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JAN 08 2018

DEPARTMENT OF
WATER RESOURCES

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ATTORNEY FOR ELMORE COUNTY

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO 61-7731) **REQUEST TO CONTINUE TO CONDUCT**
IN THE NAME OF ELMORE COUNTY) **INFORMAL PROCEEDINGS/ ALTERNATIVE**
BOARD OF COUNTY COMMISSIONERS) **PETITION FOR RECONSIDERATION OF**
PRELIMINARY ORDER REINSTATING PERMIT

INTRODUCTION

Elmore County, through its counsel, hereby requests that the Idaho Department of Water Resources (IDWR) continue to conduct matters regarding the above water permit as informal proceedings, pursuant to IDAPA 37.01.01.100 through 103 of the IDWR Rules of Procedure (Rules).

Alternatively, Elmore County hereby petitions for reconsideration of the Preliminary Order Reinstating Permit (Order) and the determinations in the letter of December 26, 2017 from Mr. Daniel A. Nelson (Letter). This petition for reconsideration is made on a provisional basis if the IDWR refuses to continue to conduct matters regarding this permit as informal proceedings. As such, this petition for reconsideration is filed pursuant to Rule 730.01.a.

DISCUSSION

Elmore County does not understand why the IDWR issued the Letter with the Order. Elmore County has been proceeding with the IDWR in an informal manner under the Rules and has not indicated any desire to have the IDWR convert these informal proceedings into formal proceedings under its Rules. In fact, the dual actions of issuing the Order and issuing the Letter cause major problems for Elmore County.

Now, unless Elmore County files this provisional petition for reconsideration, it could be deemed to have waived its rights under Rule 703.01.a.

Instead of formal proceedings which have arguably been triggered by the Order, Elmore County prefers to continue with informal proceedings with the IDWR. However, if informal proceedings will not be conducted by the IDWR in this matter from this point, Elmore County intends to fully protect its rights under Idaho law by pursuing its rights of review under the Rules and Idaho Code provisions.

In fact, the Order is defective, because it fails to contain the mandatory language specified in Rule 703.02. Consequently, the IDWR should rescind the Order and continue to conduct this matter under the Rules for informal proceedings. This would be a simple solution that would avoid potentially unnecessary litigation expenses for Elmore County.

However, if the IDWR declines to adopt this simple solution, Elmore County petitions for reconsideration of the Letter, to the extent that it is interconnected with the Order. To clarify, Elmore County disputes the conclusions adopted in the Letter. It improperly concludes that Elmore County cannot rely upon proof of beneficial use after the date of permit reinstatement for licensing purposes. So, although the Order says nothing about this issue, the Letter imposes these restrictions. In fact, the Order itself simply reinstates the permit. Something Elmore County desires. But in the same related action, the Letter imposes restrictions that Elmore County believes are improper and unsupported by Idaho law.

Specifically, the Letter incorrectly states: "The certified field report submitted only addressed the water diverted for recharge in 2017." In fact, the report contains data regarding beneficial use prior to June, 2008. (See page 3 of report, attached hereto). The Letter rejects the 2017 recharge beneficial use of water, and then reaches the conclusion that "The only recognized recharge event during this time frame was the 1999 recharge event." Elmore County disagrees with this interpretation.

The Letter cites no Idaho Code provisions (except I.C. 42-211), no IDWR Rules, and no internal policy memoranda to support the legal conclusions contained in the Letter. Consequently, at a minimum, the Letter is fatally defective under the basic requirements that administrative decisions must be based upon factual findings and supporting legal conclusions. Elmore County challenges the determinations of the letter in this regard, also.

CONCLUSION

Elmore County does not want to fight with the IDWR. Quite the opposite, Elmore County has tried very hard to comply with the information requests and procedural mandates of the IDWR. However, under the present circumstances, Elmore County desires that the IDWR resume consideration of this permit under the informal proceedings Rules and allow Elmore County to informally communicate with the IDWR officials to resolve the outstanding issues.

In the alternative, Elmore County petitions for reconsideration of the Order and the Letter. This petition is presented only to avoid waiving Elmore County's legitimate appeal rights if the IDWR refuses to continue to handle this matter as an informal proceeding under the Rules.

Dated this 8th day of January, 2018.

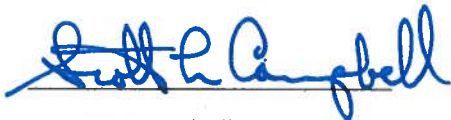
A handwritten signature in blue ink, reading "Scott L. Campbell", written over a horizontal line.

Scott L. Campbell

Attorney for Elmore County

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that I have this 8th day of January, 2018 the foregoing Request to Continue to Conduct Informal Proceedings/Alternative Petition for Reconsideration of Preliminary Order Reinstating Permit upon all parties of record in this proceeding. Since there are no parties of record, no service has been made.

A handwritten signature in blue ink, reading "Scott L. Campbell", written over a horizontal line.

Scott L. Campbell

Attorney for Elmore County

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

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JUN 12 2017

DEPARTMENT OF
WATER RESOURCES

A Beneficial Use Field Report is prepared by a water right examiner as the result of an examination to clearly confirm and establish the extent of the beneficial use of water established in connection with a permit during the development period authorized by the permit and any extensions of time previously approved.

A. GENERAL INFORMATIONPermit No. 61-77311. Owner Elmore County, Board of County Commissioners Phone No. (208) 587-2129Current address Elmore County Courthouse, 150 South 4th East Suite #3, Mountain Home, ID 836472. Examiner's name Scott N. King, P.E. EXAM DATE March 17, 20173. Accompanied by Bud Corbus, Wes Wootan, Al Hofer Email _____Address 150 South 4th East, Mountain Home, ID 83647Relationship to permit holder County Commissioners Phone No. (208) 587-21294. Source Canyon Creek tributary to Snake River**B. OVERLAP REVIEW**1. Other water rights with the same place of use Mountain Home Irrigation District (numerous rights)2. Other water rights with the same source and point of diversion 61-2117**C. DIVERSION AND DELIVERY SYSTEM**

1. Point(s) of Diversion:

Ident. No.	Gov't Lot	¼	¼	¼	Sec	Twp	Rge	County	Method of Determination/Remarks
1			NE	NE	10	3S	6E	Elmore	GPS. "Upper" Diversion
2			SE	NW	10	3S	6E	Elmore	GPS. "Lower" Diversion

2. Place(s) of Use: Method of determination GPS, aerial imagery, site inspection

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3S	6E	10	X			X						X							

E. NARRATIVE/REMARKS/COMMENTS

The upper diversion consists of a check structure in Canyon Creek with a concrete abutment on the south bank with ungated 30-inch diameter, 49-ft long corrugated metal pipe (CMP) discharging to a ditch conveying water to gravel pits for recharge. The lower diversion consists of a similar check structure and abutment on the south bank with headgate and 24-inch diameter, 18-ft long CMP pipe discharging to a ditch conveying water to a gravel pit for recharge.

Discharge measurements were made by SPF staff at the direction of this examiner on March 20 and March 29, 2017. On March 20, the upper diversion discharge was 20.3 cfs and the lower diversion discharge was 13.5 cfs. On March 29, the upper was 10.9 cfs and the lower 8.4 cfs. The Manning's equation was used as a confirmation of measurements and to calculate flows at higher water levels that I understand were observed by Bud Corbus on prior occasions. The conditions observed on March 20 yield a calculated discharge of 19.2 cfs from the upper diversion and 11.4 cfs from the lower diversion (see attached). If water levels were 1-ft higher in Canyon Creek at the culvert entrances, the calculated discharge at the upper diversion is 30.6 cfs and 18.6 cfs at the lower diversion for a total of 49.2 cfs.

I discussed prior use of Canyon Creek water for recharge with former Mountain Home Groundwater Advisory committee member Mike Pope (590-0531) and Calvin Ireland with the Mountain Home Irrigation District (599-4610). Both confirmed that prior to June 2008, water was diverted from Canyon Creek for recharge use at the two gravel pits that were used in 2017 and described in this report. Further, both stated that the Advisory Committee disbanded and it is appropriate for Elmore County to own 61-7731 and manage recharge operations. Mr. Ireland also stated that in years past, Canyon Creek has been diverted for recharge into his personal gravel pit located upstream in the SWSW Section 2.

The diversion point for the lower diversion appears to be within the SENW of Section 10, but is very close to or possibly within the SWNE tract.

Frazier Reservoir has not been used as a place of use for Groundwater Recharge Storage during the permit development period and therefore Groundwater Recharge Storage is not recommended as a use.

Has the permit holder met all conditions of permit approval, including any mitigation requirements and/or measuring device installation requirements? ☒ Yes ☐ No If no, what must be done to meet the permit requirements?

ATTACHMENT A

**PERMIT RECORD, PROOF OF BENEFICIAL USE, AND REQUEST TO
REINSTATE LAPSED PERMIT**

State of Idaho
Department of Water Resources**Permit To Appropriate Water**

NO. 61-07731

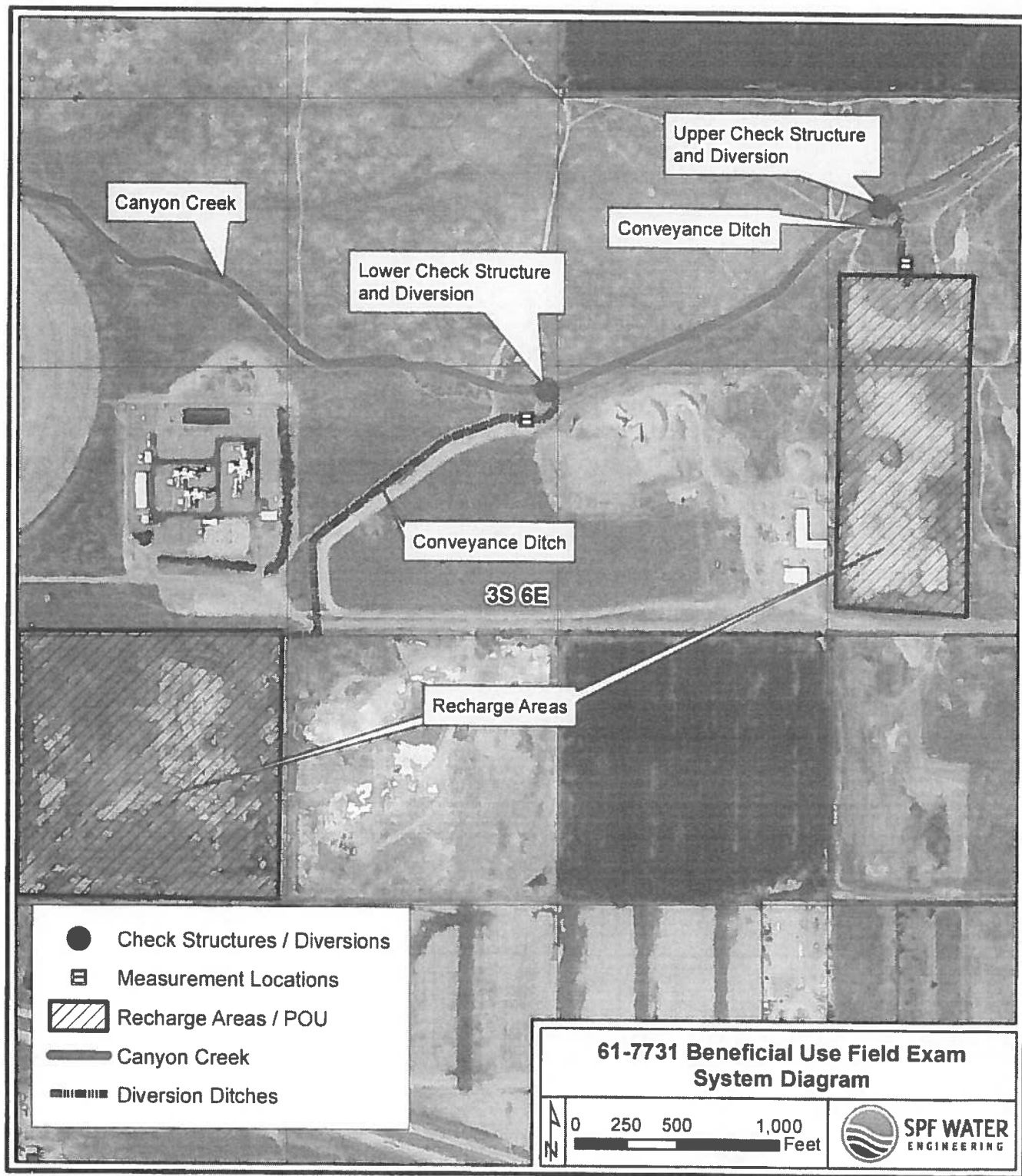
CONDITIONS OF APPROVAL AND REMARKS

3. Use of water under this right may be affected by an agreement between the protestant and the right holder.
4. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
5. Use of water under this water right will be regulated by the watermaster of State Water District No. 61A.
6. The storage of water under this right is contingent upon the certification of the dam and authorization of storage per the dam safety provisions of the Idaho Code.
7. Any license issued by IDWR pursuant to the right or portion thereof for the use of trust water is subject to a term review of 20 years after the date of this approval to determine availability of water for the use and to re-evaluate the public interest at the end of the term.
8. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
9. The Director retains jurisdiction over this right and may change, add, or remove any requirement as determined to be appropriate.
10. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.
11. The issuance of this right does not grant any right-of-way or easement across the land of another.
12. Upon specific notification by the department, the right holder shall install/maintain permanent measuring devices in such a manner that the amount of water entering the reservoir and the amount of water released from the reservoir can be measured.
13. Return flows discharged to any subsurface system must be authorized by separate injection well permits.
14. Groundwater recharge storage place of use is locally known as Fraser Reservoir.
15. Prior to diversion of water under this right, the right holder shall consult with the department to determine the best construction methods for the diversion structures.
16. This right is subject to all prior water rights, including those water rights for power purposes that may otherwise be subordinated by contract entered into by the governor and Idaho Power Company on October 25, 1984, and ratified by the legislature pursuant to section 42-203B, Idaho Code.
17. Pursuant to section 42-4201A(3), Idaho Code, the director may reduce the amount of water diverted for recharge purposes under this right even though there is sufficient water to supply the entire amount authorized for appropriation under this right.

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ATTACHMENT B
TOPO MAP AND 2015 AERIAL PHOTO



Culvert Report

Hydraflow Express Extension for Autodesk® AutoCAD® Civil 3D® by Autodesk, Inc.

Monday, May 1 2017

Upper Diversion 3.20.17

Invert Elev Dn (ft)	=	10.00
Pipe Length (ft)	=	49.00
Slope (%)	=	0.53
Invert Elev Up (ft)	=	10.26
Rise (in)	=	30.0
Shape	=	Circular
Span (in)	=	30.0
No. Barrels	=	1
n-Value	=	0.022
Culvert Type	=	Circular Corrugate Metal Pipe
Culvert Entrance	=	Projecting
Coeff. K,M,c,Y,k	=	0.034, 1.5, 0.0553, 0.54, 0.9

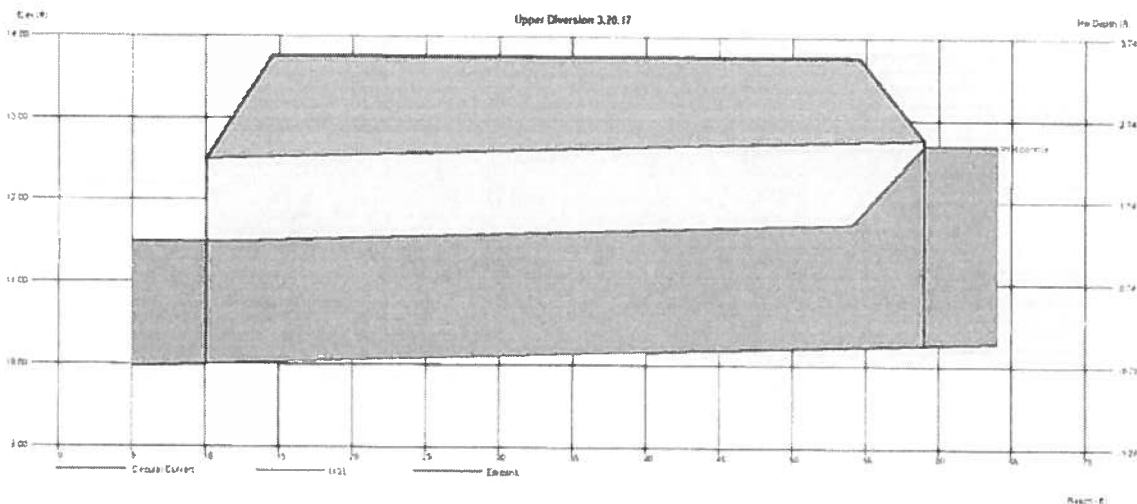
Embankment	
Top Elevation (ft)	= 13.76
Top Width (ft)	= 40.00
Crest Width (ft)	= 10.00

Calculations

Qmin (cfs)	=	10.00
Qmax (cfs)	=	20.00
Tailwater Elev (ft)	=	0.00

Highlighted

Qtotal (cfs)	=	19.20
Qpipe (cfs)	=	19.20
Qovertop (cfs)	=	0.00
Veloc Dn (ft/s)	=	6.32
Veloc Up (ft/s)	=	6.32
HGL Dn (ft)	=	11.48
HGL Up (ft)	=	11.74
Hw Elev (ft)	=	12.69
Hw/D (ft)	=	0.97
Flow Regime	=	Inlet Control



Culvert Report

Hydraflow Express Extension for Autodesk® AutoCAD® Civil 3D® by Autodesk, Inc.

Wednesday, May 3 2017

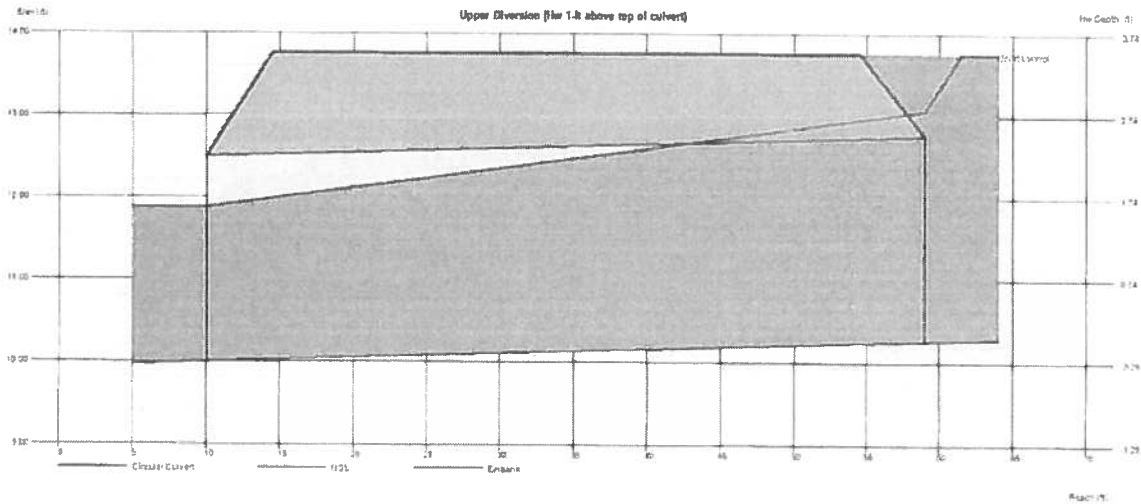
Upper Diversion (Hw 1-ft above top of culvert)

Invert Elev Dn (ft) = 10.00
 Pipe Length (ft) = 49.00
 Slope (%) = 0.53
 Invert Elev Up (ft) = 10.26
 Rise (in) = 30.0
 Shape = Circular
 Span (in) = 30.0
 No. Barrels = 1
 n-Value = 0.022
 Culvert Type = Circular Corrugate Metal Pipe
 Culvert Entrance = Projecting
 Coeff. K,M,c,Y,k = 0.034, 1.5, 0.0553, 0.54, 0.9

Embankment
 Top Elevation (ft) = 13.76
 Top Width (ft) = 40.00
 Crest Width (ft) = 10.00

Calculations
 Qmin (cfs) = 30.00
 Qmax (cfs) = 31.00
 Tailwater Elev (ft) = 0.00

Highlighted
 Qtotal (cfs) = 30.60
 Qpipe (cfs) = 30.60
 Qovertop (cfs) = 0.00
 Veloc Dn (ft/s) = 7.71
 Veloc Up (ft/s) = 6.23
 HGL Dn (ft) = 11.88
 HGL Up (ft) = 13.06
 Hw Elev (ft) = 13.75
 Hw/D (ft) = 1.40
 Flow Regime = Inlet Control



Culvert Report

Hydraflow Express Extension for Autodesk® AutoCAD® Civil 3D® by Autodesk, Inc.

Monday, May 1 2017

Lower Diversion 3.29.17

Invert Elev Dn (ft) = 10.00
 Pipe Length (ft) = 18.00
 Slope (%) = 1.72
 Invert Elev Up (ft) = 10.31
 Rise (in) = 24.0
 Shape = Circular
 Span (in) = 24.0
 No. Barrels = 1
 n-Value = 0.022
 Culvert Type = Circular Corrugate Metal Pipe
 Culvert Entrance = Projecting
 Coeff. K,M,c,Y,k = 0.034, 1.5, 0.0553, 0.54, 0.9

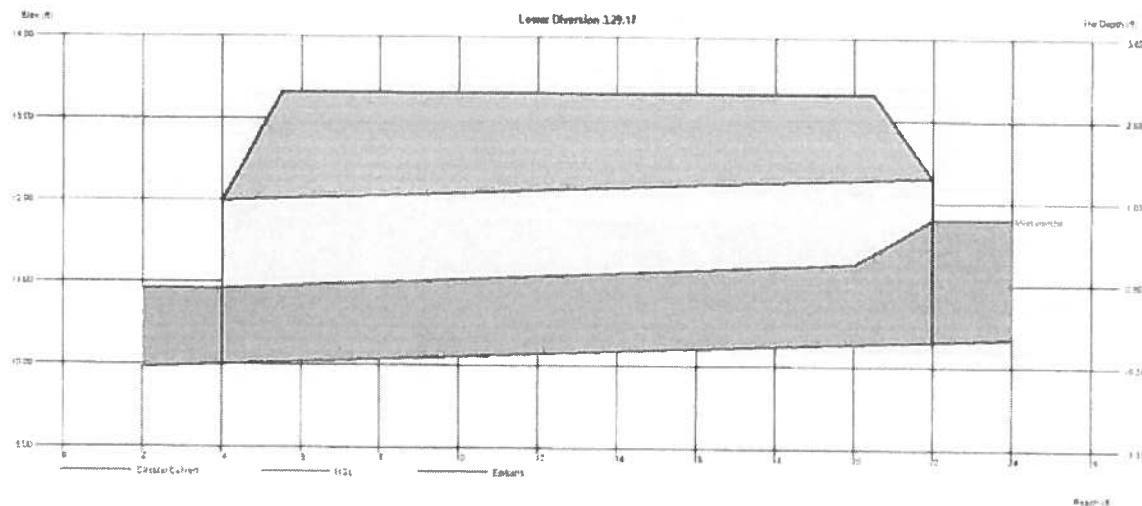
Embankment
 Top Elevation (ft) = 13.31
 Top Width (ft) = 15.00
 Crest Width (ft) = 15.00

Calculations

Qmin (cfs) = 7.00
 Qmax (cfs) = 12.00
 Tailwater Elev (ft) = 0.00

Highlighted

Qtotal (cfs) = 7.60
 Qpipe (cfs) = 7.60
 Qovertop (cfs) = 0.00
 Veloc Dn (ft/s) = 5.35
 Veloc Up (ft/s) = 4.97
 HGL Dn (ft) = 10.92
 HGL Up (ft) = 11.29
 Hw Elev (ft) = 11.81
 Hw/D (ft) = 0.75
 Flow Regime = Inlet Control



ATTACHMENT D

PHOTOS



Figure 3: Upper diversion culvert discharging to ditch conveying water to recharge area.



Figure 4: Measuring discharge at Upper diversion.



Figure 7: Measuring discharge at lower diversion.



Figure 8: Lower diversion recharge area near I-84.