

(Tr. Vol. 2, 338:4-16).

84. Dr. Still's dispute as to the extent of the ROW seemingly should have been, and in fact was, resolved by his agreement to sell 1.78 acres of land to the County for the purpose of eliminating possible encroachment onto his property. That sale was commenced and completed as the work under the declared emergency was ongoing. There was no persuasive evidence to establish that the disputed 1.78 acres was actually outside of what was understood by the County to be the historic ROW, but its purchase definitively resolved the issue without the time and expense of litigation. It is difficult to craft an argument that the volitional sale of property to facilitate road repairs in an undisputed ROW, particularly when the travel surface of the road is unchanged, should then become a basis for denial of authorization to perform those road repairs.

85. Dr. Still appeared to have a concern with the initial replacement of an existing 30- inch culvert with two 24-inch culverts under 101st Avenue. Those 24-inch culverts appear in most of the photographs depicting the conditions in the area. However, when those culverts were then replaced (prior to the filing of the Petition) with one 30-inch culvert, matching the size of the preexisting culvert, any issues that existing water flow from the upgradient side of 101st Avenue was adversely impounded or obstructed, that the road repairs caused adverse impacts to existing surface water storage and conveyance capabilities, or that the road repairs caused adverse water quantity or flooding impacts to receiving waters and adjacent lands were eliminated. There was no evidence offered that the flow of water through the new 30-inch culvert was changed at all as a result of the completed road repairs. (Tr. Vol. 2, 308:18-21). Dr. Still provided no calculations of water flow or velocity to suggest that the road repairs will result in adverse water quantity or flooding impacts to receiving waters and adjacent lands.

86. The only conclusion that can be objectively drawn, given the facts of this case, is that **the action challenging the Exemption was taken primarily to harass the County and the District, for frivolous purpose, or to needlessly increase the cost of securing the Exemption.**

(RO at page 27-28) (Emphasis supplied)

Finally, the ALJ not only determined that STILL challenged the EXEMPTION for an improper purpose, but also determined that STILL's "improper purpose" applied to both the DISTRICT and the COUNTY (RO - page 28, paragraph 86). STILL did not file any exceptions to the this finding of fact. Therefore STILL has expressed his "agreement with, or at least