

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Martin P. Cleveland

SUBJECT: Interlocal Agreement with Dakota County for the Replacement of Pigeon Jones Watershed Structure No. 11

DATE: September 6, 2023

In 1998, Dakota County, Nebraska and Papio NRD signed a Road Structure Program Special Project Operation and Maintenance Agreement to replace a bridge with a road structure (aka dam). The Pigeon Jones Watershed Structure No. 11 was built in 1999 by Dakota County and the Papio NRD provided \$75,000 of the \$129,314 construction cost as per Road Structure Program guidelines. This dam is in the Papio NRD's Pigeon Jones Watershed and referred to as Pigeon Jones Structure No. 11 or Simmons Road Structure. Enclosed is a location map.

In 2022, the Papio NRD completed the construction of Pigeon Jones Watershed Structure No. 12A (PJ12A), which is located approximately 2600 ft. downstream of the Pigeon Jones No. 11 (PJ11). After the PJ12A structure construction was completed, the PJ12A drawdown valve closed, and PJ12A started impounding water downstream of the PJ11 embankment. Papio NRD staff noticed that water was starting to flow onto the downstream (backslope) of PJ11. Enclosed is a photo of the submerged backslope and a profile drawing of both dams.

The PJ12A design engineer (Olsson) determined that the permanent (normal) pool elevation 1286.0 ft. above MSL will be 7 ft. above the PJ11 outlet invert of 1279.0 ft. above MSL. The permanent pool of PJ12A would submerge the backslope of PJ11 under 7 ft. of water. PJ11, built as a road structure, was not designed to have a submerged principal spillway or partially submerged backslope.

To resolve the submerged PJ11 outlet situation, it has been determined that the existing dam and principal spillway culvert would need to be replaced with a road culvert at an elevation above the PJ12A conservation pool elevation. The PJ11 road structure is owned by Dakota County, and it is part of Odell Ave./Simmon Road. The replacement culvert project is estimated to have an engineering cost of \$40,000 and construction cost of \$166,000.

Enclosed is a proposed Interlocal Cooperation Agreement with the Dakota County for the replacement of Pigeon Jones Watershed Structure No. 11. Dakota County would be responsible for any needed right-of-way and for the project operation and maintenance and Papio NRD would be responsible for all engineering and construction costs. Dakota County approved the proposed agreement on September 5, 2023.

Management recommends that the Programs, Projects, and Operation Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Cooperation Agreement with Dakota County, Nebraska for Replacement of Pigeon Jones Watershed Structure No. 11, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

File: 505 PJ 11 Dakota Agree PPO Memo 9-6-23

INTERLOCAL COOPERATION ACT AGREEMENT
BETWEEN
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
AND
DAKOTA COUNTY, NEBRASKA
FOR
REPLACEMENT OF PIGEON JONES WATERSHED STRUCTURE NO. 11

THIS INTERLOCAL COOPERATION ACT AGREEMENT (“**THIS AGREEMENT**”) is made pursuant to the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801 to 13-827, *et seq.*, by and between the following parties (collectively, “the **PARTIES**” and each, a “**PARTY**”), to wit: the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (“the **NRD**”) and DAKOTA COUNTY, NEBRASKA (“the **COUNTY**”).

RECITALS:

WHEREAS, the NRD has the power and authority to develop and manage flood prevention and control projects and sediment retention and grade control projects pursuant to Neb. Rev. Stat. § 2-3229, and pursuant to such authority, the NRD has developed and is developing an earthen dam with flood prevention and control, sediment retention and grade control features within its geographical boundary;

WHEREAS, the COUNTY has the power and authority to construct, maintain, and improve drainage facilities on or near public road right-of-way pursuant to Neb. Rev. Stat. § 39-1802 and pursuant to such authority, the COUNTY has developed and is developing drainage facilities on or near the public roads within its respective geographic boundary;

WHEREAS, the PARTIES entered into that certain Road Structure Program Special Project Operation and Maintenance Agreement dated August 14, 1998 (the “**1998 OPERATION AND MAINTENANCE AGREEMENT**”);

WHEREAS, the subject of the 1998 OPERATION AND MAINTENANCE AGREEMENT was a project to build a road structure (hereinafter referred to as “**PIGEON JONES WATERSHED STRUCTURE NO. 11**” or “**PJ #11**”) to replace a bridge on Simmon Road in Dakota County, Nebraska, the location of which is conceptually depicted in the document attached hereto as Exhibit “A” and incorporated herein by reference;

WHEREAS, pursuant to the 1998 OPERATION AND MAINTENANCE AGREEMENT, the NRD cost shared on the construction of PJ #11 under its Road Structure Program and provided \$75,000 of the \$129,314 in construction costs as per the NRD’s Road Structure Program guidelines in effect at that time;

WHEREAS, pursuant to the 1998 OPERATION AND MAINTENANCE AGREEMENT, the COUNTY owns PJ #11 and is responsible for its operation and maintenance;

WHEREAS, in 2022, the NRD completed the construction of another watershed structure (hereinafter referred to as “**PIGEON JONES WATERSHED STRUCTURE NO. 12A**” or “**PJ #12A**”), the location of which is conceptually depicted in the document attached hereto as Exhibit “A” and incorporated herein by reference;

WHEREAS, PJ #12A is located approximately 2,600 ft downstream of PJ #11, and its pool filling will back water onto PJ #11’s backslope;

WHEREAS, the construction of PJ #12A will result in its permanent pool submerging PJ #11’s backslope of under 7 ft of water;

WHEREAS, PJ #11 was not designed to have a submerged principal spillway outlet or partially submerged backslope, and therefore, the issue of PJ #11 being submerged must be resolved;

WHEREAS, to resolve the issue of PJ #11 being submerged, the existing dam and principal spillway culvert needs to be replaced with a road culvert at an elevation above PJ #12A'S conservation pool elevation (the "**PROJECT**");

WHEREAS, the PARTIES desire to resolve the issue of PJ #11 being submerged by designing and constructing the **PROJECT**;

WHEREAS, the PARTIES desire to terminate the 1998 OPERATION AND MAINTENANCE AGREEMENT on the terms and subject to the conditions set forth herein; and,

WHEREAS, the PARTIES desire to provide herein for the cooperative development, design, construction, operation, maintenance, regulation and ownership of the **PROJECT** and to specify the rights, duties and obligations of the PARTIES in connection therewith.

NOW, THEREFORE, for and in consideration of the foregoing recitals and the mutual covenants of the PARTIES hereinafter expressed, the PARTIES agree as follows:

1. TERMINATION OF THE 1998 OPERATION AND MAINTENANCE AGREEMENT. Subject to the terms and conditions of THIS AGREEMENT, the 1998 OPERATION AND MAINTENANCE AGREEMENT is hereby terminated as of the last date set forth on the signature page attached hereto (the "**TERMINATION DATE**"). From and after the **TERMINATION DATE**, the 1998 OPERATION AND MAINTENANCE AGREEMENT will be of no further force or effect, the rights and obligations of each of the parties thereunder shall terminate, and the rights and obligations set forth in THIS AGREEMENT shall take the place of and supersede all rights and obligations set forth in the 1998 OPERATION AND MAINTENANCE AGREEMENT.

2. PROJECT PARTICIPANTS. The PROJECT shall be undertaken by the PARTIES, as provided herein, without any separate entity being created, and the duties and responsibilities of the PARTIES with respect to the PROJECT shall be as defined by THIS AGREEMENT.

3. PROJECT LAND. The PROJECT shall be constructed on parcels of land located Section 8, Township 27 North, Range 7 East in Dakota County, Nebraska (“the **PROJECT LAND**”).

4. ACQUISITION OF PROJECT LAND. The PARTIES anticipate that the PROJECT will be located within existing road right-of-way. In the event that additional land rights are needed for the PROJECT, the COUNTY is responsible for, and shall pay all costs associated with, the acquisition and dedication of the PROJECT LAND and any other property needed to complete the PROJECT.

5. SUBDIVISION OF PROJECT LAND. If certain portions of adjacent real property to the PROJECT LAND or PROJECT LAND require subdivision, the COUNTY shall be responsible for the subdivision process and the COUNTY shall pay all costs associated with the required subdivision of property.

6. GENERAL BENEFIT. The PARTIES do hereby find and agree that the PROJECT, as herein described, will be of general benefit to the COUNTY and the NRD with only an incidental special benefit.

7. THE ENGINEERS. The NRD shall retain engineering consultants (“the **ENGINEERS**”) to design the PROJECT and to prepare plans and specifications and contract documents for and administer construction of the PROJECT.

8. PREPARATION OF PRELIMINARY PLANS. The ENGINEERS shall prepare preliminary plans and specifications for the PROJECT (collectively,

“the **PRELIMINARY PLANS**”), in accordance with the provisions of THIS AGREEMENT, subject to the following:

- a) The PRELIMINARY PLANS shall be drawn in accordance with design criteria provided by the General Manager of the NRD; and,
- b) The PRELIMINARY PLANS shall be in general compliance with applicable Nebraska state and federal statutes, rules and regulations; and
- c) The PRELIMINARY PLANS shall be drawn in accordance with COUNTY design standards, rules and regulations.

9. APPROVAL OF PRELIMINARY PLANS. Upon the ENGINEERS’ completion of the PRELIMINARY PLANS, and after approval of the same by the NRD, the PRELIMINARY PLANS shall be submitted to the COUNTY for its written approval. The COUNTY shall have a period of thirty (30) days to review and approve or disapprove the same in writing or suggest amendments thereto and shall have an additional period of thirty (30) days to review and approve subsequent amendments thereto. Such approvals shall not be withheld or delayed unreasonably.

10. PREPARATION OF FINAL PLANS. Upon approval of the PRELIMINARY PLANS, the NRD shall direct the ENGINEERS to prepare final plans and specifications for the PROJECT (collectively, “the **FINAL PLANS**”), in accordance with the provisions of THIS AGREEMENT, subject to the following:

- a) The FINAL PLANS shall be drawn in accordance with design criteria provided by the General Manager of the NRD;
- b) The FINAL PLANS shall be in general compliance with applicable Nebraska state and federal statutes, rules and regulations; and
- c) The FINAL PLANS shall be drawn in accordance with COUNTY design standards, rules and regulations.

d) The FINAL PLANS shall include legal descriptions of the PROJECT LAND to be acquired by the COUNTY, if not already acquired by the COUNTY.

11. APPROVAL OF FINAL PLANS. Upon the ENGINEERS' completion of the FINAL PLANS and approval of the same by the NRD, the FINAL PLANS shall be submitted to the COUNTY for its written approval. The COUNTY shall have a period of thirty (30) days to review and approve or disapprove the same in writing or suggest amendments thereto and shall have an additional period of thirty (30) days to review and approve subsequent amendments thereto. Such approvals shall not be withheld or delayed unreasonably.

12. CONSTRUCTION CONTRACT. After receipt by the NRD of the COUNTY's written approval of the FINAL PLANS, the NRD shall deliver to the COUNTY for its approval (such approval to not be withheld or delayed unreasonably) the NRD's proposed contract documents ("the **CONTRACT DOCUMENTS**") for competitive bidding for construction of the PROJECT. The COUNTY shall have a period of 14 days to review the CONTRACT DOCUMENTS and to approve or disapprove of the same in writing or suggest amendments thereto. Such approvals shall not be withheld or delayed unreasonably.

13. CONSTRUCTION OF THE PROJECT. After the COUNTY approves of the CONTRACT DOCUMENTS, and in accordance with the NRD's purchasing regulations, the NRD will seek competitive bids for construction of the PROJECT. Upon receipt of the competitive bids, the NRD shall make the bids available to the COUNTY for review. The NRD shall award the contract for such construction to the bidder that the NRD determines provides the lowest responsible bid.

14. THE PROJECT CONTRACTOR(S). The NRD shall retain one or more general contractors ("the **CONTRACTOR(S)**") to construct the PROJECT. All agreements with the CONTRACTOR(S) for the PROJECT will include appropriate indemnification and insurance provisions with respect to the

PROJECT. The NRD shall enforce all bonds and warranties given by the ENGINEERS, CONTRACTOR(S) and their subcontractors.

15. CONSTRUCTION OF THE PROJECT. Within thirty (30) days receipt by the NRD of the lowest responsible bid, or at such other time as the PARTIES agree in writing, whichever is later, the NRD will order commencement of construction of the PROJECT, which shall be constructed in general conformance with the CONTRACT DOCUMENTS as approved by the COUNTY.

16. PAYMENT OF COSTS. Except as may otherwise be provided in THIS AGREEMENT, the NRD shall pay all the costs of design and construction of the PROJECT.

17. CONSTRUCTION OBSERVATION. The NRD will contract for engineering observation and administration of construction of the PROJECT.

18. OPERATION AND MAINTENANCE. After completion of construction of the PROJECT, the COUNTY, at its sole cost and expense, shall permanently operate, maintain, replace and regulate the PROJECT. For purposes of clarity and avoidance of doubt, the NRD shall have no obligations to maintain, repair, replace, or regulate with respect to the PROJECT and PROJECT LANDS.

19. INDEMNIFICATIONS. The COUNTY shall defend, indemnify, and hold the NRD harmless from and against all loss, damage, liability, costs and expenses, including attorneys' fees and court costs, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the COUNTY'S operation, maintenance, repair, replacement, or regulation of the PROJECT and PROJECT LANDS, excepting such personal injuries or property damages to the extent caused by the sole negligence of the NRD. The NRD shall defend, indemnify, and hold the COUNTY harmless from and against all loss, damage, liability, costs and expenses, including attorneys' fees and court costs, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the NRD's engagement

for design and construction services for the PROJECT, excepting such personal injuries or property damages as to the extent caused by the sole negligence of the COUNTY.

20. RISK OF LOSS. After completion of construction of the PROJECT, the risk of loss of or damage to such PROJECT components or facilities shall be borne by the COUNTY, whether such loss or damage results from flood or other casualty whatsoever. Under no circumstances shall the NRD be responsible for any risk of loss or damage to the PROJECT after completion of construction of the PROJECT.

21. APPROVALS. Wherever THIS AGREEMENT speaks of approval and/or consent by the NRD, such approval and/or consent shall be manifested by act of the General Manager of the NRD. Wherever THIS AGREEMENT speaks of approval and/or consent by the COUNTY, such approval and/or consent shall be manifested by act of the Highway Superintendent of the COUNTY.

22. NONDISCRIMINATION. The PARTIES shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, disability under the Americans with Disabilities Act, political or religious opinions, affiliations or national origin.

23. CAPTIONS. Captions used in THIS AGREEMENT are for convenience and are not used in the construction of THIS AGREEMENT.

24. APPLICABLE LAW. The PARTIES to THIS AGREEMENT shall conform to all existing and applicable state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under THIS AGREEMENT.

25. MERGER. THIS AGREEMENT shall not be merged into any other oral or written agreement, lease or deed of any type.

26. MODIFICATION. THIS AGREEMENT contains the entire agreement of the PARTIES. No representations were made or relied upon by either of the PARTIES other than those that may be expressly set forth herein. No agent, employee or other representative of any PARTY is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of such PARTY.

27. STRICT COMPLIANCE. All provisions of THIS AGREEMENT and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from an authorized representative.

28. INVALID PROVISIONS. In the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision herein contained shall not affect the validity of the remainder of the covenants, conditions or provisions of THIS AGREEMENT, which shall in all respects remain a legally binding agreement with the invalid portion being deleted; provided, however, that the validity of any such covenant, condition, or provision does not materially prejudice either of the PARTIES in its respective rights and obligations contained in the valid covenants, conditions, or provisions of THIS AGREEMENT.

29. NON-WAIVER. No delay or failure by either of the PARTIES to exercise any right under THIS AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A valid waiver by either of the PARTIES shall not be deemed to extend the amount of time available to perform any other act required under THIS AGREEMENT.

30. FURTHER AGREEMENTS. Each of the PARTIES will, whenever and as often as the other may reasonably request, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all such further

conveyances, assignments or other instruments and documents as the requesting party may reasonably believe to be necessary, expedient or proper in order to complete any and all conveyances, transfers, and assignments herein provided and to do any and all other acts and to execute, acknowledge and deliver any other documents so reasonably requested in order to carry out the intent and purposes of THIS AGREEMENT.

31. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall become effective upon its execution by the PARTIES and shall be perpetual in its duration.

32. NOTICES. Any notice required under the terms of THIS AGREEMENT shall be deemed to have been given within forty-eight (48) hours after written notice has been deposited in the United States mail; and:

a) Notices to the COUNTY provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid, addressed to:

Board of Commissioners
Dakota County, Nebraska
1601 Broadway
PO Box 39
Dakota City, NE 68731

b) Notices to the NRD provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid addressed to:

General Manager
Papio-Missouri River NRD
8901 South 154th Street
Omaha, Nebraska 68138-3621

or to such other respective address(s) as the PARTIES may designate to each other from time to time in writing.

33. COUNTERPARTS. THIS AGREEMENT may be executed in one or more counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement. Facsimile or scanned and emailed signatures shall be deemed to have the same full force and effect as original signatures.

IN WITNESS WHEREOF

THIS AGREEMENT is executed by the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT on this ____ day of _____, 2023, pursuant to resolution duly adopted by its Board of Directors.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By _____
General Manager

THIS AGREEMENT is executed by DAKOTA COUNTY, NEBRASKA on this ____ day of _____, 2023, pursuant to resolution duly adopted by its Board of Commissioners.

DAKOTA COUNTY, NEBRASKA

By _____
Board of Commissioners, Chair

[NOTARY ACKNOWLEDGEMENTS FOLLOW]

EXHIBIT "A"

PIGEON JONES WATERSHED STRUCTURE NO. 11 & 12-A



Pigeon-Jones Watershed - Dakota County, NE

Dam Sites 11 & 12-A



Pigeon-Jones
Dam #11

Pigeon-Jones
Dam #12A

Odell Ave

Odell Ave

240th St

240th St

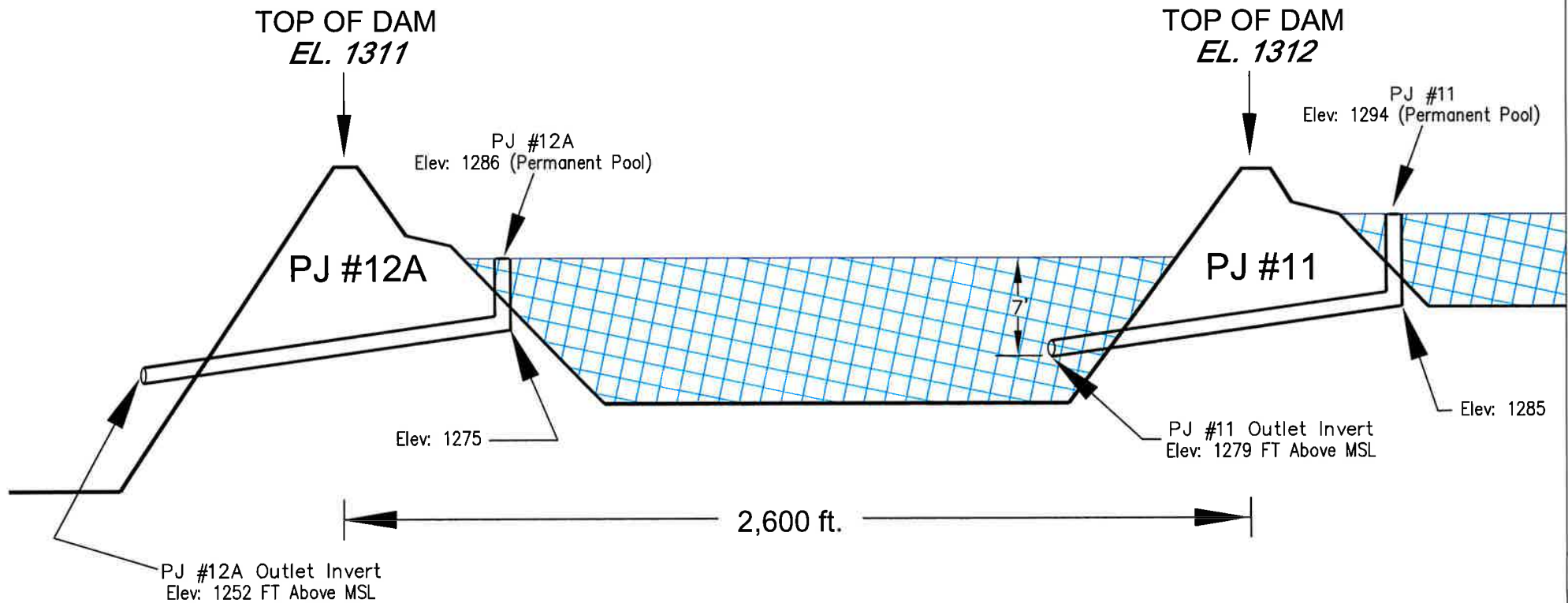
Pigeon
Creek

O Ave



Date: 8/10/2023

PIGEON JONES WATERSHED STRUCTURES #12A & #11



No Scale



PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

TITLE

PIGEON JONES #12A & #11

8/28/2023

Pigeon Jones Watershed Structure #11
Looking South along Simmon Road (aka Odell Ave.)
April 2023

Top of Dam



Submerged Outlet

