

Opinion No. 46-4860

February 25, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. C. V. Hemphill Chairman, State Committee Production & Marketing
Administration Field Service Branch State College, New Mexico

{*192} Replying to your request for a copy of a State law which authorizes the State Engineer to require permits for construction of stock water dams and silt control dams more than 10 feet in height, but which store less than 10 acre feet of water.

You have cited Laws of 1941, Chapter 126, Section 25 (Section 77-530 of the 1941 Compilation), and inasmuch as you have a copy of same, we will not set forth the statute in full.

{*193} We also acknowledge receipt of the Application for Permit to Construct Dam for Livestock Water or for Silt Retention and Control. The State Engineer has apparently, by promulgating regulations under the Application for Permit, construed the statute to mean that if the dam is over 10 feet in height, and has a retention capacity less than 10 acre feet, it does not come within the exemption of Section 77-530 of the Statute, and a permit is necessary.

We do not concur with the State Engineer in the construction he has placed on the above statute. Our construction is that the height of the dam is not controlling if it be a silt or stock dam. It is a fact that the dam must not have a retention of more than 10 acre feet.

Section 77-530 of the 1941 Compilation specifically provides:

"* * * provided, that this section shall not be construed to apply to stock dams whose maximum storage capacity does not exceed ten (10) acre-feet or to the construction of works designed solely for silt retention and which do not impound or divert water for beneficial use."

Also see Laws of 1941, Chapter 126, Section 24 (Section 77-803 of the 1941 Compilation) of the same act, which should be read in construing the meaning in Section 77-530:

"This article shall not be construed to apply to stockmen or stock owners who may build or construct water tanks or ponds for the purpose of watering stock which have a capacity of ten (10) acre-feet of water or less."

Trusting the foregoing answers your questions, I am

By THOS. C. McCARTY,

Asst. Atty. General