

person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

§ 20. (SHORT TITLE.)

This act may be cited as the Uniform Trust Receipts Act.

§ 21. (INCONSISTENT LAWS REPEALED.)

(Except so far as they are applicable to trust receipt and pledge transactions entered into before this act takes effect, the following acts shall be and hereby are repealed...; and) all acts or or parts of acts inconsistent with this act are hereby repealed.

Approved March 14, 1945.

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## WATERS

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### CHAPTER 321

H. B. No. 210

Introduced by Representatives Belzer and Monson by request

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#### ASSESSMENT FOR DRAINAGE

An Act Authorizing Board of Flood Irrigation to make levy for drainage within flood irrigation project, providing for assessment for drainage, certification of levy to county auditor, and the land within project subject to such levy.

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

§ 1. ASSESSMENT FOR DRAINAGE.] The board of flood irrigation of any flood irrigation project shall be and is empowered to levy a special tax against all land located within any particular pond in the project to be used for necessary ditching of lands located within the particular pond of the flood irrigation project to procure proper drainage for such lands. Said board shall annually certify to the county auditor the amount that shall be required for such drainage purposes during the following year. Thereupon the county auditor shall apportion the same to the several tracts or parcels of land within such pond within the project, the amount which each parcel or tract of land shall be assessable within said pond, such apportionment to be made on the basis on which the original benefits were assessed within the particular pond under the provisions of Section 61-1222 of the North Dakota Revised Code of 1943, and shall extend such

amount upon the tax lists as a special tax on the lands in such pond. The taxes so collected for drainage shall be credited to a drainage fund for the pond of the project involved.

Approved March 13, 1945.

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## CHAPTER 322

S. B. No. 179

Introduced by Senators Braun, Rue, Young and Kehoe

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### ASSESSMENTS BY IRRIGATION DISTRICTS

An Act To amend and reenact Section 61-0915 of the North Dakota Revised Code of 1943, relating to assessments by Irrigation Districts, and to the powers of district courts involving the validity of such assessments, and of tax certificates, and tax deeds based upon such assessments, and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 61-0915 of the North Dakota Revised Code of 1943 be amended and reenacted to read as follows:

61-0915. All assessments made pursuant to the provisions of this chapter on real property, and assessments on leasehold estates owned by this state or any of its subdivisions, and, to the extent provided by the act of congress of August 11, 1916, assessments on entered or unentered public lands, shall be a general tax against the real property on which assessed in like manner and to the same effect as general state and county taxes and shall be of the same order. The lien thereof shall share ratably with general tax liens in all tax proceedings and tax sales, and shall be subject to all provisions of law relating to general taxes. Such assessment shall become due and payable and delinquent at the same time as other general state and county taxes, and at the annual tax sale the said assessment shall be included in the total amount of taxes for which the property affected is being offered for sale, and such property, in the absence of other bidders, shall be sold to the county. A tax sale certificate therefor may issue to the county and shall remain subject to all statutory provisions applying to tax sale certificates issued to a county. In case leasehold estates only are affected by said assessments the tax sale certificate issued therefor shall state that fact. The lien for the bonds of any series shall be preferred to that of any subsequent series, and the lien for the payments due to the United States under any contract between the district and the United States, accompanying which bonds have not been deposited with the United

States, shall be a lien preferred over that of any issue of bonds or any series of any issue subsequent to the date of such contract. All funds arising from assessment and levy, if any, shall be devoted to the obligations of the district payable from said funds and as to all obligations from the bond and United States contract a fund shall be so devoted in the order of priority of the creation of the obligation. No error or omission which may be made in the proceedings of the board, or of any officer of an irrigation district in referring, reporting upon, ordering or otherwise acting concerning the establishment, construction or acquisition of irrigation works, or concerning the issuance of bonds or improvement warrants, or in making or certifying any assessment shall vitiate or in any way affect any such assessment; but if it shall appear that by reason of such error or omission substantial injury has been done to the party or parties claiming to be aggrieved, the court shall alter such assessment as may be just and the same shall then be enforced. Whenever the validity of any assessment, or the validity of any tax sale certificate or deed given pursuant to a sale for such assessment shall be drawn in question in any action in any district court in this state, and such assessment shall be held to be invalid by reason of noncompliance with the laws of this state, the court shall determine the true and just amount which the property attempted to be so assessed by said assessment should pay, to make the same uniform with other assessments for the same purpose, and the amount of such assessments as the same appears on the assessment list thereof, shall be prima facie evidence of such true and just amount, and judgment must be rendered and given therefor against the property liable for such assessment, without regard to the proceedings had for the levy thereof, and such judgment shall be a lien upon the property upon which the assessment shall have been levied, of equal force and effect as the lien of irrigation district assessments, and the lien of such judgment shall be enforced by the court in such action.

§ 2. EMERGENCY.] An emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval.

Approved March 10, 1945.

## CHAPTER 323

## H. B. No. 219

Introduced by Representatives Collette, Halcrow, Levin, Saumur, McInnes, Ohnstad, Pyle, Thompson of Richland, Luick, Johnson of Richland, Klefstad, Severson, Bagge, Stanley, Gainor, Lillehaugen and Wollitz

## DRAINS MAY BE LAID ALONG ROADS AND RAILROADS

An Act To amend and re-enact Section 61-2135 of the North Dakota Revised Code of 1943, providing that drains may be laid along roads and railroads and providing for the building and keeping in repair.

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

§ I. AMENDMENT.] That Section 61-2135 of the North Dakota Revised Code of 1943 is hereby amended and re-enacted to read as follows:

61-2135. DRAINS MAY BE LAID ALONG ROADS AND RAILROADS ; BUILDING AND KEEPING IN REPAIR.] Drains may be laid along, within the limits of, or across any public road. When so laid out and constructed or when any road shall be constructed along or across any drain, the board of county commissioners or board of township supervisors, as the case may be, shall keep the same open and free from all obstructions. A drain may be laid along any railroad when necessary, but not to the injury of such road, and when it shall be necessary to run a drain across a railroad, the railroad company, when notified by the board to do so, shall make the necessary opening through said road and shall build and keep in repair suitable culverts or bridges. A drain may be laid along any state or federal highway when necessary, but not to the injury of such highway, and when it shall be necessary to run a drain across such highway, the State Highway Department, when notified by the board to do so, shall make the necessary opening through said highway and shall build and keep in repair suitable culverts or bridges at its own expense.

Approved March 12, 1945.

## CHAPTER 324

H. B. No. 50

Introduced by Representatives Halvorson, Halcrow and Bagge

## FLOOD IRRIGATION FUNDS, TRANSFER

An Act Allowing a board of flood irrigation to transfer balance in sinking fund, after payment of bonded debt of the flood irrigation project to the maintenance fund of the project for maintenance expenses and payment of outstanding maintenance warrants of the project.

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

§ 1. The board of flood irrigation of any flood irrigation project shall have the right upon the payment of all of the bonded debt of the flood irrigation project, by resolution, to transfer any and all funds then remaining in the sinking fund of the project to the maintenance fund of the project for use in maintenance, repair and care, and for payment of outstanding and unpaid warrants issued for maintenance of the project.

§ 2. The county treasurer as custodian of the funds of any flood irrigation project, of any county in this State, shall upon receipt of a certified copy of a resolution of any board of flood irrigation, showing that all bonded debt of a flood irrigation project has been fully paid, transfer any and all funds then remaining in the sinking fund of the project to the maintenance fund of the project.

§ 3. All acts or parts of acts in conflict herewith are hereby repealed.

Approved February 20, 1945.

## CHAPTER 325

H. B. No. 269

Introduced by Representatives Collette, Halcrow, Levin, Saumur, McInnes, Ohnstad, Pyle, Thompson of Richland, Luick, Johnson of Richland, Klefstad, Severson, Wollitz, Stanley, Bagge, Lillehaugen, and Gainor.

## HIGHWAY DITCHES, METHOD OF CONSTRUCTION

An Act Providing that any and all highways constructed or reconstructed by the State Highway Department, the county commissioners, township supervisors or their contractors, sub-contractors or agents shall be so designed that the ditches of such highway or highways shall carry off water running into same so as to prevent overflow upon adjacent land.

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

§ 1. That any and all highways of any kind hereafter constructed or reconstructed by the State Highway Department, any board of county commissioners, any board of township supervisors, their contractors, sub-contractors or agents, or by any individual firm or corporation, shall be so designed as to permit the waters running into such ditches to drain into coulees, rivers and lakes according to the surface and terrain where such highway or highways are constructed in accordance with scientific highway construction and engineering so as to avoid the waters flowing into and accumulating in the ditches to overflow adjacent and adjoining lands. It is the intention of this act that in the construction of highways, as herein provided, the natural flow and drainage of surface waters shall not be obstructed, but that such water shall be permitted to follow the natural courses according to the surface and terrain of the particular terrain.

Approved March 12, 1945.

## CHAPTER 326

H. B. No. 267

Introduced by Representatives Gainor, Lillehaugen, Halcrow, Levin, Saumur, McInnes, Ohnstad, Pyle, Collette, Thompson of Richland, Luick, Johnson of Richland, Klefstad, Severson and Wollitz.

## LETTING CONTRACTS FOR DRAINS

An Act To amend and re-enact Section 61-2125 of the North Dakota Revised Code of 1943 as amended by Chapter 15 of the Special Session Laws of 1944 relating to letting of contracts by Board of Drain Commissioners, and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 61-2125 of the North Dakota Revised Code of 1943 as amended by Chapter 15 of the Special Session Laws of 1944 is hereby amended and re-enacted to read as follows:

§ 61-2125. LETTING CONTRACTS FOR DRAINS; DEFERRING; PREFERENCE IN AWARDED.] At the time and place appointed the board of drain commissioners shall proceed to hear all complaints relative to such assessments, unless a hearing has already been had under the provisions of Sections 61-2120 and 61-2121, and correct and confirm the same. Such board shall then proceed to let contracts for the construction of the drain by divisions as it shall have divided the same, to the persons who will do the work according to the specifications, for the lowest price and give adequate security for the performance of the same within such time as the contract shall specify. Such board may adjourn such letting in whole or in part and from time to time to such other time and place, to be by it at the time of such adjournment publicly announced, as shall to it seem proper and it may reserve the right to reject any and all bids. The parties who are to be assessed for the construction of such drain and who may be bidders for contracts thereon shall, if equal bidders with other parties, be preferred in the awarding of such contracts; provided, that contracts for the building of bridges and culverts mentioned in Section 61-2136 may be deferred, until the construction of the drain has reached such a stage of completion that the character of the bridges and culverts which will be needed can be determined. As soon as the character of such bridges and culverts can be determined such board shall cause plans and specifications of the bridges and culverts to be constructed in connection with such drain to be prepared and shall give at least ten days' notice of the time and place when and where it will meet parties for the purpose of letting contracts for such construction. Such notice shall be published at least fifteen days prior to the date of the opening of the bids there-

under ; such notice shall be published in some established newspaper of general circulation qualified to publish legal notices, and which is printed and published in the city or village or county where such work is located and also in some trade publication of general circulation among the contractors of the state. Such contracts shall be left to the lowest bidder as hereinbefore in this section provided, except that said board of drain commissioners may in their discretion reject any and all bids and enter into an agreement with any state or federal agency for the construction of drains, provided that such discretionary power in boards of drain commissioners shall expire on June 1, 1947 and that on and after June 1, 1947 such construction of drains can' only be let by bid as hereinbefore in this section provided.

§ 2. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

§ 3. EMERGENCY.] This act is hereby declared to be an emergency and shall be in full force and effect from and after its passage and approval.

Approved March 12, 1945.

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## CHAPTER 327

H. B. No. 208

Introduced by Representatives Luick and Wollitz

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### NOTICE OF HEARING ON PETITION AND SURVEYOR'S REPORT

An Act To amend and re-enact Section 61-2114 of the North Dakota Revised Code of 1943, providing for notice of and hearing on petition and surveyor's report.

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

§ 1. AMENDMENT.] That Section 61-2114 of the North Dakota Revised Code of 1943 is hereby amended and re-enacted to read as follows:

§ 61-2114. HEARING ON PETITION AND SURVEYOR'S REPORT; NOTICE OF.] Upon the filing of the surveyor's report provided for in Section 61-2113, the board shall fix a date and public place for hearing objections to the petition. Such place for hearing shall be in the vicinity of the proposed drain and shall be convenient and accessible for the majority of the landowners affected by such drain. At least ten days' notice of such hearing shall be given by causing a notice to be published at least once in the official newspaper of the

county in which such proposed drain is located. In addition, a notice shall be sent by registered mail to the post office address, as shown by the records of the Register of Deeds or County Treasurer of the county, of each owner of land which may be affected by the proposed drain. Notices of such hearing shall contain a copy of the petition and a statement of the date of filing of the surveyor's report and the date when the board will act upon the petition, and shall be signed by the members of the board or a majority thereof. All persons whose land may be affected by any such drain may appear before the board and may express fully their opinions and offer evidence upon the matters pertaining thereto.

Approved March 12, 1945.

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## CHAPTER 328

H. B. No. 101

Introduced by Representative Sellens

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### POWERS AND DUTIES, STATE WATER COMMISSION

An Act To amend and re-enact Section 61-0214 of the North Dakota Revised Code of 1943 relating to the powers of the State Water Conservation Commission.

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

§ 1. AMENDMENT.] That Section 61-0214 of the North Dakota Revised Code of 1943 is hereby amended and re-enacted so as to read as follows:

61-0214. POWERS AND DUTIES OF THE COMMISSION.] The commission shall have full and complete power, authority, and general jurisdiction:

1. To investigate, plan, regulate, undertake, construct, establish, maintain, control, 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 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 water-shed areas of the state and, subject to vested and riparian rights, to divert the waters within water-shed area to another water-

shed 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 good agricultural lands and to construct any needed channels;

i. To provide more satisfactory subsurface water supplies for the smaller villages of the state;

j. To finance the construction, establishment, 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;

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 regulation;

a. For the sale of waters and water rights to individuals, associations, corporations, and 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;

3. To exercise full power and control of the construction, operation, and maintenance of works and the collection of rates, charges, and revenues realized therefrom;

4. To sell, lease, and otherwise distribute all waters which may be developed, impounded, and diverted by the commission under the provisions of this chapter, for the purpose of irrigation, the development of power, and the watering of livestock, and for any other private or public use; and

5. To exercise all express and implied rights, power, and

authority, that may be necessary, and to do, perform, and carry out all of the expressed purposes of this chapter and all of the purposes reasonably implied incidentally thereto or lawfully connected therewith.

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 right-of-ways for diversion and distributing canals.

7. To cooperate with the United States and any department, agency or officer thereof in the planning, establishment and maintenance of dams, reservoirs, diversion and distributing canals, for the utilization of the waters of the state for domestic and municipal 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 real and personal property, including land or easements for dams and reservoir sites and right-of-ways and easements for diversion and distribution canals.

Approved February 20, 1945.

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## CHAPTER 329

### H. B. No. 218

Introduced by Representatives Collette, Halerow, Levin, Saumur, McInnes, Ohnstad, Pyle, Thompson of Richland, Luick, Johnson of Richland, Klefstad, Severson, Wollitz, Bagge, Stanley, Gainor and Lillehaugen

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### REPAIRS OF DRAINS

An Act To amend and re-enact Section 61-2142 of the North Dakota Revised Code of 1943 as amended by Chapter 14 of the 1944 Special Session Laws relating to repairs of existing drains, and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 61-2142 of the North Dakota Revised Code of 1943 as amended by Chapter 14 of the 1944 Special Session Laws is hereby amended and re-enacted to read as follows:

§ 61-2142. DRAIN KEPT OPEN AND IN REPAIR BY BOARD OF COUNTY COMMISSIONERS; COST OF.] All drains that may have been constructed under any law of this state, or that may be constructed

under the provisions of this chapter and situated in this state, shall, except as otherwise provided, be under the charge of the board of county commissioners and their successors in office and it shall be the mandatory duty of the board of county commissioners and their successors in office to keep said drain open and in good repair. In all cases when any completed drain is or may be situated in more than one county the care of the portion lying within any county is hereby assigned to the board of county commissioners of such county to be by it kept open and in repair. The cost of such keeping open and in repair shall in all cases be assessed, levied and collected in the same manner as is provided in this chapter for the construction of drains in the first instance, and in cases when no assessments of benefits shall have been made, the board of commissioners having charge of or to whose care such drain may be assigned shall make such assessments.

Provided that any work of cleaning out or repairing any drain, the cost of which said work is not in excess of \$150.00 in any one year, may be done by day work or under contract therefor, which contract may be let without such work being advertised and the expense thereof shall be paid out of the county road and bridge fund.

Provided that the levy in any one year for cleaning out or repairing any drain shall not exceed a maximum of fifty cents per acre on any lands in such drain district. Provided further that the Board of County Commissioners may accumulate a fund for such purpose, but such fund shall not exceed the maximum levy allowable for one year.

Provided that all such cleaning out and repair shall be let by bids as provided by law except that the said Board of County Commissioners may in their discretion reject any and all bids and perform such work with county equipment or enter into an agreement with any State or Federal agency for such cleaning out and repair of drains. Provided that such discretionary power in the Board of County Commissioners shall expire on June 1, 1947 and that on and after June 1, 1947 such cleaning and repair can only be let by bids as provided by law. Provided that where such a county drain runs through or adjacent to an incorporated city or village, the governing body of such city or village is hereby authorized to contribute to the expense of cleaning such drain in such amount as may be agreed upon between such governing board and the county commissioners.

Provided, however, that if such levy and the funds accumulated in said drain fund shall not be sufficient for properly cleaning out or repairing such drains, the Board of County Commissioners may spend more than the above maximum limit as follows:

Sub-§ 1. Upon presentation to the Board of County Commissioners of a petition signed by property owners liable for 10% or more of the cost of such repair or improvement requesting the cleaning out and repair of an established drain, the Board of County

Commissioners shall forthwith give notice by registered mail, to all property owners interested in such drain of a hearing upon such petition at some convenient time and place.

Sub-§ 2. At such hearing after the purpose of the proposed improvement and repair has been explained, and the probable cost and all other pertinent information has been presented, the signers of such petition shall have the right to withdraw their names. Other owners of property within the drainage district shall at that time have the right to add their names to such petition at the time of the hearing or within twenty days thereafter, if they so desire.

Sub-§ 3. If, after ten days and within twenty days thereafter, petitions are signed containing the signatures of persons owning property which is liable for 51% or more of the cost of such repair or improvement, the Board of County Commissioners shall proceed in the regular way with such repair or improvement. If however, within twenty days after the hearing on the petition, property owners liable for 51% or more of the cost of such repair and improvements, have not signed such petition, then all action of such project shall be postponed for at least one year.

§ 2. EMERGENCY.] This act is hereby declared to be an emergency and shall be in full force and effect from and after its passage and approval.

Approved March 10, 1945.

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## CHAPTER 330

H. B. No. 270

Introduced by Representatives Collette, Halcrow, Levin, Saumur, McInnes, Ohnstad, Pyle, Thompson of Richland, Luick, Johnson of Richland, Klefstad, Severson and Wollitz

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### TOWNSHIP DITCHES, COST LIMIT

An Act To amend and re-enact Section 61-2206 of the North Dakota Revised Code of 1943, providing that a township ditch costing more than three thousand dollars shall not be constructed.

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

§ 1. AMENDMENT.] That Section 61-2206 of the North Dakota Revised Code of 1943 is hereby amended and re-enacted to read as follows:

§ 61-2206. TOWNSHIP DITCH COSTING MORE THAN THREE THOUSAND DOLLARS NOT TO BE CONSTRUCTED.] No ditch which

shall cost the township more than three thousand dollars shall be constructed under the provisions of this chapter.

Approved March 16, 1945.

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## CHAPTER 331

S. B. No. 122

Introduced by Committee on Irrigation & Drainage

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### TRI STATE COMPACT RATIFICATION

An Act To Ratify and Approve the Compact between the States of Montana, North Dakota and Wyoming, Providing for an Equitable Apportionment of the Waters in the Yellowstone River Basin among said States.

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

§ I. RATIFICATION OF COMPACT BETWEEN THE STATES OF MONTANA, NORTH DAKOTA AND WYOMING.] That the compact entered into between the states of Montana, North Dakota and Wyoming pursuant to an act of Congress of the United States of America, approved March 16, 1944 (Public No. 257, 78th Congress, Second Session), which was concluded and signed on the 18th day of December, 1944, at Billings, Montana, by the Commissioners for the states of Montana, North Dakota and Wyoming, respectively, acting under appointment by the Governors of said states, providing for an equitable apportionment of the waters in the Yellowstone River basin among said states and each and every part and article thereof is hereby ratified and approved by the Legislative Assembly of the State of North Dakota, which said compact is in words and figures, as follows:

YELLOWSTONE RIVER COMPACT. The State of Montana, the State of North Dakota, and the State of Wyoming, being moved by consideration of interstate comity, and desiring to remove all causes of present and future controversy between said States and between persons in one and persons in another with respect to the waters of the Yellowstone River and its tributaries, other than waters within or waters which contribute to the flow of streams within the Yellowstone National Park, and desiring to provide for an equitable division and apportionment of such waters, and to encourage the beneficial development and use thereof, have resolved to conclude a Compact as authorized under the Act of the Congress of the United States of America, approved March 16, 1944 (Public No. 257, 78th Congress, Second Session), for the attainment of these

purposes, and to that end, through their respective governments, have named as their respective Commissioners:

For the State of Montana: Fred E. Buck, W. E. Ogden, P. F. Leonard, H. W. Bunston, Wesley A. D'Ewart, E. E. Tiffany, D. M. Manning, Chester E. Onstad, Paul J. Hagan, Axel Persson;

For the State of North Dakota: J. J. Walsh, Kenneth W. Simons, Einar H. Dahl, M. M. Millhouse, Frank P. Whitney, John T. Tucker;

For the State of Wyoming: L. F. Thornton, John Gonin, Earl Bower, Ray Bower, R. E. McNally, E. J. Johnson, Ernest J. Goppert, David G. Anderson, W. B. Snyder, Mark N. Partridge, L. C. Bishop, H. J. Paustian, W. R. Holt who, after negotiations participated in by Harold D. Comstock, appointed as the representative of the United States of America, have agreed upon the following articles, to-wit:

ARTICLE I. A. Where the name of a state is used in this Compact, as a party thereto, it shall be construed to include the individuals, corporations, partnerships, associations, districts, administrative departments, bureaus, political subdivisions, agencies, persons, permittees, appropriators, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River System under the authority of said State.

B. Any individual, corporation, partnership, association, district, administrative department, bureau, political subdivision, agency, person, permittee, or appropriator authorized by or under the laws of a signatory State, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River System under the authority of said State, shall be subject to the terms of this Compact. Where the singular is used in this article, it shall be construed to include the plural.

ARTICLE II. A. The State of Montana, the State of North Dakota, and the State of Wyoming are hereinafter designated as "Montana", "North Dakota", and "Wyoming", respectively.

B. The terms "Commission" and "Yellowstone River Compact Commission" mean the agency created as provided herein for the administration of this Compact.

C. The term "Yellowstone River Basin" means areas in Wyoming, Montana, and North Dakota drained by the Yellowstone River and its tributaries, and includes the area in Montana known as Lake Basin.

D. The term "Yellowstone River System" means the Yellowstone River and all of its tributaries, including springs and swamps, from their sources to the mouth of the Yellowstone River near Buford, North Dakota, except those portions thereof which are

within or contribute to the flow of streams within the Yellowstone National Park.

E. The term "Tributary" means any stream which in a natural state contributes to the flow of the Yellowstone River, including interstate tributaries and tributaries thereof, but excluding those which are within or contribute to the flow of streams within the Yellowstone National Park.

F. The term "Interstate Tributaries" means the Clarks Fork, Yellowstone River; the Big Horn River; the Tongue River; and the Powder River; whose confluences with the Yellowstone River are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the State of Montana.

G. The term "Point of Diversion" means the point or place at which water is taken or removed from the channel of the Yellowstone River or from any tributary thereof.

H. The terms "Divert" and "Diversion" mean the taking or removing of water from the Yellowstone River or any tributary thereof when the water so taken or removed is not returned directly into the channel of the Yellowstone River or of the tributary from which it is taken.

I. The term "Divertible Flow" means the quantity of water that could be diverted from the stream flow above a designated point of measurement during a specified period of time. It is comprised of three elements: (a) the total net inflow to storage; (b) the total diversions; and (c) the remaining flow in the stream at the designated point of measurement for which the divertible flow is being determined. It is computed as follows:

The algebraic sum of:

(a) the quantity of water (in acre-feet) that flowed into reservoirs situated above the point of measurement during the specified period of time; less the outflow and diversions made directly from reservoirs (in acre-feet) during the same period; plus

(b) The quantity of water (in acre-feet) that was diverted from the stream above the point of measurement (including diversions made directly from reservoirs) during the specified period of time; plus

(c) The quantity of water in the stream (in acre-feet) that flowed past the point of measurement for which divertible flows are being determined during the specified period of time.

J. The term "Mean Divertible Daily Flow" means the average divertible flow occurring during a twenty-four hour period, beginning at 12:00 midnight.

K. The term "Mean Daily Flow" at any point means the aver-

age stream flow occurring at that point during a twenty-four hour period, beginning at 12:00 midnight.

L. The term "Beneficial Use" is herein defined to be that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man, and includes water lost by evaporation, percolation, and other natural causes from streams, canals, ditches, irrigated areas, and reservoirs.

ARTICLE III. A. This Compact is entered into by each signatory State in the exercise of its sovereign powers for a governmental purpose, and its provisions shall be administered by a Commission, composed of one representative from each signatory State, to be known as the Yellowstone River Compact Commission. The State representatives on this Commission shall be selected in such manner as each signatory State shall choose. The State Engineer of each signatory State, or other similar official, shall be and act as the State representative on the Commission at all times when a vacancy may exist thereon either from failure to designate a method of selection or otherwise. The President of the United States shall be requested by the Commission to designate a representative of the United States to sit with such Commission, and such representative of the United States, if designated by the President, shall, when present, act as Chairman of the Commission without vote.

B. The salaries and necessary expenses of each State representative shall be paid by the respective State; all other expenses incident to the administration of this Compact not borne by the United States shall be allocated to and borne by each state as follows: One-fifth by the State of North Dakota; and two-fifths each by the States of Montana and Wyoming.

C. In addition to other powers and duties herein conferred upon the Commission and the members thereof, the jurisdiction of the Commission shall include the collection, correlation, and presentation of factual data, the maintenance of records having a bearing upon the administration of this Compact, and, by unanimous action, the making of recommendations to the respective States upon matters connected with the administration of this Compact. In connection with the performance of its duties hereunder, the Commission may employ such services and make such expenditures as may be reasonably necessary, within the limit of funds provided for that purpose by the respective States. The Commission shall compile a report for each year ending September 30th, and shall transmit it to the Governors of the signatory States on or before December 31st of that year.

D. The Secretary of War; the Secretary of the Interior; the Secretary of Agriculture; the Chairman, Federal Power Commission; the Chief, Federal Weather Bureau, or comparable officers of whatever Federal agencies may succeed to the functions and duties

of these agencies, and such other Federal officers and officers of appropriate agencies of the signatory States having services of data useful or necessary to the Compact Commission, shall cooperate, ex-officio, with the Commission in the execution of its duty in the collection, correlation, and publication of records and data necessary for the proper administration of the Compact; and these officers may perform such other services related to the Compact as may be mutually agreed on with the Commission.

E. The Commission shall have power to formulate rules of procedure, rules, and regulations, and to perform any and all acts it may find necessary to carry out the provisions of this Compact, and to prescribe, issue, make, amend, and rescind such order, rules and regulations. All rules of procedure, rules, and regulations of the Commission shall be filed in the Office of the State Engineer of each signatory State and shall be kept in a convenient form for public inspection and examination during reasonable business hours.

F. The Commission herein authorized shall have power to sue and be sued in its official capacity in any Federal Court of the Signatory States and may adopt and use an official seal which shall be judicially noticed.

ARTICLE IV. The Commission shall itself, or in conjunction with other responsible agencies, cause to be established, maintained, and operated such suitable water gaging and evaporation stations as it finds necessary in connection with its duties.

ARTICLE V. A. The States of Montana, North Dakota, and Wyoming hereby agree that the waters of the Yellowstone River and its interstate tributaries shall be apportioned among said States as follows:

I. CLARKS FORK, YELLOWSTONE RIVER

Each day, during the period May 1st to September 30th, inclusive, of each year, the first 1,600 acre-feet of mean divertible daily flow of the main stem of the Clarks Fork, Yellowstone River, determined immediately above the confluence of Rock Creek with Clarks Fork in Montana, shall be divided fourteen (14) per cent to Wyoming and eighty-six (86) per cent to Montana; however, either State may temporarily divert, consume, or store for its beneficial use any unused part of the above flow allotted to the other, but no continuing right to such unused flow shall be established thereby. Unappropriated divertible daily flows in excess of 1,600 acre-feet occurring during the period May 1st to September 30th, inclusive, of each year, and all presently unappropriated flows occurring during the period October 1st to April 30th, inclusive, shall be subject to future appropriation for beneficial use within the Yellowstone River Basin in Montana, North Dakota and Wyoming in accordance with the laws of said respective States.

## 2. BIG HORN RIVER (EXCLUSIVE OF LITTLE HORN RIVER)

Each day during the period May 1st to September 30th, inclusive, of each year, after due consideration being given to all Indian-treaty-water rights of the lands in Wyoming and Montana served directly from the main stem of the Big Horn River, the first 15,000 acre-feet of mean divertible daily flow of the Big Horn River, determined at or near the Big Horn River Bridge on U. S. Highway 87 near Hardin, Montana, shall be divided ninety (90) percent to Wyoming and ten (10) per cent to Montana; and the next 15,000 acre-feet of mean divertible daily flow shall be divided ninety-three (93) per cent to Wyoming and seven (7) per cent to Montana; provided, however, that either State may temporarily divert, consume, or store for its beneficial use any unused part of the above flows allotted to the other, but no continuing right to such unused flows shall be established thereby. Subject to Indian-treaty-water rights, the unappropriated divertible daily flows in excess of 30,000 acre-feet occurring during the period May 1st to September 30th, inclusive, of each year, and all presently unappropriated flows occurring during the period October 1st to April 30th, inclusive, shall be subject to future appropriations for beneficial use within the Yellowstone River Basin in Montana, Wyoming and North Dakota in accordance with the laws of said respective States.

## 3. TONGUE RIVER

Each day during the period May 1st to September 30th, inclusive, of each year, the first 2,200 acre-feet of mean divertible daily flow of the Tongue River, determined at the lowest point of diversion on this stream, shall be divided seventy-two (72) per cent to Wyoming and twenty-eight (28) per cent to Montana; and the next 1,200 acre-feet of mean divertible daily flow shall be divided forty-three (43) per cent to Wyoming and fifty-seven (57) per cent to Montana: Provided, That either State may temporarily divert, consume, or store for its beneficial use any unused part of the above flows allotted to the other, but no continuing right to such unused flows shall be established thereby. Unappropriated divertible daily flows in excess of 3,400 acre-feet occurring during the period May 1st to September 30th, inclusive, and all presently unappropriated flows occurring during the period October 1st to April 30th, inclusive, of each year, shall be subject to future appropriation for beneficial use within the Yellowstone River Basin in Wyoming, Montana, and North Dakota in accordance with the laws of said respective States.

The provisions herein, and each of them, and in particular the allotments, and each of them, shall be subject to the following conditions:

- (a) For the purpose of determining the engineering feasibility, particularly as to water supply, of any project or program of the United States for the further conservation and utilization

of the waters of the Tongue River, particularly the storage of waters in the State of Wyoming for beneficial use in that State, the allotments hereinabove made, and each of them, may be assumed as the measure of an equitable apportionment of the waters of the Tongue River between the States of Wyoming and Montana to satisfy, as of the date of this Compact, those established rights for beneficial consumptive uses which are exercised beneficially and which are valid under the laws of the States of Wyoming or Montana, as the case may be.

(b) Such provisions and allotments shall become operative either ten (10) years from and after the date that this Compact is ratified by the Congress; or on June 15 of the year in which water is available for release through any adequate distributary system, other than the stream bed, from the Tongue River Reservoir of the Montana Water Conservation Board for beneficial uses in Montana, the amount of water so released, however, shall be equal to at least one-half of the working capacity of such reservoir; or on June 15 of the year in which water is available for release through any adequate distributary system, other than the stream bed, if such be necessary, from any storage reservoir constructed in Wyoming to conserve for beneficial uses in Wyoming the waters of the Tongue River, the amount of water released, however, shall be equal to at least one-half of the working capacity of such reservoir; or whichever of said dates is the earlier.

#### 4. POWDER RIVER (EXCLUSIVE OF LITTLE POWDER RIVER)

Each day during the period May 1st to September 30th, inclusive, of each year, the first 2,000 acre-feet of mean divertible daily flow of the Powder River, determined at the Wyoming-Montana State line, shall be divided ninety-six and one-half (96½) per cent to Wyoming and three and one-half (3½) per cent to Montana; Provided, That, when in the judgment of the Compact Commission the carriage loss in and through the stream bed depletes the divertible flow to such an extent that an unreasonable waste of water would result if Wyoming were regulated to produce such percentage to Montana, then such regulation shall be enforced only to the extent directed by the Commission. The next 2,600 acre-feet of mean divertible daily flow shall be divided sixty (60) per cent to Wyoming, and forty (40) per cent to Montana; however, either State may temporarily divert, consume, or store for beneficial use any unused part of the above flows allotted to the other, but no continuing right to such unused flows shall be established thereby. Unappropriated divertible daily flows in excess of 4,600 acre-feet occurring during the period May 1st to September 30th, inclusive, and all presently unappropriated flows occurring during the period October 1st to April 30th, inclusive, of each year, shall be subject to future appropriation for beneficial use within the Yellowstone River Basin

in Montana, Wyoming, and North Dakota in accordance with the laws of said respective States.

5. YELLOWSTONE RIVER—MAIN STEM (NEAR MONTANA-NORTH DAKOTA STATE LINE)

During the period May 1st to September 30th, inclusive, of each year, lands within the Yellowstone River Basin in Montana and in North Dakota below Intake, Montana, shall be entitled to the beneficial use of the available residual flow of the waters of the Yellowstone River below Intake, Montana, on a pro rata basis of acreage irrigated.

All residual flows of the Yellowstone River below Sidney, Montana, after the states of Montana and Wyoming have made, or may make, full beneficial use of the waters of said streams, is hereby allotted to the State of North Dakota.

B. From time to time following the consummation of this Compact, the Commission shall re-examine the allocations made under part "A" of this article and shall, after reaching unanimous agreement, make such modifications in these allotments as are fair, just and equitable, giving consideration among other factors to:

- (a) priorities of water rights;
- (b) acreage irrigated;
- (c) acreage irrigable under existing works; and
- (d) potentially irrigable lands.

Provided, That if the Commission should fail to reach unanimous agreement as to the modification of any allotment provided for in this article, then, as to the stream affected, the allotment then existing shall continue in full force and effect until unanimous agreement thereon be reached; and

Provided further, That changes and amendments that are substantive and are not modifications of allotments as herein provided shall be subject to Article XI.

C. The allocations made herein shall be exclusive of the use of the waters for domestic and stock use, and each signatory State shall be allowed unrestricted use for these purposes, except that no reservoir for such use shall exceed 20 acre-feet in capacity.

D. It is recognized that variable climatic conditions, stream flow regulation, the administration of the interstate tributaries in Wyoming and Montana, and other causes will produce diurnal and other unavoidable variations and fluctuations in the stream flows at the interstate measuring stations, and it is agreed that in the performance of provisions of part "A", of this article and subsequent modifications thereof, minor compensating irregularities and fluctuations in the flow shall be permitted; but where any deficiency of the mean daily flow at an interstate measuring station may be occasioned by neglect, error, or failure in the performance of the

duty of the upstream-state water officials having charge of the administration of the diversions from the stream, each such deficiency shall be made up within the next succeeding period of 72 hours by delivery of additional flow at the interstate measuring station over and above the amount allotted, sufficient to compensate for such deficiency. Notwithstanding the allocations of this Compact, the Commission, in its administration, shall direct the regulation of the streams within each of the signatory States to avoid unreasonable carriage losses.

ARTICLE VI. Present vested rights within each State and between States relating to the beneficial use of the waters of the Yellowstone River System are recognized by this Compact and shall be administered by the proper officials of the respective States. All rights to the beneficial use of the waters of the Yellowstone River System, heretofore and hereafter established under the laws of any signatory State, shall be satisfied solely from the portion of the water allotted to that State as provided in Article V. All Indian Treaty rights pertaining to the waters of the Yellowstone River Basin are unaffected by this Compact and are excluded therefrom.

ARTICLE VII. A. A lower signatory State shall have the right, by compliance with the laws of an upper signatory State, to file application for and receive permits to appropriate and use any waters in the Yellowstone River System not specifically apportioned to or appropriated by such upper State as provided in Article V; and to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such upper State for the purpose of conserving and regulating water that may be apportioned to or appropriated by the lower State, provided that such right is subject to the rights of the upper State to control, regulate, and use the water apportioned to and appropriated by it; and, provided further, that should an upper State elect, it may share in the use of any such facilities constructed by a lower State to the extent of its reasonable needs upon assuming or guaranteeing payment of its proportionate share of the cost of the construction, operation, and maintenance. This provision shall apply with equal force and effect to an upper State in the circumstance of the necessity of the acquisition of rights by an upper State in a lower State.

B. Each claim hereafter initiated for an appropriation of water in one signatory State for use in another signatory State shall be filed in the Office of the State Engineer of the signatory State in which the water is to be diverted, and a duplicate copy of the application including a map showing the character and location of the proposed facilities and the lands to be irrigated shall be filed in the Office of the State Engineer of the signatory State in which the water is to be used. If a portion or all the lands proposed to be reclaimed are located in a State other than the one in which the water is to be

diverted, then, before approval of the application shall be granted, said application shall be checked against the records of the appropriate office of the State in which the water is to be used, and a notation shall be placed thereon by the officer in charge of such records to the effect that the land description does not indicate a conflict with existing water rights. All endorsements shall be placed on both the original and duplicate copies of all such maps filed, to the end that the records in both States may be complete and identical.

C. Appropriations may hereafter be adjudicated in the State in which the water is diverted, and where a portion or all of the lands irrigated are in another signatory State, such adjudications shall be confirmed in that State by the proper authority. Each adjudication is to conform with the laws of the State where the water is diverted and shall be recorded in the County and State where the water is used.

ARTICLE VIII. A lower signatory State shall have the right, upon compliance with the laws of an upper signatory State, to acquire in such upper State by purchase, or through exercise of the power of eminent domain, such easements and rights of way for the construction, operation, and maintenance of pumping plants, storage reservoirs, canals, conduits, and appurtenant works as may be required for the enjoyment of the privileges granted herein to such lower State. This provision shall apply with equal force and effect to an upper State in the circumstance of the necessity of the acquisition of rights by an upper State in a lower State.

ARTICLE IX. Should any facilities be constructed by a lower signatory State in an upper signatory State under the provisions of Article VII, the construction, operation, repairs, and replacements of such facilities shall be subject to the laws of the upper State. This provision shall apply with equal force and effect to an upper State in the circumstance of the necessity of the acquisition of rights by an upper State in a lower State.

ARTICLE X. In the event water from another drainage basin shall be imported into the Yellowstone River Basin, or transferred from one tributary basin to another by the United States, Montana, North Dakota, or Wyoming, or any of them jointly, the State having the right to the use of such water shall be given proper credit therefor in determining its share of the divertible flows apportioned in accordance with Article V herein.

ARTICLE XI. The provisions of this Compact shall remain in full force and effect until amended in the same manner as it is required to be ratified to become operative as provided in Article XVII.

ARTICLE XII. No action taken by the Compact Commission

shall be valid except by the unanimous consent of the Commissioners representing the signatory States.

ARTICLE XIII. This Compact may be terminated at any time by unanimous consent to the signatory States, and upon such termination all rights then established hereunder shall continue unimpaired.

ARTICLE XIV. Nothing in this Compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, in any Federal Court of the United States Supreme Court, for the protection of any right under this Compact or the enforcement of any of its provisions.

ARTICLE XV. Nothing in this Compact shall be construed as affecting any rights to the use of the waters of the Big Horn or Wind River and the Little Horn River and their tributaries, existing by virtue of Indian treaties.

ARTICLE XVI. The physical and other conditions characteristic of the Yellowstone River and peculiar to the territory drained and served thereby and to the development thereof, have actuated the signatory States in the consummation of this Compact, and none of them, nor the United States by its consent and approval, concedes thereby the establishment of any general principle or precedent with respect to other interstate streams.

ARTICLE XVII. This Compact shall become operative when approved by the Legislature of each of the signatory States and consented to and approved by the Congress of the United States.

ARTICLE XVIII. Nothing in this Compact shall be deemed:

(a) To impair or affect any rights or powers of the United States, its agencies, or instrumentalities, in and to the use of the waters of the Yellowstone River Basin nor its capacity to acquire rights in and to the use of said waters;

(b) To subject any property of the United States, its agencies, or instrumentalities to taxation by any State or subdivision thereof, nor to create an obligation on the part of the United States, its agencies, or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any State or political subdivision thereof, State agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

(c) To subject any property of the United States, its agencies, or instrumentalities, to the laws of any State to an extent other than the extent to which these laws would apply without regard to the Compact.

ARTICLE XIX. Should a Court of competent jurisdiction hold

any part of this Compact to be contrary to the constitution of any signatory State or of the United States, all other severable provisions of this Compact shall continue in full force and effect.

IN WITNESS WHEREOF the Commissioners have signed this Compact in quadruplicate original, one of which shall be filed in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each signatory State.

Done at the City of Billings in the State of Montana, this 18th day of December, in the year of Our Lord, One Thousand Nine Hundred and Forty-Four.

Commissioners for the State of Montana:

Fred E. Buck, W. E. Ogden, P. F. Leonard, H. W. Bunston, Wesley A. D'Ewart, E. E. Tiffany, D. M. Manning, Chester E. Onstad, Paul Hagan, Axel Persson.

Commissioners for the State of North Dakota:

J. J. Walsh, Kenneth W. Simons, Einar H. Dahl, M. M. Millhouse, Frank P. Whitney, John T. Tucker.

Commissioners for the State of Wyoming:

L. F. Thornton, John Gonin, Earl Bower, Ray Bower, Ernest J. Goppert, David Anderson, W. B. Snyder, Mark N. Partridge, L. C. Bishop, W. R. Holt.

"I have participated in the negotiation of this Compact and intend to report favorably thereon to the Congress of the United States.

Harold D. Comstock

Representative of the United States of America"

§ 2. COMPACT NOT BINDING ON STATES UNTIL APPROVED BY THE OTHER STATES.] That said compact shall not bind any of the signatory States thereto unless and until the same shall have been approved by the legislature of each of the signatory States, and the Congress of the United States shall have given its consent thereto and approval thereof.

§ 3. GOVERNOR TO GIVE NOTICE OF RATIFICATION.] That the Governor of the State of North Dakota shall notify the Governor of the State of Montana and the Governor of the State of Wyoming and the President of the United States of America of the passage of this act, and the President is requested to notify the Governors of each of said States of the consent to and the approval of said compact by the Congress of the United States.

Approved March 17, 1945.

## CHAPTER 332

H. B. No. 268

Introduced by Representatives Bagge, Halcrow, Wollitz,  
Collette, Ohnstad, Thompson of Richland, Pyle, and Luick

## VOTING AT TOWNSHIP MEETING FOR DRAINAGE DITCHES

An Act To amend and reenact Section 61-2202 of the North Dakota Revised Code of 1943 providing for voting at township meeting for drainage ditches; and providing a method of payment.

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

§ 1. AMENDMENT.] That Section 61-2202 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

61-2202. VOTING AT TOWNSHIP MEETING FOR DRAINAGE DITCHES; VOTE IN FAVOR.] If at the meeting provided for in Section 61-2201, it is made to appear that such drainage ditch is necessary and desirable and that the same will not cost more than three thousand dollars, the question shall be submitted to a vote of the electors present. If a majority of such votes shall be in favor of the construction of such drainage ditch, the supervisors shall proceed to have the same constructed with all reasonable dispatch, and the cost thereof shall be paid out of the funds of the township, or a special levy may be made therefore.

Approved March 14, 1945.

## WEEDS

## CHAPTER 333

H. B. No. 228

Introduced by Representatives Halvorson, Bolmeier,  
Dalzell, Devlin and Monson

## NOXIOUS WEEDS; DESTRUCTION BY COUNTY BOARDS

An Act Authorizing the county commissioners, in an emergency, to destroy noxious weeds on private property at the expense of the county; declaring an emergency.

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

§ 1. When in the judgment of the county commissioners a public emergency shall exist and it shall be deemed necessary in