

flooding of his property. Therefore, on or about December 17, 2019, prior to the December 23, 2019, filing of the Petition, the 24-inch culverts were removed, and a 30-inch culvert was installed to match the size and capacity of the previously existing culvert, and return the area to its pre-existing condition.

31. There was no evidence that the current 30-inch culvert has resulted in any flooding. Since the 30-inch culvert reestablished the pre-Exemption condition, a strong inference is drawn that the exempt work will not “cause adverse water quantity or flooding impacts to receiving water and adjacent lands.” Rather, the evidence establishes that water quantity impacts, if any, were in existence prior to the exempt road repairs.³

32. The work was not related to the alteration or maintenance of a “culverted roadway crossing,” despite the culvert work. Thus, the previous inclusion of rule 62-330.051(4)(b) as a basis for the County’s Exemption request was withdrawn. The District accepted that withdrawal, and its notice of Exemption did not include any reference to the culvert. As indicated in the Preliminary Statement and the amended disposition of the Motion in Limine, the road repair Exemption does not explicitly address culvert replacement. Therefore, any allegation that the replacement of the culvert was a violation of District permitting standards must be taken up with the District as an exercise of its enforcement discretion, and is not an issue in this proceeding.

33. Dr. Still produced photographs that were described as depicting “sediment” that was deposited along a “canal” on his property between 101st Avenue and a cleared utility easement. To the extent the photographs depicted sediment as described, which was not visually apparent, they were not sufficient to prove when any such sediment was deposited, or whether the sediment was related to the road repairs performed under the Exemption.

³ Again, simplistically, work performed under the road repair exemption is not designed to make pre-existing water quality and water quantity issues better, it just cannot make those conditions worse.