

STATE ARBITRATION BOARD

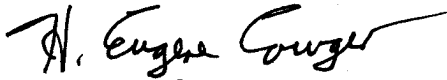
NOTICE

In the case of Anderson Columbia Co., Inc. versus the Florida Department of Transportation on Project No. 48130-3512 in Escambia County, Florida, both parties are advised that State Arbitration Order No. 1-98 has been properly filed on March 16, 1998.

S.A.B. CLERK

MAR 16 1998

FILED



H. Eugene Cowger, P.E.
Chairman & Clerk, S.A.B.

Copies of Orders & Transcript to:

Jimmy Lairscey, P.E., Director of Construction/FDOT

Kenneth Sweet, Area Manager/Anderson Columbia Co., Inc.

STATE ARBITRATION BOARD

ORDER NO. 1-98

RE:

Request for Arbitration by
Anderson Columbia, Co., Inc.
Job No. 48130-3512 in
Escambia County

The following members of the State Arbitration Board participated in the disposition of this matter:

H. Eugene Cowger, P.E., Chairman
Bill Deyo, P. E., Member
John Roebuck, Member

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 10:10 a.m. on Thursday, January 22, 1998.

The Board Members, having fully considered the evidence presented at the hearing, now enter their Order No. 1-98 in this cause..

ORDER

The Contractor presented a request for arbitration of a claim in the total amount of \$16,311.94. The amount claimed represents the cost of erosion repair, slope dressing and stabilization work accomplished in accordance with a list Repair Items Required for Project Completion issued by the Department's Project Engineer on March 5, 1997.

The Contractor presented the following information in support of his claim:

1. A punch list for this project was issued on January 30, 1997 at about the time the curing period for the Friction Course began. We completed this work prior to the end of the curing period which occurred on March 5, 1997.
2. The damage to the work addressed in the March 5, 1997 List occurred during the "curing period".
3. It is our position that this additional work was required as the result of deficiencies in the drainage design for the project and does not constitute routine maintenance of the work or items for which a punch list should have been issued. We were taking water continuously off adjacent 600-acre cotton fields and had to make repairs to the front slopes frequently during work on the project. Since, through much of the job there was no roadway ditch and thus no back slope,

water running from the road and down the front slope cut its own channels parallel to the road. There was some damage to the upper portions of front slope in the areas where DOT installed riprap and sod in the ditch line, but the primary location of the erosion repaired after March 5, 1997 was along the toe of the front slope.

4.. The following documentation supports our position:

a. A statement in a letter dated February 19, 1997 from the Resident Engineer to the District Construction Engineer regarding Supplemental Agreement Request No. 1: "Findings conclude that no original design provisions were made to address an existing offsite drainage canal discharging to the FDOT right of way creating adverse erosion of the front slopes in the areas specified".

b. A note on the DOT Engineer's Weekly Summary for the week ending March 9, 1997: "All work performed after Wednesday (03/5/97) was performed to correct erosion damage which occurred during the curing period. This work was unforeseen at the time of suspension for the asphalt curing period".

The Department of Transportation rebutted the Contractor's claim as follows:

1. The design of this project was typical for a RRR project and the rain that occurred during the curing period was nothing unusual.
2. We do not agree with the Contractor that the erosion in question was due to design deficiencies. It our position that the Contractor is responsible for repairs to erosion damage during the curing period.
3. There were areas along the project where an existing ditch had to be moved outward because of shoulder widening. In two of the areas where heavy vegetation existed there were severe erosion problems. Negotiations with the Contractor to add sod and riprap in these areas were not successful and DOT Maintenance Forces did this work. There, also, was one section of new ditch that we ordered to be regraded because it was holding water.
4. The washouts we required to be repaired were throughout the job. The areas of major erosion where sod and riprap were installed were not addressed in the March 5, 1997 List.
5. The notes in the Engineer's Weekly Summary referred to by the Contractor were there for the purpose of preventing our Final Estimates Section from revoking the suspension of time charges for the curing period because there was work, other than installing pavement markers done after the curing period. i.e.: All work except for installing pavement markers was not complete on the date that time charges were suspended.

6. The following specifications make the Contractor responsible for the repair work in question here at his expense:

a Contract Time Extension-Weather Special Provision No. 14 (8.7.3.2) "No additional compensation will be made to the Contractor for delays caused by the effects of inclement weather."

b Earthwork-12-10 2nd paragraph "The Contractor shall maintain all earthwork construction throughout the life of the contract, unless otherwise provided, and shall take all reasonable precautions to prevent loss of material from the roadway due to the action of wind or water. He shall repair at his expense, except as otherwise proved herein, any slides, washouts, settlement subsidence or other mishap which may occur prior to final acceptance of the work."

c. Grassing-570-6 2nd paragraph "The Contractor shall, at his expense, maintain the planted areas in a satisfactory condition until final acceptance of the project. Such maintenance shall include the filling, leveling and repairing of any washed or eroded areas, as may be necessary.

The Board in considering the testimony and exhibits presented found the following points to be of particular significance:

1. The March 5, 1997 list of items to be addressed included reconstructing and stabilizing roadside ditches in areas where DOT Maintenance Forces constructed riprap and sod. (See Items g. and h.) The DOT Daily Report of Construction for March 7, 1997 indicates that fill material was placed at these locations on that date.

2. There were three weekdays during the period between March 5, 1997 and March 13, 1997 on which the Contractor, at his option, performed no restoration work.

From the foregoing and in light of the testimony and exhibits presented, the State Arbitration Board finds as follows:

The Department of Transportation shall reimburse the Contractor in the amount of \$6,000.00 for his claim.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 208.40 for Court Reporting Costs.

S.A.B. CLERK
MAR 16 1998
FILED

Tallahassee, Florida

Dated: March 16, 1998



H. Eugene Cowger, P.E.
Chairman & Clerk

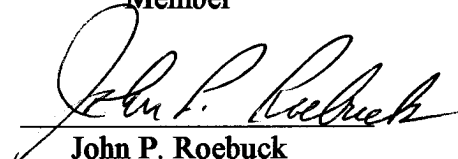
Certified Copy:



Bill Deyo, P. E.
Member



H. Eugene Cowger, P.E.
Chairman & Clerk, S.A.B.



John P. Roebuck
Member

March 16, 1998

DATE

STATE ARBITRATION BOARD
STATE OF FLORIDA

S.A.B. CLERK

MAR 16 1998

FILED

ANDERSON COLUMBIA CO., INC.)

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DEPARTMENT OF TRANSPORTATION)

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PROJECT NO. 48130-3512

LOCATION: Escambia County,
Florida

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Thursday, January 22, 1998

PLACE: Florida Transportation Center
1007 Desoto Park Drive
Tallahassee, Florida

TIME: Commenced at 10:10 a.m.
Concluded at 11:05 a.m.

REPORTED BY: CATHERINE WILKINSON
CSR, CP
Notary Public in and for
the State of Florida at
Large

WILKINSON & ASSOCIATES
Certified Court Reporters
Post Office Box 13461
Tallahassee, Florida
(850) 224-0127

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman
 Mr. Jack Roebuck
 Mr. Bill Deyo

APPEARING ON BEHALF OF ANDERSON COLUMBIA CO., INC.:

Mr. Brian Yerby
 Mr. Ken Sweet

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Steve Benak
 Mr. James Weeks

* * *

I N D E X

EXHIBITS	PAGE
Exhibit Nos. 1 through 4 in evidence	4
CERTIFICATE OF REPORTER	38

P R O C E E D I N G S

1
2 CHAIRMAN COWGER: This is a hearing of the State
3 Arbitration Board established in accordance with
4 Section 337.185 of the Florida Statutes.

5 Mr. Bill Deyo was appointed a member of the Board
6 by the Secretary of the Department of Transportation.

7 Mr. John Roebuck was elected by the construction
8 companies under contract to the Department of
9 Transportation.

10 These two members chose me, H. Eugene Cowger, to
11 serve as the third member of the Board and as the
12 Chairman.

13 Our terms began July 1, 1997 and expire June 30,
14 1999.

15 Will all persons who will make oral presentations
16 during this hearing please raise your right hand to be
17 sworn in.

18 (Whereupon, all witnesses were duly sworn.)

19 CHAIRMAN COWGER: The documents which put this
20 arbitration hearing into being are hereby introduced as
21 Exhibit No. 1. This is the contractor's request for
22 arbitration and everything that was attached to it.

23 Exhibit No. 2 will be a rebuttal document, a
24 one-page rebuttal document that was submitted by DOT.
25 The contractor was faxed a copy of that document

1 yesterday. Did you receive it?

2 MR. SWEET: We did.

3 CHAIRMAN COWGER: All right. You have had a
4 chance to review it.

5 Exhibit 3 is a package of information with a
6 letter on top dated February 19, 1997. It's a letter
7 from Killam to the DOT. And there are several
8 attachments to it.

9 Exhibit 4 is a package of various specifications,
10 copies of various specifications from the special
11 provisions and from the standard specification book,
12 which was submitted this morning by DOT. It is
13 identified as Exhibit 4.

14 I believe that takes care of all identification
15 of all of the exhibits, and they can be discussed as we
16 move on.

17 (Whereupon, Exhibit Nos. 1, 2, 3 and 4 were received in
18 evidence.)

19 CHAIRMAN COWGER: During this hearing the parties
20 may offer such evidence and testimony as is pertinent
21 and material to the controversy, and shall produce such
22 additional evidence as the Board may deem necessary to
23 an understanding and determination of the matter before
24 it.

25 The Board shall be the sole judge of the

1 relevance and materiality of the evidence offered.

2 The parties are requested to assure that they
3 receive properly identified copies of each exhibit
4 submitted during the course of this hearing -- that
5 would be Exhibits 1 through 4 -- and to retain these
6 exhibits.

7 The Board will furnish the parties a copy of the
8 court reporter's transcript of this hearing along with
9 its final order, but will not furnish copies of the
10 exhibits.

11 This hearing will be conducted in an informal
12 manner. First, the contractor's representatives will
13 elaborate on their claim and then the Department of
14 Transportation will offer rebuttal.

15 Either party may interrupt to bring out a
16 pertinent point by coming through the Chairman.
17 However, for the sake of order, I instruct that only
18 one person speak at a time.

19 We are ready to proceed. Mr. Contractor, this is
20 new to you, so if you need any guidance, just let us
21 know. Mainly we just want to hear what your side of it
22 is.

23 MR. YERBY: All right. Basically I will give a
24 brief overview of the job. Approximately 2.5 miles,
25 State Road 97. It's 105 days.

1 The cure period started on January 31. We were
2 done with items of work on March 5. Conditional
3 acceptance was on March 13.

4 On Exhibit 3, Exhibit 3 on the third paragraph,
5 which is highlighted there, the work that we did after
6 March 5 is talked about on that third paragraph.

7 It says, "Findings conclude that no original
8 design provisions were made to address existing
9 off-site drainage channel discharging to the FDOT
10 right-of-way, creating adverse erosion of the front
11 slope in areas specified. Project records indicate
12 that these areas were constructed and stabilized over
13 three months prior to the erosion impacts presently
14 noted."

15 So, anyway, that's the work in question there
16 that shows here that it was -- now the design did not
17 make provisions for that work.

18 Also, on Exhibit 1, it's Exhibit 1 on the sixth
19 page is an engineer weekly summary. This is from
20 March 6, '97 to March 9.

21 CHAIRMAN COWGER: Excuse me, I think that came as
22 a separate package, did it not?

23 MR. YERBY: That's in the original --

24 MR. ROEBUCK: Claim?

25 MR. YERBY: -- in the original documents.

1 CHAIRMAN COWGER: Go ahead. I think we've got
2 it.

3 MR. YERBY: The sixth page of the original
4 request for arbitration of the claim. It should be --
5 starts on March 6 and has four days, March 6, 7, 8 and
6 9 on it.

7 CHAIRMAN COWGER: Okay.

8 MR. YERBY: On the bottom of that engineer weekly
9 summary it says, "Note, all worked performed after
10 Wednesday, March 5, '97, was performed to correct
11 erosion damage which occurred during the curing period.
12 This work was unforeseen at the time of suspension for
13 the asphalt curing period," which states it's
14 unforeseen.

15 Then on the next page, which is page seven -- did
16 you all find that?

17 CHAIRMAN COWGER: I'm having trouble.

18 MR. ROEBUCK: I am, too.

19 MR. BENAK: In the engineer's weekly summary.

20 MR. YERBY: The third from the last page.

21 CHAIRMAN COWGER: Okay.

22 MR. YERBY: You all had the whole report. I just
23 had the front cover here.

24 CHAIRMAN COWGER: What you just quoted was from
25 the engineer's weekly summary?

1 MR. YERBY: That's correct.

2 MR. ROEBUCK: Yes, right here, March 6.

3 MR. YERBY: It's on the bottom note down there.

4 MR. ROEBUCK: About halfway in your package,

5 Gene.

6 CHAIRMAN COWGER: It's the last note in there.

7 It's the weekly summary. It starts March 6 and goes

8 through March 9.

9 MR. YERBY: That's correct.

10 CHAIRMAN COWGER: The note at the bottom is what

11 you are referring to, all work performed after

12 Wednesday, et cetera. Okay. Now we are with you.

13 Excuse the interruption.

14 MR. YERBY: Then the next weekly summary, which

15 will be from March 10 to March 13, on March 12, the

16 second sentence there, "This work was unforeseen."

17 I will start reading the whole thing. "Anderson

18 Columbia performed erosion repair and slope

19 dressing/stabilization. This work was unforeseen and

20 was required in order to repair damage which occurred

21 during the curing period."

22 CHAIRMAN COWGER: It says essentially the same

23 wording you read us already.

24 MR. YERBY: That's correct. That was all after

25 March 5.

1 MR. SWEET: On those particular items that we
2 just talked about, along through the working of the
3 punch list and along with the consultants for FDOT,
4 there was numerous water problems we had on that job
5 from start to finish. We finished the job on March 5.
6 It was the 13th I think before we sold it.

7 During that time we had numerous washouts not
8 only in the area that's stated in there where
9 maintenance put the rubble, but it was throughout the
10 whole project.

11 Some of the areas in question that we did, and we
12 questioned the CEIs on and FDOT, is why we had to keep
13 going back in those areas when there was no drainage
14 set up for it in the beginning.

15 The typical section shows the section but it does
16 not adhere to the problems in the locations that we had
17 problems with in the grading procedures and whatnot.

18 I have some pictures here that you all are
19 welcome to look at.

20 During the course of building that job, we was
21 taking water continuously. The cross sections show the
22 front slope, the ditch to be moved out, no back slopes.
23 We was taking water continuously off 600-acre cotton
24 fields.

25 In one instance there was a pipe located on one

1 cotton field that was not in the plans. The engineers
2 didn't pick it up. The designers didn't pick it up.
3 We had to remove it, build a part of the back slope and
4 change the direction of the flow of water to keep it
5 off of us before we could ever create a positive
6 drainage in that area.

7 I have these pictures here if you all want to
8 pass them around and look at them. We had no way
9 whatsoever in areas that were to keep the water off it.

10 MR. DEYO: Is that documented in your submittal
11 package?

12 MR. SWEET: As far as the water problems in the
13 pictures, no, sir.

14 MR. DEYO: There is one letter of March 21 that
15 says didn't take into consideration the full amount of
16 water running through the project, but it doesn't say
17 anything about off site.

18 MR. SWEET: I know we talked about it with the
19 CEI and the Department personnel as to the problems we
20 had actually standing on the project itself. It was a
21 fight to the finish to keep this thing ongoing and to
22 finish it in a timely manner.

23 During those days that we are asking for, we feel
24 like we went up there and done work over and beyond the
25 call of duty, so to speak, to get that job in an

1 acceptable manner, in the Department's eyes to where
2 they would take it, over and beyond the contract.

3 CHAIRMAN COWGER: Might I ask you a couple of
4 questions of Mr. Sweet -- have you finished your
5 statement for the moment?

6 MR. SWEET: Yes, sir.

7 CHAIRMAN COWGER: You can always come back. Let
8 me ask you a couple of questions about these photos if
9 I could. As I understand it, this was a mill resurface
10 job, adding paved shoulders?

11 MR. SWEET: Correct.

12 CHAIRMAN COWGER: Regrading the shoulders and the
13 front slopes basically?

14 MR. SWEET: Regrading the front slopes, right.

15 CHAIRMAN COWGER: As I understand it, there was a
16 couple of areas -- from reading the DOT rebuttal, there
17 was a couple of instances where you had to go and work
18 on the back slopes to get the ditch in the right
19 configuration.

20 MR. SWEET: That's right.

21 CHAIRMAN COWGER: Have you seen those pictures?
22 How about you all -- I have handed the pictures to DOT
23 to have them take a look at them. I showed them the
24 two -- there's another one, same situation I think
25 (indicating on photographs).

1 MR. WEEKS: Where were these taken?

2 MR. SWEET: We did it on the west side just south
3 of the Conoco. That's where we found the pipe that was
4 not originally picked up in the design.

5 CHAIRMAN COWGER: Is that kind of typical of the
6 configuration of the job, Steve or Jim?

7 MR. WEEKS: Probably -- and you correct me if you
8 think it's different, but I would say 80 to 85 percent
9 is very level like this. This was probably the most
10 level spot.

11 But then there were also a couple of areas that
12 we had some very steep grades where we -- and that was
13 the erosion that they were talking about where
14 maintenance ended up putting in rubble. We will talk
15 about that some more.

16 But there were probably 10 to 15 percent of the
17 job that was very steep. It's kind of characteristic
18 of that part of north Florida, south Alabama.

19 MR. DEYO: These pictures are not in the 1091 to
20 1102 station area? That's where the riprap and stuff
21 went?

22 MR. SWEET: No, it's south of that.

23 MR. WEEKS: South of that.

24 CHAIRMAN COWGER: 1091 to what --

25 MR. DEYO: 1102.

1 CHAIRMAN COWGER: Okay. Here is the other
2 picture, too. I just wanted you to look at it.

3 Let me ask a couple of questions, now that we
4 have gotten through that. The only work remaining to
5 be done on March 5 was the punch list work, which
6 included the regrading that's in question here today.

7 Then there were a couple of things like your
8 traffic signal burn-in period and your adhesion period
9 for your pavement markers that went beyond that. That
10 should not be an issue here today, should it?

11 MR. WEEKS: If I could, there was a punch list
12 done before the cure period. That's one of the things
13 Ken has talked to several times, we asked him to do
14 things that weren't on the punch list.

15 The punch list as I understand is like a courtesy
16 that you do for the contractor to get him ready for the
17 cure period because you don't want him to do a lot of
18 work after he puts the friction course to get tracking
19 of mud and stuff like that on it.

20 There was a punch list done dated January 30.
21 Then there was another letter later like the first week
22 in March where there were some other things that had to
23 be taken care of because of rain that occurred during
24 that cure period.

25 As I recall, there were two pretty good rains

1 during that period that caused some erosion, and we
2 didn't feel we could finally accept it until those
3 areas had been fixed.

4 Do you want me to continue on?

5 CHAIRMAN COWGER: No, let's let you come back
6 with some more. But still those times that were after
7 March 5 for the traffic signal burn-in period and the
8 pavement marker adhesion period don't relate at all to
9 the issue in question here because you gave conditional
10 acceptance on the 13th, right?

11 MR. BENAK: Yes.

12 MR. WEEKS: Yes.

13 CHAIRMAN COWGER: Tell me about the curing
14 period. Was that the curing period for the friction
15 course before you could put the pavement markers down?
16 Is that correct?

17 MR. WEEKS: Yes, sir.

18 CHAIRMAN COWGER: That was 30 days?

19 MR. WEEKS: Yes, sir.

20 CHAIRMAN COWGER: When did that start? Do you
21 have any feel for that, when the curing period started?

22 MR. YERBY: January 31.

23 MR. WEEKS: They said January 31. I thought it
24 was more like February 1, but it's right in there.

25 CHAIRMAN COWGER: That gets us up to somewhere

1 around the first of March.

2 MR. WEEKS: Except that February is a short
3 month.

4 CHAIRMAN COWGER: Well, the 3rd, 4th, something
5 like that.

6 Now, you mentioned a punch list that was issued
7 around January 30. We don't see that in any of the
8 records I don't think, but let me go on.

9 That punch list would obviously deal with things
10 that needed to be corrected on January 30. Now as
11 I understand, at least some of this erosion that we are
12 dealing with here in this hearing occurred during the
13 curing period.

14 MR. WEEKS: Correct.

15 CHAIRMAN COWGER: Just trying to get everything
16 set up in the proper framework. Now on that January 30
17 punch list was there erosion that needed to be fixed at
18 that time, too?

19 MR. WEEKS: Yes.

20 CHAIRMAN COWGER: Was it fixed before March 5 or
21 was it rolled into this stuff due March 5?

22 MR. WEEKS: Right. It was fixed before March 5.

23 CHAIRMAN COWGER: The stuff identified on March 5
24 as far as erosion occurred during the curing period?
25 We agree to that?

1 MR. WEEKS: Right. But if I could, Mr. Cowger,
2 the erosion, the severe erosion they are talking about,
3 you all actually came in and did some work on that
4 during the cure period, didn't you?

5 MR. SWEET: Yes, we did.

6 MR. WEEKS: It was actually eroding almost up to
7 the paved shoulder. And I will show you some
8 photographs on that in a minute.

9 CHAIRMAN COWGER: Okay. That was fixed during
10 the curing period?

11 MR. WEEKS: I think they did some work during the
12 cure period, just emergency work.

13 CHAIRMAN COWGER: None of that is in dispute.
14 The disputed work is that done after March 5, correct?

15 MR. SWEET: Yes.

16 CHAIRMAN COWGER: This was work done basically to
17 correct -- and correct me if I am wrong -- to correct
18 erosion problems that occurred during the curing
19 period?

20 MR. WEEKS: I think their figures represent
21 earthwork done during that curing period to fix the
22 erosion that -- emergency fix. The dailies that they
23 show are only on that period, but I think some of that
24 work occurred before that.

25 CHAIRMAN COWGER: Can you bring that back up

1 later?

2 MR. WEEKS: Sure.

3 CHAIRMAN COWGER: Before we leave the contractor,
4 and we will then let the DOT rebut, I had another
5 question.

6 Can you tell us -- you have made the statement
7 that these problems with erosion that occurred during
8 the curing period were due to defects in the
9 Department's design of the project, drainage design may
10 have been the words you used. Can you tell us a little
11 bit about what that means? How was the design
12 defective?

13 MR. SWEET: Basically in these areas that we had
14 the problem with, there was no back slope to channel
15 the water.

16 When the water came off the widening project
17 across the dirt shoulders, it went straight down the
18 front slope and just bled out and cut its own channels.

19 There was no back slope in these areas to create
20 a channel. The water picked its own channel and just
21 continuously kept the bottom, the toe of the front
22 slopes and also the front slope itself eroded out.

23 There was nothing to break the speed of the water
24 or channel it, like I mentioned, to get it on in a
25 ditch line because there was no ditch line provided.

1 It just come straight off the cross slope,
2 shedded out, straight across to people's property,
3 coming off of people's property on the DOT
4 right-of-way, which was our project at the time.

5 We had no way to control it except to just keep a
6 continuous go-back.

7 CHAIRMAN COWGER: I guess that -- let me ask my
8 next question and then I will let you kind of wrap it
9 all up.

10 The extent of the -- the type of erosion that
11 occurred, was it in the front slopes or was it -- was
12 it in the shoulders and the front slopes or was it
13 primarily along the toe of the slope where you were
14 just describing it that it sort of cut itself a ditch?

15 MR. SWEET: It was primarily down in the bottom
16 because when the water came off the front slope, it had
17 nowhere to go to channel itself. There was no channel
18 mechanism set up for it. There was no ditch paving, no
19 ditches and no back slopes to help keep it on DOT
20 property.

21 It just kept washing straight on, taking our
22 topsoil, our grass and everything with it right on out
23 on people's property.

24 During this time I made several statements to
25 Carlan and Killam -- and I'm sure Mr. Weeks can verify

1 it -- that we had talked about several times about
2 maybe the Department or the designers taking a look at
3 that job and coming up with some idea of ditch pavement
4 or things of that nature to channel the water to keep
5 it from cutting so many troughs and channels of its
6 own, put it in a place where it could travel, take it
7 on down to the necessary drainage, to cross pipes or
8 whatever, take it to where it is supposed to go instead
9 of just eating out everything every time it rained.

10 CHAIRMAN COWGER: I'm still not sure where the
11 erosion occurred. Let's take the water coming off the
12 road. It came across the shoulder, down the front
13 slope.

14 MR. SWEET: Correct.

15 CHAIRMAN COWGER: Erosion occurred from the toe
16 outward?

17 MR. SWEET: Most of our work now -- like the
18 Department said, we had some trouble with the washing
19 in the front slopes, but most of our repair work,
20 except the areas where the rubble went that maintenance
21 put in, was in the bottom of the drainage sections
22 versus the cross front slopes, with the exception of
23 where these pictures were took. It blew out
24 everything there.

25 CHAIRMAN COWGER: I think I have asked all the

1 questions I am entitled to ask. Do either one of the
2 Board members have any others?

3 MR. DEYO: No.

4 CHAIRMAN COWGER: Do you have anything else
5 before the DOT comes back? We will let them talk a
6 while.

7 MR. YERBY: Well, if it helps verify it, there
8 is, on that Exhibit No. 3, it kind of shows what the
9 designer came up with to fix that ditch problem.

10 CHAIRMAN COWGER: This was in the area, though,
11 that riprap was installed?

12 MR. YERBY: That's correct. That's one area that
13 it washed up close, you know -- pretty close to the
14 roadway.

15 CHAIRMAN COWGER: Okay. Is that it?

16 MR. YERBY: Yes.

17 CHAIRMAN COWGER: DOT, before you start, while we
18 are still looking at this Exhibit No. 3, I think he is
19 referring to, say, page five of those ditch plan and
20 typicals, looks like this (indicating)?

21 MR. WEEKS: All right.

22 CHAIRMAN COWGER: What was this riprap intended
23 to do? Obviously stop erosion, but where was the water
24 coming from? This was in that rolling area you were
25 talking about?

1 MR. WEEKS: Yes. I don't know how much you want
2 me to get into it, Gene. I have some photographs if
3 you would like to see what it looked like.

4 CHAIRMAN COWGER: Basically what I was trying to
5 find out is was this water -- to try to control water
6 that was coming from off site?

7 MR. WEEKS: Yes, sir.

8 CHAIRMAN COWGER: That's all I wanted to know.

9 MR. WEEKS: It was a drainage ditch coming off
10 some of those existing fields.

11 CHAIRMAN COWGER: Existing ditch in one case.

12 MR. WEEKS: It's all existing ditch. They had to
13 disturb it in order to move the front slope out in
14 order to get the shoulder widened.

15 CHAIRMAN COWGER: Okay.

16 MR. WEEKS: I will show you some photographs.

17 CHAIRMAN COWGER: Let's let DOT then come back
18 and rebut.

19 MR. BENAK: Are you ready?

20 CHAIRMAN COWGER: I'm ready.

21 MR. BENAK: I'm Steve Benak, district
22 construction engineer in District 3. You know, weather
23 caused this issue and the rework. You know, the
24 contractor has even said that there were numerous
25 washouts throughout the project. The issue here is

1 from when conditional acceptance should have been
2 entered into.

3 As Jim has said before, he went in prior to the
4 curing period, fixed the washouts throughout the job,
5 laid the friction course and then started with the cure
6 period after that time.

7 The cure period was up on March 5. Jim and the
8 project engineer went out and there were more washouts
9 on the job, small washouts throughout the job.

10 I think it was -- you talk about -- he said there
11 were design errors in the plans, but this being a rural
12 area, any job is not going to be a closed basin where
13 the only water that drops on that job is the only water
14 that comes there. There's going to be water coming
15 from other places and leaving our job.

16 So, it's not a closed basin. That's inherent of
17 every rural job we have. If we have a curb and gutter
18 job, we would control the water a lot better. We would
19 have a drainage system set up. But that's the way this
20 job was originally bid.

21 Now what does the contract say about weather on
22 earthwork and grassing? We gave the exhibit -- I don't
23 know what it's numbered --

24 CHAIRMAN COWGER: Number 4, this one?

25 MR. BENAK: Yes. You start in, there is a 570-5

1 spec that deals with grassing. In that spec you can
2 read it, it puts the emphasis on the contractor to fix
3 the grassing when it's washed out. That's the top
4 part. That's the grassing.

5 Now you've got another spec, 120-10 that deals
6 with embankment. That's the dirt up underneath that.
7 It tells the contractor that if we had weather issues
8 that, you know, you are going to fix it at your cost.

9 Also in all contracts there is a special
10 provision for that. Therefore, it's there for you to
11 read, also, which indicates that no additional
12 compensation will be made to the contractor for delays
13 caused by the effects of inclement weather.

14 These were minor fixes that had to be done up and
15 down the job. The place that they are referring to was
16 one we were exploring with them to try to fix. The
17 negotiations were unsuccessful, but that did not delay
18 the conditional acceptance of the job.

19 That part of the job, we wouldn't hold that
20 against the contractor for not grading it and getting
21 it done in time.

22 CHAIRMAN COWGER: These areas you are talking
23 about are the areas where you ultimately put the
24 riprap?

25 MR. BENAK: The maintenance put the riprap in

1 itself. The negotiations were unsuccessful with the
2 contractor, so we decided to put it in ourselves. That
3 did not affect this March 5 date. That -- at March 5
4 we weren't looking at this to say you do this or we are
5 going to hold the job.

6 What he was looking at, Jim and the other project
7 engineer were looking at washouts throughout the job.
8 We need that fixed so they can sell us the job and then
9 we can conditionally accept the project.

10 So, the contractor is requesting an eight-day
11 delay. You don't really come back out and say that,
12 you have to go back and look at the claim.

13 I think there's home office overhead requested,
14 job overhead requested and items such as that that are
15 inherent to delay claims, which special provisions
16 exclude.

17 CHAIRMAN COWGER: May I interrupt you a minute.
18 If we look at the Exhibit 1, the original request for
19 arbitration, about the third sheet in there is the
20 sheet that's got the dollar amounts detailed.

21 When you talk about home office overhead, and job
22 site overhead costs and maintenance of traffic costs,
23 those are the ones down there under maintenance of
24 traffic and overhead? That's the area you are
25 referring to?

1 MR. BENAK: Yes, sir.

2 CHAIRMAN COWGER: Just so we understand.

3 Proceed.

4 MR. BENAK: The Department's position is that the
5 contractor is owed no additional compensation for this
6 work. It's a contractual obligation that he has and
7 that all contractors do prior to selling a job or
8 getting a job conditionally accepted.

9 They put it in the fashion that is acceptable to
10 the project engineer. It's conditionally accepted at
11 that point. If it rains after that day then we have
12 maintenance come in there and fix it.

13 This issue also has statewide implications in
14 that once the weather days are compensable -- I don't
15 know just exactly where to stop because if it rains
16 I start paying or the Department starts paying. I say
17 me, but the Department.

18 So, it does have implications that once the rain
19 days are considered compensable it will go on and on.

20 CHAIRMAN COWGER: I think that's the reason you
21 highlighted in Exhibit 4, you highlighted in Exhibit 4
22 the special provision number 14?

23 MR. BENAK: Yes, sir. I wanted to also address
24 the -- I think they brought up consideration about
25 being unforeseen on the daily diaries. Weather is

1 unforeseen. They can't predict when the weather is
2 going to hit, we can't predict when the weather is
3 going to hit.

4 So, that's why we have our existing specs
5 involved where we give day for day for weather and the
6 contractor will recover from that.

7 Also, the reason they put that note in there is
8 because if final estimates gets ahold of work being
9 done after the cure period except for thermoplastic,
10 they will go back and charge them the 30 days of cure
11 period because there was work done.

12 So, we have been telling our people that we need
13 some terminology in the daily diaries so that the final
14 estimates guys will not charge the contractor 30 days
15 for that period.

16 So, they could have used some better language,
17 could have said rework or something like that. It was
18 rework due to unforeseen weather conditions.

19 CHAIRMAN COWGER: You are commenting on the
20 contractor's emphasis on some notes or -- some notes in
21 some of the letters in the diaries that dealt with work
22 that was unforeseen, and that was the reason it was
23 there?

24 MR. BENAK: Yes, sir. Believe it or not, I'm
25 done.

1 CHAIRMAN COWGER: Your feeling is that no time
2 should have been charged during the curing period for
3 any restorative work that was being done?

4 MR. BENAK: Correct. If the final estimates, if
5 they go in there and they see men and equipment being
6 worked on during the cure period, they will
7 automatically start that time back up.

8 So, we need some terminology in those daily
9 diaries so that when they read it they understand that
10 it was rework being done and not bid item work that's
11 being done.

12 MR. WEEKS: Could we go off the record a minute.

13 CHAIRMAN COWGER: Yes.

14 (Discussion off the record)

15 MR. BENAK: I will turn it over to Mr. Weeks and
16 let him give a brief presentation. Hopefully it won't
17 be too long.

18 MR. WEEKS: Can I come around and show you all my
19 photographs so I can show you some things?

20 CHAIRMAN COWGER: Why don't you put them in front
21 of Mr. Roebuck and that way the contractor can come and
22 look at them at the same time if he wishes.

23 MR. WEEKS: Okay. What I wanted to point out is
24 the water that Mr. Sweet is talking about, the picture
25 that he is showing is this field right back here. We

1 had a cross drain we replaced back there. I don't have
2 a real good picture of that.

3 This is the Conoco station. Now it's an Amoco
4 station. We had a ditch bottom inlet we placed there
5 tying those two side drains together.

6 I won't get into that too much right now, but
7 I will mention right here about the ditch bottom inlet
8 and how it was modified and the contractor was paid
9 extra to do that.

10 MR. ROEBUCK: This had nothing to do with that
11 terrible place where the cross ditch was?

12 MR. WEEKS: The photograph he showed you was
13 right here, but the terrible place was --

14 MR. ROEBUCK: The place you put the riprap.

15 MR. WEEKS: That's right here. There were
16 several cross drains like this. This isn't the
17 particular -- this is not this one. There is a house
18 on this site. This is on either the other side or the
19 next one down.

20 This is that eroded area. This is what I was
21 saying about how it got eroded, so far that it got
22 backed right up to the edge of the pavement. That's
23 why we felt we had to do something of an emergency
24 nature.

25 So, they did come out and regrade this. They

1 also regraded this ditch right here because it was
2 impounding water. And the specs do say we shouldn't
3 accept anything that's -- even though we don't catch it
4 at the time, that we should have it fixed. That also
5 occurred during the cure period.

6 So, some of that work that was done was to fix
7 that ditch right there.

8 CHAIRMAN COWGER: That work was done after
9 March 5 or before?

10 MR. SWEET: Was done after March 5.

11 MR. WEEKS: I think it was after March 5.

12 CHAIRMAN COWGER: Good enough.

13 MR. WEEKS: So, part of the equipment cost that
14 they show there was due to that. Then the second --

15 MR. ROEBUCK: Is this some of the riprap you put
16 in?

17 MR. WEEKS: Yes, that's what maintenance did
18 during or about the same time as they were doing that
19 work.

20 The third situation, and this was Ken's reference
21 to being held hostage in the letters there, the day
22 that we wrote it, I think it was on March 11. It could
23 have been on March 5.

24 There were a lot of areas like this. This is
25 what the job looked like before we did it, after. And

1 these are the kind of things that we had them fix.

2 CHAIRMAN COWGER: This was prior to construction?

3 MR. WEEKS: Yes, sir.

4 CHAIRMAN COWGER: This is typical of what you had
5 fixed?

6 MR. WEEKS: Right. That's what I really thought
7 we were coming over here to talk about. I didn't know
8 we were coming over here to talk about the ditch in
9 Exhibit 1. It wasn't clear to me. I thought we were
10 talking about this situation.

11 MR. ROEBUCK: Most of the time in your claim,
12 three or four days of equipment and labor out there was
13 on that one that maintenance had to put the rubble in?

14 MR. SWEET: That's where the bulk of the dirt
15 went, yes.

16 CHAIRMAN COWGER: Do you want us to keep those
17 long enough for us to look at them some more or do we
18 need them? All right. Good enough.

19 MR. WEEKS: Now, if I could just speak to a
20 couple of things Ken said. I will try to be brief. He
21 talked about numerous water problems. Typical section
22 does not show the problems. Quote, 60 acres of cotton
23 fields draining into the area.

24 MR. SWEET: 600.

25 MR. WEEKS: 600, I'm sorry. And a pipe off the

1 cotton fields. These are 3-R plans. I brought the
2 plans, if you haven't had a chance to look at them.
3 You will see we have the 3-R lump sum, regular
4 excavation for 3-R projects only, like you have lump
5 sum.

6 We have a typically section that shows both
7 situations, the water where you have a back slope and
8 where you don't, like what Ken was talking about, where
9 the field just comes up flat to it.

10 Then we have some cross section. Now this was
11 something we talked about all the way to the
12 preconstruction conference about how being 3-R plans we
13 don't have a lot of cross sections. I don't think we
14 have cross sections in the area where Ken was talking
15 about, where that big, big cotton field was.

16 We do have cross sections that show several of
17 these typical situations where you are building a front
18 slope, where you are having to move the back slope
19 back. That was something I wanted to correct that Ken
20 said, regrading the front slopes. You can see that we
21 do have some cross sections showing regrading the back
22 slopes as well.

23 CHAIRMAN COWGER: Was this in the rolling terrain
24 area or the flat terrain area?

25 MR. WEEKS: I can't answer that.

1 MR. SWEET: Flat terrain.

2 MR. WEEKS: We had talking about being a 3-R
3 project how a lot of work was done with assumed data.

4 I was going to mention to you, that ditch bottom
5 inlet, we actually paid them \$1100 or \$1200 extra to
6 notch both sides of it. The ditch bottom inlet was too
7 high. It was about the same elevation as the edge of
8 the road, so the water couldn't get into it.

9 MR. SWEET: Well, we also modified that inlet to
10 drain that Conoco station.

11 MR. WEEKS: That's correct. The Conoco station
12 couldn't drain either. They have slots in their curb
13 there. So, we had to put a notch on either side of it,
14 as Ken says.

15 Also, I wanted to point out that this water that
16 Ken is talking about, it was a large volume of water,
17 but it was water that had always flowed across this.

18 There were cross drains in there. We did replace
19 a cross drain that had a kink in it and was just --
20 well, you can probably tell them better than I could
21 how much was wrong with it.

22 We replaced one cross drain just south of where
23 Ken took these pictures.

24 So, there's always water that had gone in there.
25 We didn't add any additional water because of our work

1 except for maybe where we did the paving of the
2 shoulders.

3 MR. DEYO: That's not part of the claim page?

4 MR. ROEBUCK: That's not involved in this?

5 MR. DEYO: That's just typical of the drainage in
6 the area?

7 MR. WEEKS: Right, but what I am talking about,
8 there is no additional water as Ken is saying.

9 MR. SWEET: The additional water came when the
10 designers changed the front slope and changed the ditch
11 line. That put more water in the ditch and it couldn't
12 carry the water. That was the problem to start with.

13 MR. ROEBUCK: The existing wasn't washing out?

14 MR. SWEET: No. The landowners will tell you
15 that. When they changed the front slope and the
16 details of the design of the bottom of the ditch, that
17 put more volume of water on that road and we couldn't
18 contain it.

19 MR. WEEKS: That's why I wanted to point out --

20 CHAIRMAN COWGER: Just one second, Jim. You talk
21 about change. You are talking about change from the
22 original terrain to what is shown in the plans, not a
23 change that was made after you bid the job, is that
24 correct?

25 MR. SWEET: That's correct.

1 CHAIRMAN COWGER: Excuse me.

2 MR. WEEKS: This, to point out the different
3 situations here, this is where he took these pictures
4 (indicating photographs). That was flat. We never had
5 erosion problems there. They had to regrade the ditch
6 because it didn't drain.

7 The change was that the ditches used to look
8 like that (indicating on photograph). So, in order to
9 move -- to pave the shoulder and move the front slope
10 out, they had to clear all this. So, when it was
11 cleared then it did this. Different situations,
12 though, from this.

13 Now as far as coming to an agreement on having
14 Anderson Columbia do the rubble riprap, we started --
15 well, the date on this letter is February 19th. We had
16 probably been negotiating for probably close to a month
17 on the price. Do you all remember?

18 MR. SWEET: I don't remember the date on it.

19 MR. WEEKS: I'm not sure it's important, the
20 exact date, but there were a lot of negotiations
21 probably a month or so over the price of the rubble
22 riprap.

23 Here again, that may not be that pertinent to
24 what we are talking about here, but their price was
25 \$175 a ton, which is almost, I think we calculated that

1 was 2.78 times the statewide average.

2 Subsequent to this work they've gotten a metric
3 job immediately adjacent to this on 97 and their bid
4 price there was \$54 a ton and \$60 a metric ton, which
5 is slightly larger.

6 So, I think that holds up that we should not have
7 accepted the price that -- I don't differ with Ken in
8 that they did the grading work and maintenance, may
9 have had to do some regrading on it, but that's why we
10 ended up going with maintenance on riprap.

11 CHAIRMAN COWGER: When did maintenance do the
12 riprap work?

13 MR. WEEKS: It was during this same time. You
14 can see in the daily diaries the pages that they
15 concluded that maintenance was out there doing it.
16 I think there is a reference on one page that says
17 maintenance is continuing to do erosion protection or
18 rubble riprap.

19 CHAIRMAN COWGER: That was during the cure period
20 and whatever it was, ten days or eight days or whatever
21 it was following March 5?

22 MR. WEEKS: Right. I didn't mean to make it more
23 complicated, but I felt it was important that you all
24 see the different situations that we had.

25 And also that basically it was a situation where

1 I felt that the specs were clear that we didn't accept
2 the job until it was correct and that any damage that
3 was done -- and that's what our exhibit shows -- should
4 be fixed prior to giving a letter of conditional
5 acceptance.

6 CHAIRMAN COWGER: Are you through?

7 MR. WEEKS: Yes, sir.

8 CHAIRMAN COWGER: Couple of quick questions.

9 Contractor, on your Exhibit 1 where you've got these
10 dollars -- your summary of your cost of \$16,000, when
11 we get down under maintenance of traffic and overhead,
12 what is the eight days that you show there for job site
13 overhead and home office overhead? Is that the eight
14 days between March 5th and March 13th?

15 MR. YERBY: That's correct.

16 CHAIRMAN COWGER: Good enough. Just verifying.
17 What else? Anybody else got anything else to say?
18 Questions from the Board members?

19 MR. ROEBUCK: It's been questioned that some of
20 this work that you've got in your claim was done to
21 clean up punch list items that failed during the eight
22 days. I understand the bulk of it from you is on this
23 one area that they had the cross drain coming in
24 knocking out the shoulder and almost the pavement?

25 MR. YERBY: And you can also see that, yes, by 11

1 loads of fill. That's not to do minor stuff.

2 MR. SWEET: All right. And to help a little bit
3 with that, the machinery work and stuff, the motor
4 grader and stuff was continuing on this ditch that we
5 have been talking about on the south end of the job
6 that had to be regraded and reshaped, also.

7 CHAIRMAN COWGER: Mr. Roebuck, any further
8 questions?

9 MR. DEYO: No.

10 MR. ROEBUCK: No.

11 CHAIRMAN COWGER: Anybody else got anything to
12 say? If not, we will adjourn. This hearing is hereby
13 closed. The Board will meet to deliberate on this
14 claim on March 11 and you will have our final order
15 shortly thereafter.

16 (Whereupon, the hearing was concluded at 11:05 a.m.)

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CERTIFICATE OF REPORTER


STATE OF FLORIDA)

COUNTY OF LEON)

I, CATHERINE WILKINSON, Court Reporter, do hereby
certify that I was authorized to and did stenographically
report the foregoing proceedings; and that the transcript is
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I FURTHER CERTIFY that I am not a relative, employee,
attorney or counsel of any of the parties, nor am I a
relative or employee of any of the parties' attorney or
counsel in connection with the action, nor am I financially
interested in the action.

Dated this 29th day of January, 1998.



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