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Annual Meeting-Suggestions

North Dakota State Bar Association

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ANNUAL MEETING-SUGGESTIONS

The next annual meeting of the State Bar Association will be held at Bismarck, N. D., on September 18th and 19th, 1941, under the auspices of the Burleigh County Bar Association.

The plan inaugurated at the annual meeting last year at Fargo of a short legal institute will be continued under the joint guidance of the committee on the Legal Institute of which George A. Soule of Fargo is chairman, the local committee of the Burleigh County Bar, and your state officers.

And at this time we need the cooperation of the members in suggesting topics that they wish to have presented on this program, as well as lawyers who, in their judgment, are qualified to present practical discussions of their particular fields of law practice. Such suggestions can be sent to your secretary at the office of the association at Dickinson, N. D.

NAVIGABLE WATERS — WHAT UNDER THE
CONSTITUTION IS A NAVIGABLE STREAM

This is an action by the United States to enjoin the construction of a dam on the New River in Virginia without a license from the Federal Power Commission, as provided for in the Federal Water Power Act of 1920. The respondent sets forth the following defenses: (1) That the New River is non-navigable; (2) That should the New River be declared navigable the conditions of any federal license must be strictly limited to the protection of the navigable capacity of the waters of the United States; (3) That the Commission's refusal to grant a minor part license containing only such conditions was unlawful, and that any relief should be conditioned upon the Commission's granting respondent such a license. Held, the New River is navigable and subject to federal control under the delegated powers in the Commerce Clause. (2) That the term navigation as construed covers more than just the control of the waterway itself. The Court states that the power is as broad as the needs of commerce, and that navigable waters are the subject of natural control and planning is the broad regulation of commerce granted to the federal government. (3) That the license may contain these provisions which the Commission may deem necessary in the exercise of supervision and control over such navigable waters. *United States v. Appalachian Electric Power Company*, 61 S. Ct. 291 (1940).

The above decision is the farthest the Supreme Court has ever gone by judicial construction in advancing the development of the federal control over rivers. The rule followed up to the time of this case was found in this Court's decision in *The Daniel Ball*, 10 Wall. 557, 19 L. Ed. 999 (1868), stated as follows: "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they