Fwd: [EXT] Dry Lake No.2 and Flood Control Permit Requirements (No subject)

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Mark as unread

Clarkem <clarkem@itctel.com>

Fri 7/24/2020 12:24 PM

To:

Tarbox, Christine;

...

From Mark Rath reference our conversation yesterday

VR

David

Sent from my iPhone

Begin forwarded message:

**From:** "Rath, Mark" <Mark.Rath@state.sd.us>  
**Date:** July 23, 2020 at 2:33:38 PM CDT  
**To:** "clarkem@itctel.com" <clarkem@itctel.com>  
**Cc:** "Hansen, Blaise" <Blaise.Hansen@state.sd.us>  
**Subject:** **Dry Lake No.2 and Flood Control Permit Requirements**

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David,

This is in regards to our telephone conversation concerning lowering water levels in Dry Lake No 2 near Willow Lake.  I used LiDAR and determined the natural outlet for Dry Lake No. 2 to be located northeast of the lake near the town of Naples.  If lake levels got high enough to naturally spill, water from the lake would flow towards the Big Sioux River by way of Marsh Lake and down through the Lake Norden to Lake Poinsett chain of lakes.  In order to relocate and/or lower the outlet allowing water to flow from the lake, a flood control permit would need to be applied for and issued by the Water Management Board.  The two South Dakota statutes that pertain to flood control permits are SDCL 46-5-47 and 46-2A-11.  In order for the Water Management Board to consider issuing a flood control permit, the applicant would have the burden of demonstrating the requirements as laid out in SDCL 46-2A-11 are met.  This likely would require an engineering analysis to determine the effects downstream and may also involve obtaining flood easements from downstream property owners who would be adversely effected by the additional water.  If you have any questions, feel free to contact me.

[**46-5-47**](https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=46-5-47)**. Flood control--Permit required.**

No person may construct facilities on any watercourse to control floods for the purpose of preventing or alleviating damage without a permit issued pursuant to the procedure contained in chapter [46-2A](https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=46-2A). The permit may be approved subject to conditions deemed necessary, including conditions to safeguard water supplies for existing water permits and licenses, to assure the safety of works, and to prevent damage to property. No person may construct works in a manner not approved in the permit for those works. This section applies only to watercourses whose flow exceeds that of a dry-draw as defined in subdivision 46-1-6(8).

**Source:** SL 1983, ch 314, § 80; SL 2011, ch 165, § 272.

[**46-2A-11**](https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=46-2A-11)**. Flood control works--When permit may be issued.**

A permit for flood control works may be issued only if the project will reduce the damage from flooding or erosion in the area proposed to be benefited, the project will not increase the likelihood or the severity of flood damages in areas other than the project area or the area proposed to be benefited, the project will not endanger human life or property and the project will not impair existing water rights, except to the extent that such rights are extinguished or compensated through agreement or exercise of the power of eminent domain.

**Source:** SL 1983, ch 316, § 20

Mark D Rath

SD DENR - Water Rights Program

605-773-3352