

# WATERS

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## CHAPTER 542

H.B. No. 457  
(Burke, Metzger)

### NOTICE OF WATER PERMIT APPLICATION

#### AN ACT

To amend and reenact section 61-04-05 of the 1967 Supplement to the North Dakota Century Code, relating to notices to be given by applicant and seeking water permits or appropriation of water rights.

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

**Section 1. Amendment.)** Section 61-04-05 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**61-04-05. Notice of Application—Contents—Proof—Failure to File Satisfactory Proof.)** Upon the filing of an application which complies with the provisions of this chapter and the rules and regulations established thereunder, the state engineer shall instruct the applicant to: (1) give notice thereof by certified mail in the form prescribed by him, to all record title owners of real estate within a radius of one mile from the location of the proposed water appropriation site, except where the one mile radius extends within the geographical boundary of a city the notice shall be given to the governing body of such city and no further notice need be given to the record title owners of real estate within the geographical boundary of said city; and (2) publish notice thereof, in a form prescribed by him, in some newspaper of general circulation in the stream system, once a week for two consecutive weeks. Such notice shall give all essential facts as to the proposed appropriation, among them the places of appropriation and of use, amount of water, the purpose for which it is to be used, the name and address of the applicant and the time when the application will be taken up by the state engineer for consideration. Proof of publication, as required,

shall be filed with the state engineer within sixty days from the date of his instructions to make publication. In case of failure within the time required to file satisfactory proof of publication in accordance with the rules and regulations applicable thereto, the application thereafter shall be treated as an original application filed on the date of receipt of proof of publication in proper form.

Approved March 29, 1969.

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## CHAPTER 543

S.B. No. 418  
(Meschke, Decker, Coughlin)

### ASSIGNMENT OR TRANSFER OF WATER PERMITS

#### AN ACT

To amend section 61-04-15 of the 1967 Supplement to the North Dakota Century Code, relating to assignment or transfer of water permits to provide for assignment of water permits held by any state agency only upon approval of the state engineer.

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

**Section 1. Amendment.)** Section 61-04-15 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**61-04-15. Assignment or Transfer of Conditional or Perfected Water Permit—Regulations Governing.)** Any conditional or perfected water permit to appropriate water for irrigation purposes shall be assigned only upon approval by the state engineer of an application for such assignment. Any conditional or perfected water permit may also be transferred, with the approval of the state engineer, to any parcel of land owned by the holder of such water permit. Any conditional or perfected water permit held by any state agency, department, board, commission or institution, regardless of how acquired, may be temporarily assigned or transferred for any use for such term and upon such conditions as are approved by the state water commission upon

application for such assignment. Upon reasonable proof that such assignment or transfer can be made without detriment to existing rights, the state engineer shall cause the water permit involved to be simultaneously severed and assigned or transferred from such land without losing priority of any right previously established. The decision of the state engineer 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. Applications for assignment and transfer shall be in the forms required by the state engineer. 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.

Approved March 25, 1969.

## CHAPTER 544

S.B. No. 419  
(Meschke, Decker, Coughlin)

## FORFEITURE OF WATER RIGHTS

## AN ACT

To amend section 61-04-23 of the 1967 Supplement to the North Dakota Century Code, relating to forfeiture of water rights to provide that water rights held by any state agency may be forfeited only by the legislature.

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

**Section 1. Amendment.)** Section 61-04-23 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted 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 state engineer may declare such water permit or right forfeited; provided however that any such water permit or right held by a state agency, department, board, commission or institution may be declared forfeited only by the North Dakota legislative assembly. 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 permit or right, and all ditches and other works constructed or partially constructed thereunder.

Approved March 28, 1969.

## CHAPTER 545

S. B. No. 464  
(Trenbeath)

WATER MANAGEMENT DISTRICT BOARD  
OF COMMISSIONERS

## AN ACT

To create and enact subsection 5 of section 61-16-01; to amend and reenact sections 61-16-08, 61-16-12, and 61-16-19 of the North Dakota Century Code, relating to the definition of the word "board"; the removal of a member of a district's board of commissioners; the approval, disapproval or modification of a district's proposed budget; the authority of a district to contract with the Canadian government or any of its provinces or municipalities; and to repeal section 61-16-20 of the North Dakota Century Code, relating to the exemption of federal agencies from the provisions of the law governing water management districts.

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

**Section 1.)** Subsection 5 of section 61-16-01 of the 1967 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

5. "Board" shall mean the water management district's board of commissioners.

**Section 2. Amendment.)** Section 61-16-08 of the 1967 Supplement to 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—Removal—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 from the first day of January next following the date of their appointment. 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 from the first day of January next following the date of their appointment. 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 from the first day of January next following the date of their appointment. When the term of office of a district commissioner has expired, his successor shall hold office for five years from the first day of January next following the date of their appointment. The term of office of a commissioner shall not terminate until his successor in office is appointed and qualified. 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. A commissioner may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the commissioner subject to removal, at which hearing such commissioner must be apprised of and allowed ample opportunity to repudiate such evidence, that such commissioner has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

**Section 3. Amendment.)** Section 61-16-12 of the 1967 Supplement to 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 management 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 apportion-

ment 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 either disapprove the entire budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, 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.

**Section 4. Amendment.)** Section 61-16-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**61-16-19. May Contract with Federal and State Governments—Local Districts, Persons and Corporations—Canadian Government, Provinces and Municipalities—Acquire Property in Adjoining States and Provinces.)** The board of commissioners shall also have the right, power and authority to enter into contracts or other arrangements for water conservation or flood control works with the United States government or any department thereof, with the Canadian government or any department thereof or any of its provinces or municipalities, with persons, railroads or other corporations, with public corporations, and state governments of this or other states, with drainage, water management, conservation, conservancy, or improvement districts, in this or other states, for cooperation or assistance in planning, constructing, maintaining, and operating such works and in making investigations and reports thereon; and may purchase, lease or acquire land or other property in adjoining states or provinces in order to secure outlets to construct and maintain dikes or dams, or for other purposes authorized by this chapter and may let contracts or spend money for securing such outlets or works in adjoining states or provinces. Provided, that no board of commissioners of any water management district shall have the right, power or authority to connect by artificial means boundary waters having different natural outlets so that the waters of one may be discharged into the other.

**Section 5. Repeal.)** Section 61-16-20 of the North Dakota Century Code is hereby repealed.

Approved March 14, 1969.

## CHAPTER 546

H.B. No. 427  
(Goodman, Reimers, Jones)

BOARD OF COMMISSIONERS OF  
WATER MANAGEMENT DISTRICTS

AN ACT

To create and enact subsection 17 of section 61-16-11 of the North Dakota Century Code, relating to the powers and duties of the board of commissioners of water management districts.

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

**Section 1.)** Subsection 17 of section 61-16-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

17. To order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert, to remove from under, within and around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, and other debris which hinders or decreases the maximum flow of water through such bridge or culvert.

Approved March 29, 1969.

## CHAPTER 547

S. B. No. 452  
(Trenbeath, Becker, Morgan)

CESSATION OF DESTRUCTION OF NATIVE  
WOODLANDS

AN ACT

To amend and reenact section 61-16-11 of the North Dakota Century Code, by creating a new subsection thereto, relating to the powers and duties of the board of commissioners of a water conservation and flood control district, and providing that such board shall have the power to order the cessation of destruction of native woodland.

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

**Section 1. Amendment.)** Section 61-16-11 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted by creating the following new subsection:

To order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred feet of that portion of a riverbank subject to overflow flooding that will cause extensive property damage or, in the alternative, to order that if such destruction is permitted, the party or parties responsible for the destruction must plant a shelterbelt which meets the specifications of the board, when the board has determined that such destruction will cause excessive property damage from the overflow flooding, due to the erosion or blocking of such river channel. In the event the native woodland within such area has already been destroyed, the board may, in its discretion, order the planting of a shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of such river channel where overflow flooding has caused extensive property damage. For purposes of this section, the words "riverbank" and "river channel" relate to rivers as defined in the United States geological survey base map of North Dakota, edition of 1963. The provisions of this subsection shall not be construed to in any manner limit, impair or abrogate the rights, powers, duties, or functions of any federal, state, or local entity to construct and maintain any flood control, irrigation, recreational or municipal or industrial water supply project.

Approved March 29, 1969.

## CHAPTER 548

S.B. No. 250  
(Trenbeath)

ESTABLISHMENT OF FLOOD  
PLAIN ZONES

AN ACT

To amend and reenact section 61-16-11 of the North Dakota Century Code, by creating a new subsection thereto, relating to the authority of a water management district to establish flood plain zones.

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

**Section 1. Amendment.)** Section 61-16-11 of the North Dakota Century Code is hereby amended and reenacted by creating a new subsection to read as follows:

To petition any zoning authority established pursuant to chapters 11-33, 11-35 or 40-47 or section 58-03-13 to assume jurisdiction over a flood plain for zoning purposes when such zoning is required to regulate and enforce the placement, erection, construction, reconstruction, repair, and use of buildings and structures in order to protect and promote the health, safety, and general welfare of the public lying within a flood plain area. In the event such zoning authority fails to act or does not exist the board may request the state water commission to assist it in a study to determine and delineate the flood plain area. Upon completion of such study the board shall make suitable recommendations for the establishment of a flood plain zone to all zoning authorities and the governing bodies of all political subdivisions having jurisdiction within the flood plain area.

Approved March 25, 1969.

## CHAPTER 549

S. B. No. 79  
(Longmire)

## COMPENSATION OF DRAINAGE COMMISSIONERS

## AN ACT

To amend and reenact section 61-21-03 of the North Dakota Century Code, relating to the compensation of members of boards of drainage commissioners.

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

**Section 1. Amendment.)** Section 61-21-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**61-21-03. Board of Drainage Commissioners—Appointment—Term—Removal—Compensation.)** The board of county commissioners of any county in this state, at any meeting of such board, by majority vote of all the members upon its own motion, or on the petition of any interested person, may appoint three residents of the county to the board of drainage commissioners of such county. The members of the board shall be appointed for terms of three years each and their terms shall be so arranged that the term of one member shall expire each year. Each member of the board shall hold his office until his successor is appointed and qualified. The board of county commissioners may remove any or all of such drain commissioners and shall appoint successors to fill any vacancies that occur. Each member of the board may be allowed the sum of fifteen dollars per day while performing his duties as a member of the board of drainage commissioners, and an allowance for actual meals and lodging expenses in an amount of not to exceed twelve dollars per day for each day actually employed in the performance of his duties as a drainage board commissioner. Compensation for expenses incurred in the performance of these duties shall be made in the manner provided in chapter 44-08.

Approved March 12, 1969.

## CHAPTER 550

S. B. No. 247

(Morgan)

## CONSOLIDATION OF DRAINAGE DISTRICTS

## AN ACT

To amend and reenact section 61-21-65 of the North Dakota Century Code, relating to the consolidation of drainage districts into water management districts.

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

**Section 1. Amendment.)** Section 61-21-65 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted 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 each week for two consecutive weeks, in a newspaper of general circulation in the county, the second publication to be not less than ten nor more than twenty days before the date set for hearing. In the event special assessments remain outstanding upon any property within a drainage district to be affected by a hearing as provided in this section, the board of county commissioners shall notify by ordinary mail at least ten days before the date set for such hearing, all landowners of record subject to such special assessments in accordance with the provisions of section 61-21-66. 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.

Approved March 10, 1969.

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CHAPTER 551

S. B. No. 439  
(Holand, Robinson, Morgan)

BOARD OF DIRECTORS OF GARRISON  
DIVERSION CONSERVANCY DISTRICT

AN ACT

To amend and reenact subsections 4 and 6 of section 61-24-08 of the North Dakota Century Code, relating to the powers and duties of the board of directors of the Garrison diversion conservancy district.

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

**Section 1. Amendment.)** Subsection 4 of section 61-24-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. To cooperate and contract with the state, its agencies, or its political subdivisions, or any agency of the United States, in research and investigation or other activities promoting the establishment, construction, development or operation of the Garrison diversion unit, or any part thereof;

**Section 2. Amendment.)** Subsection 6 of section 61-24-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. To construct separately or in cooperation with agencies of the United States, or the state of North Dakota, its

agencies or political subdivision, and to equip, maintain and operate an office and principal place of business for the district, or other buildings or facilities to carry out activities authorized by this chapter.

Approved March 19, 1969.

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CHAPTER 552

H. B. No. 311

(Dick, Linderman, Strinden, J. Peterson, Mueller)  
(Boyum, Haugland, Bullis)

HEARING ON CONTRACTS FOR  
WORK ON GARRISON DIVERSION

AN ACT

To amend and reenact section 61-24-13 of the North Dakota Century Code, relating to hearings conducted by the Garrison diversion conservancy district on contracts.

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

**Section 1. Amendment.)** Section 61-24-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**61-24-13. District May Enter into Contract for the Construction, Operation and Maintenance of Works.)** 1. When the board of directors of Garrison diversion conservancy district is notified by the United States, or by any department or agency thereof, that it is necessary for the district to enter into a contract as principal and guarantor or either, for the repayment of any part of the cost incurred, or to be incurred in the construction, operation and maintenance of works of the Garrison diversion unit of the Missouri River basin project, the board shall give notice of hearing on such proposed contract as herein provided. Hearings on such contract shall be conducted in at least three places in the district by a contract hearing committee composed of at least three director members of the board as designated by the board. Notice of the time and place of such hearings shall be published at least ten days before such hearing in not less than three newspapers of general circulation in the district.

Anyone interested in, or affected by such contract if entered into, may appear at any such hearing and show cause, if any, why such proposed contract should or should not be approved. The contract hearing committee shall submit its report, including support and objections to the contract, and its recommendations to the board for final action. After considering the terms and conditions of such proposed contract and the report and recommendations of the contract hearing committee, the board shall adopt a resolution approving or disapproving such contract. If disapproved, the board may enter into further negotiations with the United States concerning terms for a new or amended contract. At least thirty days before any hearing is held on such contract for construction of facilities or works, plans therefor shall be filed with the secretary of the district and shall be open to public inspection.

Approved March 14, 1969.

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## CHAPTER 553

S. B. No. 150  
(Lips, Kautzmann, Becker)

### VESSEL EQUIPMENT REQUIREMENTS

#### AN ACT

To amend and reenact section 61-27-04 of the North Dakota Century Code, relating to equipment requirements on vessels.

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

**Section 1. Amendment.)** Section 61-27-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**61-27-04. Equipment.)** Every vessel shall have aboard:

1. One life preserver, buoyant vest, ring buoy or buoyant cushion of the type approved by the department in good and serviceable condition for each person on board.
2. When in operation during hours of darkness, a light sufficient to make the motorboat's presence and location

known to any and all other vessels within a reasonable distance.

3. If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not an entirely open motorboat, an efficient natural or mechanical ventilation system which shall be capable of removing resulting gases prior to, and during, the time such motorboat is occupied by any person.
4. If equipped with a marine toilet or other similar device for the disposition of sewage or other wastes, only that type of marine toilet that is equipped with a treatment device meeting standards established by the water pollution control board of the state of North Dakota. The water pollution control board shall furnish a list of the types of treatment devices currently available and considered acceptable for use with marine toilets under this subsection. No person owning or operating a vessel upon the waters of this state shall use, operate, or permit the use or operation of any marine toilet or similar device for the disposition of sewage or other wastes unless it is approved under this subsection, and no person shall discharge into the waters of this state, directly or indirectly from a vessel, any untreated sewage or other wastes, nor shall any container of untreated sewage or other wastes, be placed, left, discharged, or caused to be placed, left, or discharged in or near any waters of this state from a vessel in such a manner or quantity as to create a nuisance or health hazard or the pollution of such waters.
5. Such additional equipment designed to promote the safety of navigation and of persons as the department may find to be appropriate and for which it has provided in its rules and regulations.
6. No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

Approved March 29, 1969.

## CHAPTER 554

S. B. No. 441

(Ringsak, Trenbeath, Meschke, Van Horn)

DEFINITION OF WATERS OF THE  
STATE

## AN ACT

To amend and reenact subsection 6 of section 61-28-02 of the North Dakota Century Code, relating to the definition of "Waters of the state."

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

**Section 1. Amendment.)** Subsection 6 of section 61-28-02 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Waters of the state" means all waters within the jurisdiction of this state including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters which do not combine or effect a junction with natural surface or underground waters just defined.

Approved March 13, 1969.