioning district or districts in order to retire outstanding obligations, or for the assumption of such outstanding obligations and the spreading of assessments for the payment thereof over properties in the newly created district. No petition shall be approved by the commission unless it fully meets the requirements of this section. Further procedure in the consolidation of districts shall be in accordance with the provisions of this chapter relating to the establishment of new districts. Upon the issuance of the order establishing the water management district, the commission shall issue its order dissolving the included districts. The prohibition against dissolving districts with outstanding obligations shall not apply to districts dissolved in accordance with this section.

§ 12. Amendment.) Subsection 4 of section 61-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Lateral drain" shall mean a drain constructed after the establishment of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain, provided that a determination by the board as to whether an existing or proposed drain is a lateral or a new drain within the meaning of this subsection shall be conclusive when entered upon the records of such board; and

§ 13. Amendment.) Section 61-21-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-04. State and County Officers Not Eligible as Drain Commissioners—Matters of Personal Interest to Drain Commissioners.) No person holding any state or county office, other than that of commissioner of a water management district, shall be eligible for the office of drain commissioner, and any drain commissioner accepting any state or county office, other than that of commissioner of a water management district, shall be deemed to have vacated the office of drain commissioner. No member of the board shall be qualified to act as such in any matter or proceeding before the board in which he is personally or financially interested and the board of county commissioners shall appoint an alternate

commissioner who shall act in the place of any disqualified or absent commissioner, but shall so act only upon matters in which a commissioner is disqualified or while a commissioner is actually absent from an entire meeting of the drainage board. The term of office of such alternate commissioner shall be three years.

§ 14. **Amendment.)** Section 61-21-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-19. Right-of-Way—How Acquired—Assessment of Damages—Issuance of Warrants.) The right-of-way for the construction, operation and maintenance of any proposed drain, if not conveyed to the county by the owner, may be acquired by eminent domain in such manner as may be prescribed by law. Where lands assessed for drainage benefits are not contiguous to such drain, access right-of-way thereto over the land of others may be acquired in the same manner. Such right-of-way, when acquired, shall be the property of the county. The board may issue warrants in a sum sufficient to pay the damages assessed for such right-of-way. Such warrants shall be drawn upon the proper county treasurer, and shall be payable out of any drain funds in the hands of the treasurer which have been collected for the construction of the drain for which such right-of-way is sought to be obtained. The board shall negotiate the warrants at not less than the par value thereof and shall pay into court for the benefit of the owners of the right-of-way the amount to which each is entitled according to the assessment of damages, paying the surplus, if any, to the county treasurer, who shall place the same to the credit of the proper drain fund.

§ 15. **Amendment.)** Section 61-21-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-24. Notice of Letting of Contracts.) After the recording of percentage assessments as provided in section 61-21-23, the board shall then give at least ten days' notice of the time and place where contracts will be let for the construction of the drain. Such notice shall be published at least once in a newspaper having general circulation in the county.

§ 16. **Amendment.)** Subsections 1 and 2 of section 61-21-39 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

61-21-39. Petition for a Lateral Drain—Bond of Petitioners—Penalty.) 1. All property owners whose property would be affected by a lateral drain may jointly petition the board for

the construction of such drain and shall deposit with the board a good and sufficient bond to be approved by the board, conditioned upon the petitioner or petitioners paying all costs of the proposed lateral drain. Whenever improvements of an original drain are made necessary by the construction of a lateral drain the costs of such improvements to the original drain shall be charged as part of the cost of construction of the lateral drain and assessed against the property benefited thereby and collected as other assessments are collected. In the event that the board shall determine that such improvements to the original drain are also beneficial to property served by the original drain, the board may assess such portion of the cost of the improvements as it shall determine to property benefited by the original drain. Unless the petitioners agree to construct the lateral drain, the board within ten days shall commence proceedings for the construction of such lateral drain according to the provisions of this chapter. No person shall dig or construct any lateral ditch or drain which will conduct the flow of water from any land or lands into any drain constructed under the provisions of this chapter, except the petitioners as provided in this section. In all instances involving the construction of a lateral drain, the board shall estimate and determine the proportionate share of the cost of the main or original drain which should be paid by such petitioners. The petitioners shall pay into the county treasury the amount so determined, and they shall then be allowed to connect such lateral ditches or drains with the original drain under the direction and superintendence of the board, but at their own cost and expense. The money paid into the county treasury shall be credited to the drainage fund of the specific drain involved.

2. Where one or more of the property owners to be benefited by the construction of a lateral drain or ditch petition the county drainage board for the construction of a lateral drain or ditch, the county drainage board shall then proceed in the same manner as is used for the establishment of a new drain and thereafter such lateral drain shall constitute a part of the original drain to which it is connected and the affected property shall be a part of such drainage district.

§ 17.) Section 61-21-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-21-43.1. Removal of Obstructions to Drain—Notice and Hearing—Appeal—Injunction.) If the board shall determine that an obstruction to a drain has been caused by the negligent act or omission of a landowner or his tenant, the board shall notify such landowner by registered or certified mail at his post office of record. A copy of such notice shall also be sent

to the tenant, if any. Such notice shall specify the nature and extent of the obstruction, the opinion of the board as to its cause, and shall state that if such obstruction is not removed within such period as the board shall determine, but not less than thirty days, the board shall procure removal of said obstruction and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand in writing a hearing upon the matter. Upon receipt of such demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may, immediately upon learning of the existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting such a landowner or his tenant to maintain such an obstruction. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. Any landowner aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for by sections 61-16-36 through 61-16-39. A hearing as provided for in this section shall not be a prerequisite to such appeal.

§ 18. Amendment.) Section 61-21-45 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-45. Contracts for Work of Cleaning and Repairing Drains.) If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed two thousand dollars in any one year, such work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of such work exceeds two thousand dollars in any one year, a contract shall be let to the lowest and best bidder in the manner described in this chapter for the letting of bids for construction of drains. The board may reject any and all bids for the cleaning and repairing of drains and have such work performed by county equipment at the expense of the drainage district.

§ 19. Amendment.) Section 61-21-56 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-56. Dissolution of Drainage District—Return of Unexpended Assessments.) The owners of property subject to fifty-one percent or more of the liability for maintaining any drain as determined in section 61-21-16 may petition the board for the abandonment and dissolution of such drain. Upon receipt of such petition, the board shall call a public hearing on the petition and if they find the number of valid signatures to represent property liable to fifty-one percent or more of the cost of upkeep of such drain, as determined by section 61-21-16, and that such drainage district has no outstanding indebtedness, the board shall then declare such drain to be abandoned and such drainage district to be dissolved, shall record such declaration upon the minutes and publish the same in a newspaper having wide circulation in that county, and shall return all unexpended assessments collected for the maintenance of the drain to the owners of the assessed property on a pro rata basis in proportion with the amount originally assessed. In case the drainage district extends into two or more counties, the board upon receipt of the petition above referred to shall convene in joint session and call the public meeting above provided. When a drain has been abandoned and dissolved, it may then be re-established in whole or in part only in the same way as a new drain is established.

§ 20.) Section 61-21-65 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-21-65. Consolidation of Drainage District or Districts Into Water Management Districts.) Upon resolution of the board of county commissioners or the board of drainage commissioners, or upon the filing with the board of county commissioners of a petition containing the signatures of landowners possessing at least fifteen percent of the voting rights in one or more drainage districts, computed in accordance with section 61-21-16, the board of county commissioners shall set a date for hearing upon the establishment or expansion of a water management district to include the property contained within such drainage district or districts. The board of county commissioners shall publish notice of the time, place, and purpose of such hearing once, in a newspaper of general circulation in the county not less than ten nor more than twenty days before the date set for hearing, and shall mail notice of such meeting by ordinary mail to each landowner within each drainage district affected at his address as shown by records in the office of the register of deeds or county treasurer. An affidavit of mailing shall be filed with the record of proceedings of the board of county commissioners. If, at the time and place set for hearing, a majority of affected landowners computed in accordance with section 61-21-16 shall

file written objections, further proceedings shall be discontinued. If such majority does not object, the board of county commissioners shall file with the state water commission the petition provided for in section 61-16-02 and all further proceedings shall thereafter be governed by chapter 61-16. Upon the establishment or expansion of a water management district to include one or more drainage districts the board of county commissioners shall, by resolution, dissolve the drainage districts and transfer all property of the dissolved districts to the water management district.

§ 21.) Section 61-21-66 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-21-66. Dissolution Prohibited When Liabilities Outstanding—Disposition of Assets.) Notwithstanding the provisions of section 61-21-65, no drainage district shall be dissolved if such district has any outstanding warrants, bonds, or other obligations unless the order of the board of county commissioners dissolving such district shall provide for a continuance of assessments upon properties within the dissolved district for the payment of outstanding obligations, or an assumption of such obligations by the newly created district and the spreading of such assessments over properties within the newly created district. All sinking funds created for the payment of such obligations shall be continued in force by the new district until the liquidation of such obligations. Any funds in the treasury of the drainage district shall, upon dissolution under the provisions of section 61-21-65, be transferred to the treasury of the water management district. Such funds may be expended separately or jointly with other funds on projects or activities of the water management district which are of specific benefit to property in the dissolved drainage district from whence the funds were transferred or, in the discretion of the board of county commissioners, such funds may be prorated among the properties in the dissolved drainage district and credited to such property in proportion with the amount originally assessed as a credit against subsequent assessments by the water management district.

§ 22. **Repeal.)** Section 61-16-41 and chapters 61-22 and 61-25 of the North Dakota Century Code are hereby repealed.

Approved March 21, 1963.

CHAPTER 422

H. B. No. 538

(Mueller, Christensen (Ward), Winge, Breum, Wilkie)

(Davis (Dickey), Tweten)

(From LRC Study)

GARRISON CONSERVANCY DISTRICT MANAGEMENT

AN ACT

To amend and reenact section 61-24-06, subsection 9 of section 61-24-08, and section 61-24-09 of the North Dakota Century Code, relating to the election of officers, mill levy and establishment of reserve funds by the Garrison diversion conservancy district.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 61-24-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24-06. Meetings of the Board—Quorum—Board to Adopt Rules, Regulations and Bylaws.) The board of directors of the district shall adopt such rules and regulations and bylaws for the conduct of the business affairs of the district as they may deem necessary, including the time and place of regular meetings of the board. They shall elect from their number a chairman and vice chairman. They shall also elect a secretary and a treasurer, which offices may be held by the same person, and either or both offices may be held by someone not a member of the board. Special meetings may be called by the secretary on order of the chairman of the board or upon the written request of the majority of the qualified members of the board. Notice of a special meeting shall be mailed to each member of the board at least six days before such meetings, provided, that a special meeting may be held at any time when all members of the board are present or consent thereto in writing. A majority of the members of the board of directors shall constitute a quorum for the transaction of business, but any number may adjourn the meeting for want of a quorum.

§ 2. **Amendment.)** Subsection 9 of section 61-24-08 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

9. In 1961 and each year thereafter to levy a tax of not to exceed one mill annually on each dollar of taxable valuation in the district, for the payment of the expenses of the district, including, but not limited to, per diem, mileage and other expenses of directors,

technical, administrative, clerical, operating and other expenses of the district office, and for the cumulation of a continuing fund through such levy for the performance of obligations entered into with the United States of America in connection with the construction, operation and maintenance of works of the said Garrison diversion unit of the Missouri River basin project. All moneys collected pursuant to such levy shall be deposited in the Bank of North Dakota to the credit of the district and shall be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, bonds and mortgages or other securities the payment of which is guaranteed by the United States or an instrumentality or agency thereof, bonds or certificates of indebtedness of the state of North Dakota or any of its political subdivisions. The amount which may be levied in any one year for operating the district prior to authorization by Congress of the Garrison diversion project shall not exceed ten percent of the maximum permissible;

§ 3. **Amendment.)** Section 61-24-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24-09. District Budget—Determination of Amount To Be Levied—Adoption of Levy—Limitation.) In July of each year the board of directors shall estimate and itemize all the expenses and obligations of the district, including, but not limited to, expenses of directors, expenses of operating the office, debt service and retirement, and obligations and liabilities to the United States for which provision must be made. The board of directors may include in such budget funds deemed necessary to create reserve funds to meet future payments under district contracts. Upon the completion and adoption of such budget, the board of directors shall make a tax levy in an amount sufficient to meet such budget. Such levy shall be in the form of a resolution, adopted by a majority vote of the members of the board of directors of the district. Such resolution shall levy in mills, but not exceeding one mill, sufficient to meet all the expenses, obligations and liabilities of the district as provided in the budget.

Approved March 9, 1963.

CHAPTER 423

H. B. No. 537

(Mueller, Christensen (Ward), Winge, Breum, Wilkie)

(Davis (Dickey), Tweten)

(From LRC Study)

GARRISON CONSERVANCY DISTRICT, WITHDRAWAL

AN ACT

To amend and reenact section 61-24-16 of the North Dakota Century Code, relating to the exclusion of counties from the Garrison conservancy district.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 61-24-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24-16. County May Be Excluded from Conservancy District if Not Benefited.) 1. Any county in the conservancy district not benefited or not to be benefited, in whole or in part, by the establishment of the Garrison diversion unit of the Missouri Basin project as authorized by Act of Congress, approved December 22, 1944 (58 Stat. 887) and Acts amendatory thereof or supplementary thereto may be excluded from the district as provided herein. The board of county commissioners of any such county may by resolution direct the county auditor and the chairman of the board to file with the board of directors of the conservancy district a petition, for and on behalf of the county, requesting the board of directors of the district to exclude such county therefrom. A certified copy of the resolution of the county board shall accompany and be filed with such petition. The petition and resolution shall state specific reasons why such county will not be benefited by the establishment and development of the Garrison diversion unit.

2. Within sixty days from the date of filing said resolution and petition for exclusion from the district the district board shall meet to consider such petition. It may grant such petition or it may fix a time and place for a hearing thereon. If a hearing be set, the secretary of the board shall cause notice of the filing of such petition for exclusion, and of the time and place for a hearing, to be published once each week for two consecutive weeks in a newspaper of general circulation printed in the district. The hearing mentioned in such notice shall be held not less than ten nor more than twenty days after the last publication of such notice. The notice shall state

that any person, corporation, municipality and county in the district may appear or be represented at the hearing and show cause why the petition should or should not be granted. The board shall hear the petition at the time and place mentioned in the notice.

3. If after the hearing on the petition the district board of directors shall determine that the county requesting to be excluded from the district will not be benefited the district board shall by resolution grant the petition and shall direct the chairman and secretary to execute the order of the board excluding such county from the conservancy district. If, however, the district board shall decide that such county will be benefited it shall deny the petition and direct the chairman and secretary to execute its order refusing to exclude such county from the district. A county excluded from the conservancy district shall not be liable for any obligations thereof incurred after exclusion but shall be liable for and shall pay to the district taxes levied before exclusion.

4. If any contract shall have been made with the United States or any agency thereof before such petition is filed, such petition shall not be granted unless consented thereto by the appropriate agency of the United States and if such agency gives its consent upon condition, such conditions shall be included in the order of exclusion and the county may be required to and in that event such county shall continue to pay any tax levies required to meet the obligations of any such contract.

Approved March 9, 1963.