

CHAPTER 110

DAMS; LAKE WATER LEVELS

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110.01-110.12 [Repealed, 1947 c 123 s 7]

110.121 [Repealed, 1973 c 702 s 26]

110.122 [Repealed, 1973 c 702 s 26]

110.123 [Repealed, 1973 c 702 s 26]

110.124 [Repealed, 1973 c 702 s 26]

110.125 [Repealed, 1973 c 702 s 26]

110.126 [Repealed, 1973 c 702 s 26]

110.127 MS 1978 [Local, Hennepin County]

110.13 CONTROL OF SHORE LINES; VIOLATION.

In order to preserve shore lines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature, no dam and no addition to any existing dam shall hereafter be constructed in or across any public stream or body of water within or bordering upon those portions of the area of Cook, Lake, and St. Louis counties designated in the act of congress of July 10, 1930 (Chapter 880), and no alteration of the natural water level or volume of flowage of any such stream or body of water shall be made and no easement for flooding or overflowing or otherwise affecting lands of the state of Minnesota adjacent thereto shall be granted, unless and until specific authority shall have first been obtained by an act of the legislature. With the written approval and consent of the department of natural resources, together with the signed authority of the executive council, dams for public recreational uses or dams essential for logging or for logging reservoirs that do not exceed 100 acres in extent may be constructed to maintain temporarily water levels not higher than the normal highwater marks. Every such approval shall be subject to suitable charges, time limitation, and other conditions designed fully to protect the public interest in the intent of this section. The provisions of this section shall not apply to that portion of any proposed development for water-power purposes now or heretofore actually occupied and maintained by any applicant for license to make such development under the terms of the federal water power act if the application for such license was pending on or before January 1, 1928. Such occupancy is hereby legalized and confirmed and such occupant is hereby granted the right to occupy and use for water-power purposes, and so long as required and used for such purposes, the state lands and waters now or heretofore so occupied and used up to an elevation not exceeding two feet above the lowest crest of the spillway or overflow dam of such occupant as now constructed; provided, that no water control structures shall be used higher than those now or heretofore used. The occupant shall pay to the state annually reasonable compensation for the use of the state lands affected, to be determined

by the commissioner of natural resources after investigation. The occupant shall comply with the following requirement:

To pay the state promptly reasonable compensation for any further damage to state lands or timber heretofore or hereafter caused by such development, other than such as is covered by the compensation paid for the use of the lands as hereinbefore provided.

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

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

110.14 DAMS; PURPOSES; EMINENT DOMAIN.

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

History: RL s 2543 (6579)

110.15 NON-USER; FORFEITURE; EXCEPTIONS.

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

History: RL s 2544 (6580)

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

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

History: RL s 2545 (6581)

110.17 REPAIRS; SERVIENT ESTATE; DAMAGES.

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

History: *RL s 2546 (6582)*

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

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

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

110.19 [Repealed, 1969 c 475 s 1]

110.20 [Repealed, 1969 c 475 s 1]

110.21 [Repealed, 1969 c 475 s 1]

110.22 [Repealed, 1969 c 475 s 1]

110.31 WATER LEVELS, REGULATION.

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

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

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

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

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

History: *1951 c 667 s 1*

110.32 DEDICATION OF PERPETUAL FLOWAGE EASEMENT.

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

History: 1951 c 667 s 2

110.33 CONVEYANCE OF EASEMENT TO COMMISSIONER OF NATURAL RESOURCES.

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

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

110.34 DETERMINATION OF EASEMENT RIGHTS.

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

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

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

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

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

110.35 EASEMENTS, APPURTENANT TO DAM.

Every easement obtained by the state on account of any dam as hereinbefore provided shall attach and be appurtenant to such dam if acquired or taken over and maintained or controlled by the commissioner of natural resources or any other authorized agency of the state in aid of public navigation, propagation of

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

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

110.36 HIGH WATER LEVELS.

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

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

110.37 ABANDONMENT OF DAMS.

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

The title of the state to any such dam, site, or easements may be established and determined by action in the district court as provided by law for actions for the determination of title to real estate. The taking of possession of any such dam, site, or easements by the commissioner of natural resources shall be manifested by written certificate thereof executed by him and recorded in the office of the county recorder of the county in which the dam is situated. No responsibility for any such dam shall devolve upon the state or the commissioner or any other agency of the state until such certificate shall have been recorded or a

judgment entered in an appropriate action establishing the state's title thereto. In case any county or counties or other political subdivision of the state or combination thereof shall undertake to take over such dam and easements and maintain, operate, control, or dispose of the same for public purposes as authorized by law, the commissioner of natural resources, in his discretion, may convey the same in the name of the state to such county or counties or other political subdivision or combination thereof for such purposes.

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

110.38 LIMITATIONS.

No action or proceeding against the state or the commissioner of natural resources or any other officer or agent of the state or against any other public agency specified in section 110.35 or any officer or agent of such agency on account of the taking over, construction, reconstruction, repair, improvement, maintenance, operation, or control of any dam specified in sections 110.31 to 110.39 or on account of the effects of any water levels regulated, controlled or maintained by any such dam shall be maintained unless commenced within one year after such taking over or after the completion of such construction, reconstruction, repair, or improvement, as the case may be.

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

110.39 APPLICATION, SUPPLEMENTAL.

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

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

History: 1951 c 667 s 9,10

110.40 MAINTENANCE OF ACTION.

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

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

110.41 [Expired]

110.46 BIG STONE LAKE, WATER CONTROL WORKS.

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

Big Stone Lake, a public, navigable body of water on the boundary between the states of Minnesota and South Dakota, provides extensive and favorable habitat for valuable species of fish, waterfowl, and other wildlife, and is capable of use and is extensively used by the public of both of said states for fishing, hunting,

boating, bathing, and other beneficial public purposes. The existing dam and appurtenant water control works at the outlet of said lake were constructed during the period of economic depression and drouth prior to World War II by and under the authority of the state of Minnesota, the state of South Dakota, and the United States through their respective agencies in collaboration as a work project for employment of and relief for poor, needy, and destitute persons. Said works have ever since been and now are under the control of this state, in charge of the commissioner of natural resources. By reason of the onset of the war and the termination of public work relief measures, certain necessary features of said works were never completed. In consequence thereof said works in their present condition are inadequate and ineffective to properly conserve, control, and maintain the waters of said lake for the purposes aforesaid, and said works aggravate the continuing deposition of silt in the lower portion of said lake, resulting in progressive filling up of the lake bed and in permanent damage to and impairment of the lake for the purposes aforesaid. A plan for a project for the remodeling, extension, and completion of said works, including a silt barrier and an artificial outlet channel, designed, among other things, to stabilize, so far as practicable, the level of Big Stone Lake within reasonable limits at about elevation 967.0 feet, project datum, has been prepared under the direction of the commissioner of natural resources and approved by the South Dakota-Minnesota Boundary Waters Commission May 1, 1956. The construction of said project would make said works adequate and effective to conserve, control, and maintain the waters of said lake for the purposes aforesaid, would materially reduce the deposition of silt in said lake, and would substantially enhance the value of said lake for said purposes. Said project would promote the public health and welfare and would be in furtherance of the public interest in both of said states.

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

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

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

NOTE: See section 114.12.

110.47 HEADWATER LAKES OF MISSISSIPPI, REASON FOR CONTROL.

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

History: 1961 c 459 s 1

110.48 JOINT FEDERAL-STATE CONTROL.

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

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

110.49 PLAN FOR DAM OPERATION.

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

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

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

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

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

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

- Leech Lake0.0
- Winnibigoshish Lake6.0
- Pokegama Lake6.0
- Sandy Lake7.0
- Pine River9.0
- Gull Lake5.0

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

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

- Leech Lake3.5
- Winnibigoshish Lake12.0
- Pokegama Lake12.0
- Sandy Lake11.0
- Pine River14.0
- Gull Lake7.0

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

110.50 POTENTIALS COMPREHENDED BY PLAN.

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

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

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

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

History: 1961 c 459 s 4

110.51 NOTICE OF PLAN; HEARING.

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

History: 1961 c 459 s 5

110.52 APPEAL.

Any riparian land owner or water user aggrieved by such findings shall have the right to appeal within 30 days of the completion of publication to the district court of any county in which the regulated water lies, which appeal shall be determined by the court on the record made before the commissioner of natural resources. Issues on any such appeal shall be the legal rights of the parties and the further question as to whether the findings of the commissioner are reasonably supported by the evidence adduced at the hearing.

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

110.53 MODIFICATIONS.

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

History: 1961 c 459 s 7; 1976 c 239 s 21