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AN AGRICULTURAL VIEW:      Irrigation Organiza-  
   tions and a Case  
   Study Through  
   North Dakota Law

BY ROY A. HOLLAND\* AND VERNON COOPER\*\*

The science of irrigation is as ancient as the history of man. It is defined as "the operation of watering of lands for agricultural purposes by artificial means."<sup>1</sup> Some students of history and literature believe that irrigation was known in prehistoric times. Reference to irrigation can be found in Chapter 2, Verse 10, of the book of Genesis where it states: "a river went out of Eden to water the garden." It is known that irrigation was practiced many thousands of years before the Christian era in China, India, Armenis—some historians believe irrigation was practiced on the lost island of Atlantis. In the new world irrigation has been traced to the Nahua nations which include the Toltecs and Aztecs in Central America, Mexico, New Mexico and Arizona.<sup>2</sup>

Down through history irrigation has made possible the production of crops from lands which would be barren without the artificial application of water. The high state of civilization reached by many ancient nations can be directly associated with irrigation development in those lands and to the ingenuity of man in providing a means of bringing irrigation waters to the land.<sup>3</sup>

Many other nations learned the science of irrigation from Egypt. The Romans, who learned the art of irrigation from Egypt, built mighty systems of canals and aqueducts in Italy. Later they brought this art to Great Britain and France and other European nations.<sup>4</sup>

In America there are evidences that irrigation was practiced long before the white man arrived in the new world. In Peru, Central America, Mexico, Arizona, New Mexico and other states of our Southwest are found numerous remains of

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\*\* B.S. University of North Dakota (1948); Secretary-Treasurer, Garrison Diversion Conservancy District.

1. Black's Law Dictionary, 3rd. Ed., 1933, pp. 1010.

2. 1 KINNEY, TREATISE ON THE LAW OF IRRIGATION AND WATER RIGHTS 102 (2nd ed. 1912).

3. *Id.* at 103.

4. *Id.* at 107-114.

skillfully constructed canals. These highly developed irrigation systems indicated the work of a people who were permanently settled in the region and operated under a central head for the benefit of the people and the support of the entire civilization. It appears that the most prosperous of the ancient inhabitants of this Continent were those who raised their crops by irrigation.<sup>5</sup>

It was only natural that modern irrigation in the United States should have its beginning in the arid and semi-arid regions of western United States. The 17 states of Arizona, California, Idaho, Kansas, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming, Washington and Oregon comprise this arid and semi-arid region. Some of these states are more arid than others but, in all of them, irrigation is necessary in order to obtain the most stable and maximum production from the land.

Although irrigation was practiced in California, Arizona and New Mexico by Spanish missionaries in the latter part of the 18th century the beginning of modern irrigation development in the United States is generally associated with the Mormon settlement in Utah. The Mormons recognized the need for irrigation if they were to remain in this area. Much of the progress that has been made in the science of irrigation in the United States can be attributed to the Mormons. The success of the establishment of the Mormon colony in Utah stimulated an interest in the establishment of other colonies in the West primarily through irrigation development.

During the decade 1870 to 1880 many organizations were formed to bring people in large groups from eastern states and even from Europe and place them on small farms in various sections of the West. The success of these colonies depended on irrigation and the farms provided ordinarily were located near each other and supplied with water from a common ditch. During this period individual settlers throughout various parts of the West developed irrigation systems of their own and bought considerable quantities of land under irrigation. Through the development brought on by the settlement of colonies and individual irrigation development it is estimated that during the ten year period 1870 to 1880 the

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5. *Id.* at 114-123.

amount of land irrigated in the West increased from approximately 20,000 acres to over 1,000,000 acres.

As irrigation increased the various states and territories became more concerned with irrigation development and enacted better laws for the government and distribution of water in the West. These laws were designed to protect the investors in projects. They also practically eliminated the "boom" or wildcat development of irrigation in the West. During the last decade of the 19th century it is estimated that irrigation in the United States was doubled. In 1899 over 7,200,000 acres were under irrigation on 103,000 farms with an average of 71 acres per farm. From 1900 to 1910 the total number of irrigated acres in the West increased 82½% to a total of 13,800,000 acres. This increase was due largely to the land brought under irrigation through the National Reclamation Service and the projects developed under the Carey Act as well as the projects developed under various state irrigation district laws.<sup>6</sup>

#### FEDERAL LAWS RELATING TO IRRIGATION DEVELOPMENT

The settlement of the West is generally associated with the Homestead Act of 1862. As settlers moved West into the arid and semi-arid region of the United States it became evident that the Homestead Act was not entirely suited to that part of the country.

In 1875 President Grant visited the western arid regions and as a result of his trip recommended to Congress that a commission be created to study changes needed in the disposition of public lands. Recommendations made were based on the disposal of public lands as an aid to irrigation development and as a result, the Desert Land Act of 1877 was passed.

It was agreed generally throughout the West that a new approach was needed to reclamation development. As a result of strong support from the Western states, Congress passed the Carey Act in 1894. This act provided that the United States would donate to certain states an amount of land not to exceed 1,000,000 acres each and the states would cause the lands to be settled and irrigated and a portion of them cultivated.

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6. *Id.*, ch. 11 et seq. for discussion on modern irrigation in the United States.

Neither the Desert Land Act or the Carey Act produced the satisfactory results in irrigation development in the West that were needed. In 1902 Congress passed the Reclamation Act which in effect established the government's participation in reclamation development throughout the West. Among the main provisions of the Reclamation Act of 1902 was the establishment of a Reclamation Fund from the sale and disposal of public lands that were to be used in developing irrigation projects by the Reclamation Service; an agreement by the settler to repay the cost of the construction for the irrigation works to serve his lands; the sale of water rights to private owners of land but not in an amount to exceed 160 acres per individual; and the apportionment of the Reclamation Fund during each ten year period to the several reclamation states for irrigation development. This act has been amended and supplemented over the years and it represents the federal government's major involvement in irrigation development.<sup>7</sup>

Because of the difficulty a cooperative irrigation company experiences in securing financing, the most practical way to finance irrigation development, except by the use of public funds, is through the investment of private funds in commercial irrigation companies. The risky nature of such investments has practically precluded any development of group irrigation projects by commercial companies.

Irrigation districts are organized for the purpose of carrying out new irrigation development or providing supplemental water or buying existing irrigation works. They have the advantage over the other types of irrigation companies in that their obligations are secured by the land that can be benefited by the irrigation system built to serve the district. Most irrigation development now being carried on by the federal government is through irrigation districts. They are the organizations with whom the Bureau of Reclamation contracts to construct an irrigation system to serve certain specified lands.<sup>8</sup>

Each of the seventeen western states have provisions for the establishment of irrigation districts although the procedures followed in organizing such districts vary from state to state. The powers and duties of the districts are all basically the same and their rights to raise money to pay their obliga-

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7. *Id.* at 24-25.

8. Huffman, *op. cit.*, pp. 73-74.

tions generally is accomplished through the levying of special assessments against the land benefited.<sup>9</sup>

The Wright Act of California was declared unconstitutional by the United States Circuit Court for the Southern District of California in *Bradley v Falbrook Irrigation Dist.* 10, but the Supreme Court of the United States reversed this decision in 1896 on appeal and established for all time the constitutionality of the irrigation district law. The essence of the Supreme Court decision was that in an arid state like California the irrigation and bringing into possible cultivation of areas is a public purpose and a matter of public interest which is not confined to the landowners or to any one section of the state and that an act of the legislature providing for irrigation may well be regarded as an act devoting water to public use.<sup>11</sup>

Several other western states had enacted irrigation district laws prior to the time the constitutionality of the Wright Act was upheld by the Supreme Court. This action paved the way for ever increasing development of irrigation which began a few years later and resulted in the enactment of irrigation district laws by practically all of the 17 western states all of which embodied the principles first expressed in the Wright Act. The irrigation district laws passed by the various states were altered to meet local conditions. Since the first irrigation district laws were enacted in these various states they have been changed considerably as irrigation development has proceeded.<sup>12</sup>

#### NORTH DAKOTA IRRIGATION DISTRICT LAW

It was not until 1917 that the North Dakota Legislature enacted the first irrigation district law. Although the importance of irrigation to the agriculture economy in North Dakota, particularly in the western portion of the state, had been called to the attention of farmers in the state over the years there was very little progress made in irrigation development under the cooperative irrigation companies or commercial irrigation companies. The United States under the Reclamation Act of 1902 had constructed facilities for two fairly large

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9. *Id.* at 74.

10. 68 Fed. 948 (1895).

11. *Falbrook Irrigation Dist. v. Bradley*, 164 U.S. 112 (1896).

12. See KINNEY, *op. cit. supra* note 2 at 72.

projects in western North Dakota in Williams and McKenzie Counties but these had been more or less inactive due to various circumstances and conditions.

It was apparent that the solution to the problem that existed from prior experiences was in the establishment of an organization such as an irrigation district which would be a public corporation having taxing power and local self-government. In order to provide a suitable type of organization that could take advantage of the development of irrigation in this state by the United States the legislature in 1917 enacted the North Dakota irrigation district laws.

It will be noted that there are significant differences in the original irrigation district law in North Dakota from that presently in force. The County Commissioners are no longer responsible for organizing irrigation districts but this task has been given to the State Engineer. The qualifications of electors and the manner in which elections are conducted insofar as the votes per elector are more specifically set forth in present laws.

#### PRESENT IRRIGATION DISTRICT LAWS IN NORTH DAKOTA

There are 17 organized irrigation districts in North Dakota of which 7 have been organized to obtain a water supply through the development of the proposed Garrison Division Unit and 10 have been established to obtain a water supply through the development of other facilities. Eight of the districts that have been successfully irrigating the lands included in them for a number of years. The oldest of the North Dakota districts is the Lower Yellowstone District located in McKenzie County. This district includes some 20,000 acres of land that is served through the Lower Yellowstone project located in Montana and North Dakota, constructed by the Bureau of Reclamation in 1909.

The seven irrigation districts located in the Garrison Diversion Unit area encompass some 320,000 acres of land and will obtain their water supply through the Garrison Diversion Unit whereby it is proposed to divert water from the Missouri River eastward into central and eastern North Dakota for irrigation and other beneficial purposes.

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13. See N.D. Cent. Code (1961), chs. 61-05 through 61-10 for laws on irrigation districts.

Although there is provision in North Dakota law for the establishment of each of the three principal types of irrigation enterprise organizations that have been discussed previously, the type of organization that is used most in connection with irrigation development in the state is that of irrigation districts. North Dakota irrigation district laws find their basis in the original Wright Act that was enacted in California. Irrigation districts in North Dakota are public corporations that are established in accordance with the procedure set forth in law and have the specific powers and duties that are provided by law. They are legal entities and have the power to levy special assessments for irrigation costs and perform other special functions. Irrigation districts in the state are organized by the State Engineer upon petition from the landowners of the irrigable land to be served by the district facilities. As political subdivisions of the state they have defined geographical boundaries that are set forth in the order establishing the district. A definite procedure is set forth in chapter 61-05 of the North Dakota Code relative to the organization of irrigation districts.

The procedure followed in organizing a district requires that a petition for the proposed district be filed with the State Engineer which shall be signed by the landowners of the district who together shall own a majority of the whole number of acres subject to assessment for construction or other costs of the district.

The jurisdiction of the State Engineer in accepting the petition and instituting proceedings for the organization of the irrigation district based on this petition has been established in decisions of the North Dakota Supreme Court in the Fort Clark Irrigation District in Oliver and Mercer Counties.<sup>14</sup> The State Engineer is required under section 61-05-10 of the North Dakota Century Code to examine the petition and other data relative to the proposed district and fix a time and place for a hearing on the petition and to follow the procedure thereafter required.

The purpose of the hearing of the State Engineer required under Section 61-05-10 is to give owners of land in a proposed district an opportunity to be heard with reference to the estab-

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14. *In re Fort Clark Irr. Dist. of Mercer and Oliver Co.*, 78 N.D. 107, 48 N.W.2d 741 (1951).



lishment of the proposed irrigation district and to submit to the landowners the State Engineer's report as to whether the plan of irrigation proposed is practical and economically sound and, in general, to furnish such information as will better enable the landowners to vote for or against the establishment of the proposed district.

After the State Engineer has held his hearing and if he determines the establishment of the proposed irrigation district advisable, the State Engineer under section 61-10-13 is required to issue his order declaring the district established subject to the approval of the electors therein.

The State Engineer is required to advertise the notice of election in the county paper once each week for two weeks prior to such election in each of the counties in which land in the proposed district is located.

The number of votes an elector in an irrigation district election is allowed is determined by the number of acres of land he has in the proposed district that is subject to assessment for irrigation costs. Section 61-05-03 states that an elector shall have one vote for each 20 acres of land he has in the district subject to assessment or major fraction thereof up to a maximum number of eight votes for any one elector regardless of the number of acres owned by him that are in the district.

If upon his canvass, the State Engineer finds that a majority of the votes cast at the election are in favor of the organization of the irrigation district he will issue his order declaring the territory duly organized as an irrigation district under the name and in the style designated and he will also declare the persons receiving the highest number of votes at the election for the offices of directors duly elected as directors of the irrigation district.

Provision also exists in the law governing the organization of irrigation districts for the appeal to the district court from any order or decision of the State Engineer by person claiming to be aggrieved thereby. This appeal must be taken within 30 days following the filing of the order of the State Engineer with the County Auditor of the county in which the district is located. Appeals from the decisions of the district court to the Supreme Court are specifically provided in this section of the law.

## GOVERNMENT OF IRRIGATION DISTRICTS

Following the approval of the establishment of an irrigation district by the electors and the issuance of the order of the State Engineer declaring such a district established, the State Engineer proceeds to organize the Board of Directors elected at the initial election. The terms of office of the directors elected in elections following the organization election is for three years.

Regular irrigation district elections are to be held the first Tuesday in February of each year and the Board of Directors of the irrigation district are required to follow the procedures similar to those for the organization of the district in the conduct of the election. At each election a director for the division of the district whose term of office expires during the year will be elected. The Board of Directors is authorized and required to canvass the votes at the election and to certify the results of the elections.

Regular meetings of the Board of Directors of an irrigation district are specified.

## POWERS OF IRRIGATION DISTRICTS

As set forth in section 67-0701 each irrigation district (1) shall be a body corporate (2) shall possess all powers and duties usual to corporations organized for public purposes and those conferred on it by law (3) may sue and be sued in its corporate name (4) may contract and be contracted with (5) may hold lease, own and possess such real or personal property as shall come into its possession by contract, conveyance, purchase, gift or otherwise and (5) exercise the right of eminent domain for the purpose of acquiring right-of-way for ditches, canals, sites for dams and reservoirs and for any purpose necessary to establish and construct a complete system of irrigation works.

The irrigation district Board of Directors has certain powers and duties set forth in law including (1) the power to manage and conduct the business affairs of the district (2) to make and execute all contracts (3) to employ such officers, agents and employees as may be necessary (4) to adopt the seal for the district (5) to establish bylaws, rules and regulations for the district and to fix charges or rentals paid by water users (6) to enter upon any land to make surveys and to locate lines of any canals and other works of the district and (7) to acquire by purchase or condemnation the rights-of-

way for canals and other facilities needed for the project (8) to acquire existing irrigation works (9) to submit any questions they so desire to the electors of the district at a regular or special election (10) to act as a fiscal agent for the United States for the collection of money on behalf of the United States for irrigation facilities (11) to raise money to finance the cost of the constructing of irrigation works as set forth in law and to create a fund to be used for payments of obligations the district might incur (12) to exercise all rights, powers, and authority express or implied that might be necessary to carry out the provisions of the irrigation district law and (13) to enter into contracts and leases with the State Water Commission of North Dakota or the United States of America or its agencies for the purpose of financing the construction of any irrigation works for the district.

If, after a district is organized, it determines that it will proceed with the construction of irrigation works to serve the lands, it is authorized to do so. The district board is required to advertise for bids to accomplish the construction work and if they determine not to let a contract they can proceed with the construction on their own.

In the past, several irrigation districts in North Dakota have financed the construction of their facilities through bond issues that they made and through assistance from the State Water Conservation Commission. Generally the systems that are financed through this type of construction are for the smaller districts or for irrigation systems that are relatively low in cost. Because of the high cost of developing irrigation systems in recent times districts have found it difficult to pay the entire obligations against their lands if they were to make bond issues for the entire cost of the system needed to serve their lands. For this reason most of the major irrigation development contemplated in North Dakota will be accomplished through the Bureau of Reclamation and federal financing whereby surplus power revenues from hydro power installations can be used to assist in financing irrigation construction.

Section 61-07-11 gives the irrigation district board of directors specific authority to enter into an agreement or contract with the United States or any department or agency thereof

or with the State Water Commission or with any other firm or corporation for the establishment, construction and completion of the irrigation works necessary to serve the lands. This authority is further outlined in other sections under Chapter 61-07 of the North Dakota Code. The law provides that before a contract can be approved by the Board of Directors of an irrigation district that would extend for more than a period of one year, it must be submitted to a vote of the electors of the district. A specific procedure is also outlined in this chapter for the confirmation of contracts before any bonds or improvement warrants are issued or any assessments are levied to pay the cost of the contract. The confirmation proceedings are accomplished through the district court of the county in which the irrigation district is located.

The district board of directors has the power to apportion the water supply available to the district equitably among the lands subject to assessment for irrigation costs and also has the duty to keep water flowing in the ditches to full capacity to serve the lands when water is available but they cannot interfere with the rights of other appropriators. If the irrigation district board is negligent in failing to deliver water to its users from its irrigation canals, it can be held liable for damages by the injured party. Actions of the irrigation district board of directors can be appealed to the district court and the district court can be appealed to the Supreme Court.

#### FISCAL AFFAIRS OF THE IRRIGATION DISTRICTS

Irrigation districts in North Dakota are authorized to issue bonds or special improvement warrants to cover their costs. The procedures that they must follow relative to their resolutions, elections and sale and payment of bonds is outlined in Chapter 61-08 of the North Dakota Century Code. This chapter also contains a procedure to be followed in the issuance of refunding bonds by an irrigation district.

Because this procedure is similar to other financing procedures of public organizations and is seldom used by irrigation districts it will not be discussed at length in this article. If the reader desires further information, he can obtain it by referring to the law itself or contacting the North Dakota State Water Conservation Commission for an outline of procedures that have been outlined relative to irrigation district bond issues.

## ASSESSMENTS IN IRRIGATION DISTRICTS

Obligations of irrigation districts are paid through special assessments made by the Board of Directors on the lands benefited by the irrigation. Procedures are set forth in law for the method of levying the assessments, the equalization of the assessments and the spreading of assessments on the county tax rolls. The assessments themselves are collected along with other taxes by the County Treasurer and are remitted to the irrigation district Treasurer on a regular basis.

Just as with other special assessments, special assessments in irrigation districts are spread in proportion to benefits received. It is the duty of the district assessor to examine each tract of land and determine the benefits that will accrue to each of the tracts because of the construction of the irrigation system. In making this determination the assessor is required by law to prepare a map showing the apportionment of the benefits. Copies of this map must be filed in the office of the County Auditor and in the State Water Commission office. Section 61-09-03 acts forth the procedure to be followed in apportioning to benefited land as follows:

“Whenever any assessment is made within an irrigation district it shall be apportioned to and spread upon each unit or tract of land in the district in proportion to the benefits received. Benefits accruing to each unit or tract of land shall be apportioned thereto on the basis of the number of irrigible acres therein. Bonds, district improvement warrants, and other obligations incurred by the district shall be the obligation of the district. Only lands within the district benefited by irrigation and subject to assessment for irrigation benefits shall be subject to assessments for any deficiency in any fund created for the payment of bonds, district improvement warrants, and other district obligations.”

The assessment for irrigation costs are charged to the land and not to the owner thereof. It is the duty of the assessor to determine and list the amount payable to the various creditors of the district in making his assessment. When he has completed his assessment and before the 15th day of June each year, he is required to deliver it to the Secretary of the District. The Board of Directors of the District then proceeds to equalize such assessments at a regular meeting in July, notice of which, must be posted at least three places within the district by the District Secretary.

Following their meeting as the Board of Equalization the irrigation district board of directors shall levy an assessment against the lands of the district that will be sufficient to pay the interest on the outstanding bonds and improvement warrants; create a sinking fund to retire the outstanding bonds or improvement warrants; and pay any and all obligations of the district due or to become due to the United States, the State Water Commission or any other creditor. In determining this assessment the Board is to take into consideration revenue that might be derived from other sources. The Board may also levy an assessment for the general fund to pay the cost of operation and maintenance of the district and other general expenses. After the Board has levied the assessment for irrigation charges the Secretary of the Board is required to certify to the County Auditor the amount that is to be assessed against each tract of land. The County Auditor then enters this assessment in a separate column on the tax list of the county.

Irrigation assessments are collected in the same manner and at the same time as other taxes by the County Treasurer. The proceeds of the assessments are turned over to the irrigation district upon an order signed by the Chairman and Secretary of the district. The County Treasurer is also authorized under law to receive warrants against the irrigation district and pay the same and at the time of remitting to the irrigation district can turn over such warrants as a part of the irrigation district collections. If an irrigation district has outstanding obligations in the form of bonds or special improvement warrants and fails to make an assessment for any year the Board of County Commissioners in which the district is located is required to make the assessment in the same manner as it should have been made by the Board of Directors in the irrigation district and charge the cost of such procedure against the lands to be assessed.

If the Board finds that after it has levied its annual assessment it will not have sufficient funds to meet its obligations it can borrow money in an amount not to exceed what 50c an acre would raise to pay such additional expenses. A levy to this extent can be made following year by the Board of Directors to retire such obligations incurred.

Section 61-09-15 provides that the assessments made by an irrigation district shall be considered a general tax in like man-

ner and to the same effect as general state and county taxes and be of the same order. This section further provides that the lien of these taxes shall share with the general tax liens in all tax proceedings and tax sales and shall be subject to all provisions relating to general taxes. All laws relating to the sale of land and property at tax sale apply to the assessments for irrigation districts and funds obtained from the sale of such lands are to be applied to obligations of the district because of those lands.

It should be noted that in organizing an irrigation district the land is included by legal subdivisions which may or may not contain all irrigable land. Special assessments by irrigation districts are levied against tracts of land by legal description, i. e. SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec.\_\_\_\_, Twp.\_\_\_\_ Rge.\_\_\_\_, based on the number of acres susceptible to irrigation in each tract. If a landowner is delinquent in his payment of irrigation taxes the entire tract of land is subject to sale at tax sale for the delinquent taxes rather than just the irrigable acres located within that tract. The North Dakota Supreme Court in the case of *Heart River Irrigation District*<sup>15</sup> stated that Section 57-02-38 of the North Dakota Century Code would apply to such tax sales.

Payments of taxes under protest and the abatement of special assessments under certain cases are authorized under chapter 61-06 of the North Dakota Century Code. The board of directors of the irrigation district is also authorized, if they so desire, to call special elections to submit the question as to whether or not special assessments shall be levied on an irrigation district and the procedure is set forth in conducting these elections.

Chapter 61-10 of the Code sets forth the procedure that the irrigation district Board of Directors must follow in effecting changes in the boundaries of irrigation districts.

A similar procedure is provided in law for the exclusion of lands from an irrigation district. A petition is filed by the owner or owners of tracts of land they desire to have excluded with the board of directors of the irrigation district. The board then holds a hearing on this petition which is properly advertised and if as a result of the hearing and in the board's opinion it is desirable to exclude such land they may issue their order doing this. If they believe it is not for the best in-

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15. 78 N.D. 302, 49 N.W.2d 217 (1951).

terests of the district to exclude such lands they may issue their order denying the petition. If electors who together own at least 10% of the acres in the district subject to assessment for irrigation costs object to the exclusion of the land in writing then the Board is required to submit the question as to whether or not the lands should be excluded to a vote of the electors.

After an irrigation district's boundaries are modified by the inclusion or exclusion of land, provisions exist in law for the redivision of the district if necessary. Provision also exists in the law for the approval of holders of bonds or improvement warrants or contracts prior to any change in the boundaries of an irrigation district.

Chapter 61-11 of the North Dakota Code sets forth the procedure to be followed in the dissolution of irrigation districts.

#### THE GARRISON DIVERSION CONSERVANCY DISTRICT

During the past several years a great deal of attention and discussion has been given to the Garrison Diversion Unit in North Dakota under which water from the Missouri River would be diverted eastward into central and eastern North Dakota for the ultimate irrigation of over 1,000,000 acres of land and to serve a variety of other needs. The United States Bureau of Reclamation, the federal agency charged with the responsibility for the investigation and development of the Garrison Diversion Unit, over a period of years has located large tracts of irrigable land scattered throughout 25 counties in central and eastern North Dakota that can be irrigated through the Garrison Diversion Unit. Water would also be available for municipal and industrial use, fish and wildlife enhancement, lake restoration, stream flow improvement, recreational development and other beneficial uses. All of the areas and beneficiaries would receive their water supply from the Garrison Reservoir on the Missouri River. A seventy mile canal would convey water eastward from this reservoir to the Lone-tree Reservoir located northeastern Sheridan County from which point it would flow through a series of man-made canals and existing rivers to serve the areas scattered throughout the central and eastern portion of the state.

In 1955 the North Dakota legislature gave official recognition to the vast benefits that would accrue to the state through the development of this project and established a



Conservancy District with broad powers and duties in respect to the development of the project. This district originally contained all of the areas in 22 of the counties of the state. Since its organization 3 additional counties have been included upon their petition making a total of 25 counties in the present Conservancy District. Each of these counties have areas that are susceptible of irrigation or can be benefited through the diversion of water from the Missouri in North Dakota.

The Garrison Diversion Conservancy District in effect represents the interest that this entire region of the state of North Dakota that will be effected by the Garrison Diversion Unit has in this project. It also provides a means whereby all project beneficiaries including those who will benefit through the increase in trade and business economy can contribute to the costs of the project. This is accomplished through a mill levy that the Conservancy District is authorized to make.

The Conservancy District is governed by a Board of Directors composed of one director from each of the 25 counties in the District who are elected for terms of four years at the regular general elections of the state. Originally the directors were appointed but because of a question of the legality of a tax levy made by an appointed Board of Directors the law was changed in 1959 to provide for the election of directors of the Conservancy District. This Board elects a Chairman, a Vice Chairman and a Secretary-Treasurer and in addition has several standing committees to deal in various matters relative to its activities and the development of the Garrison Diversion Unit.

Although the Garrison Diversion Conservancy District has been given specific and broad powers relative to the development of the Garrison Diversion Unit it does not do away with the need for the establishment of individual irrigation districts through which irrigation will be accomplished in the project. Contractual and repayment arrangements proposed for the Garrison Diversion Unit contemplate a direct relationship between irrigation districts and the Conservancy District and the United States for the Garrison Diversion Unit. Because of the authority the Conservancy District has and the relationship contemplated the arrangement proposed for the Garrison Diversion Unit is unique in the United States.

The Conservancy District was organized in 1955 and since that time has been actively engaged in various matters relat-

ing to the development and promotion of the Garrison Diversion Unit. Through its directors it has spearheaded the organization of seven irrigation districts in the Garrison Diversion area encompassing over 320,000 acres of irrigable land that can be served by the project. At the present time an effort is being made to organize an additional 3 districts that if successful would raise the total number of irrigable acres in the irrigation districts to over 400,000. Although none of these irrigation districts have facilities developed to irrigate their lands as yet, they are actively engaged in contract negotiations with the Conservancy District and the Bureau of Reclamation and are ready to proceed with the development of irrigation as soon as Congress approves the authorizing legislation for the Garrison Diversion project and appropriates money for its construction.

The contract arrangements that have been established for the Garrison Diversion Unit provide for the negotiation of a contract between the Garrison Diversion Conservancy District and the United States for the supply works to serve the various water users throughout the project area. This supply works is made up of the main canals and pumping plants needed to bring water to a point where it can be delivered to serve a specific area or water user. These specific areas comprise blocks of irrigable land that can be served by one irrigation distribution system and it is for this distribution system that an irrigation district will contract with the United States and the Conservancy District for irrigation water and a system to bring water to the individual tracts of land. The contract that the irrigation district will negotiate with the United States will be for the distribution system itself. The irrigation district will also have to negotiate with the Conservancy District for a water supply from the supply system that the Conservancy District has under contract with the Bureau of Reclamation. This contractual arrangement contemplates the negotiation of two contracts, first a master contract between the Conservancy District and the United States for a supply system and second, a three-way contract between the irrigation district, the United States and the Conservancy District which will provide for the construction of the distribution system and set forth the arrangements whereby the irrigation district will receive a water supply from the supply system.

The negotiation of repayment contracts is necessary before any of the works for the Garrison Diversion Unit can be constructed. They in effect are the agreement that the Conservancy District and the irrigation district make to assume certain obligations relative to the construction and operation and maintenance of the system for the Garrison Diversion Unit. Under these contracts the water users obligate themselves to pay certain costs allocated for the construction of the project works as well as the costs associated with the operation and maintenance system on a year to year basis. Under these contracts the United States will agree to construct the project facilities in consideration of the annual assessments and payments that the irrigation districts and the Conservancy District will make. The contracts are lengthy and cover the many aspects involved in the construction and operation of the project system. They also contain provisions that are required under federal reclamation laws relative to the development of this system and the service to lands that are irrigable.

Because irrigation has been allocated approximately 90% of the total project costs, the major return to the federal government from the water users will come from the irrigation districts. The assessments that the irrigation districts will make to raise money to pay these costs will be based on the irrigable land they can obtain by land class. Class 1 land will pay a higher rate and Class 2 and Class 3 will pay progressively lower rates. In addition, the irrigable land will have to pay a fixed amount per acre regardless of land class for operation and maintenance costs each year. A development period consisting of the first ten years that water is available is provided in the contracts during which time the payments on construction of the project are deferred. The construction obligation is payable over a 40 year period following this ten year development period.

In organizing irrigation districts in the Garrison Diversion Unit area a procedure has been followed whereby the desires of an owner of irrigable land to have his land left out of the irrigation district were honored. This procedure was followed in order to avoid difficulties that might otherwise result from an objecting minority of landowners in an irrigation district. As a result, in each irrigation district there is a certain small percentage of the irrigable land that could be served by the system left out of the irrigation district. This land, therefore,

is not susceptible to assessment by the irrigation district for irrigation charges nor is it eligible to receive a water supply from the district system. However, the obligation to the United States for the irrigation system is still the responsibility of the water users. The Garrison Diversion Conservancy District has agreed to utilize a portion of the revenue it will obtain from its tax levy to finance the cost of these "missing acres" until they or other acres come under irrigation and assume the obligation to the United States for such lands. This arrangement has eliminated many of the problems that other irrigation districts have often been faced with and should enhance the development of the Garrison Diversion Unit.

The Conservancy District has also agreed to pay a certain amount per acre towards the construction of the supply works and to provide a certain amount of assistance to the irrigators for annual operation and maintenance costs during the early years of development.

The relationship that is provided between the Conservancy District and the irrigation districts in connection with the Garrison Diversion Unit is a new approach for irrigation development. It represents an attempt for all the beneficiaries from a multiple purpose large scale water resources project such as the Garrison Diversion Unit through a Conservancy District organization to participate in the costs and the development of the project. It provides for local control of the project from an overall standpoint and down to the local irrigation districts themselves and gives additional financing backing that is so urgently needed in a development of multiple purpose water resources projects under present day conditions.

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*"You never miss the water 'till the well runs dry."*

PROVERB (Burne, Shropshire Folk-Lore 590)

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