


STATE ARBITRATION BOARD

ORDER NO. 5-99

NOTICE

In the case of Anderson Columbia Co., Inc. versus the Florida Department of Transportation on Project No. 58005-3505 in Santa Rosa County, Florida, both parties are advised that State Arbitration Board Order No. 5-99 has been properly filed on October 4, 1999.


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

S.A.B. CLERK

OCT 4 1999

FILED

Copies of Order & Transcript to:

Greg Xanders, P.E., DOT State Construction Engineer
Joseph H. Anderson, III, President Anderson Columbia Co., Inc.

Copy of Order to:

Chris McCrae Esquire, Contractor's Attorney

STATE ARBITRATION BOARD

ORDER NO. 5-99

RE:

Request for Arbitration by
Anderson Columbia Co., Inc.
Job No. 58005-3505 in
Santa Rosa County

The following members of the State Arbitration Board participated in 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 10:15 a. m. on Tuesday, August 17, 1999.

The Board Members, having fully considered the evidence presented at the hearing, now enter their Order No. 5-99 in this cause.

ORDER

The Contractor presented a request for arbitration of a claim for additional compensation in the total amount of \$245,491.49 plus interest in the amount of \$60,868.44 due. This is the extra costs the Contractor claims they incurred because the original design was allegedly unworkable and could not be built without significant modifications and the Department of Transportation did not promptly effect such modifications.

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

Almost immediately after work on the project was begun we encountered standing water in the work areas. This was caused by water flowing onto the project from adjacent areas not draining from the project site. These wet conditions caused construction operations for certain work shown in the plans to affect the underlying soils resulting in saturated soil conditions which made the working platform for subgrade and shoulder base operations unstable. We could not continue working on these operations until this problem was solved.

We began work on the ditches shown in the plans, but stopped this work, because we couldn't get the water down. Even after all work on the drainage improvements shown in the plans was completed, the unstable wet subgrade problem continued.

Later County forces cleaned out ditches outside the project limits to the West. This provided a positive outfall for surface water, but did not solve the problem with excessive moisture in the underlying soils.

Once we realized the water problem we asked the Department to redesign the project to get the water off of us. Eventually the Department mitigated the wet subgrade problem by substituting additional thickness asphalt base course for stabilized subgrade under the pavement widening areas and eliminating the shoulder pavement. However, by the time the Department issued instructions for these design modifications we had encountered extended periods during which we could not work. Several times we had to leave equipment setting idle on the job.

The Department of Transportation granted additional contract days for all of the delays we encountered, but, as previously shown, they failed to act promptly to correct the design deficiencies. The 70 calendar day contract took an additional 185 days to complete, excluding Holidays and periods during which the Department of Transportation suspended of charging of contract time.

The Department takes the position that all of the soil moisture problems we encountered were due to excessive rain. We disagree. The real problem was a deficiency in the project design. The wet conditions were caused by water flowing to the project from adjacent property, not solely by rain.

The following evidence supports our position on this matter:

- a) In an internal E-Mail dated April 18, 1997, the Resident Engineer stated "The Contractor is unable to construct the shoulder as designed due to the presence of water standing in the ditches.

- b) The Departments Daily Reports indicated that the soil conditions were too wet to place the shoulders.
- c) The Department documentation for the Supplemental Agreement substituting asphalt base for stabilized subgrade recognized that extremely wet soil conditions in the areas where pavement widening and shoulder pavement work was to be done were caused mostly by excessive rains and poor drainage.

We are seeking compensation for the additional costs we incurred due to the deficient design of this project which the Department failed to correct in an timely manner. These costs include idled equipment, survey costs, clearing of drainage structures, extended maintenance of traffic, extended job site overhead, extended home office and unrecovered cost incurred during the 14 days period between 1/26/97 and 2/9/97 when the Department suspended charging of contract time while they were considering redesigning the project. We are also claiming interest on the amounts due us since completion of the project..

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

We view this claim as presenting two categories of alleged cost: (1) extra costs allegedly incurred for maintenance of traffic, job site overhead and extended home office overhead; and (2) extra costs allegedly incurred due to equipment being idled, mobilization of equipment, survey work and clearing of drainage structures.

The plan for this project included improvement of drainage. The phasing of work shown in the plans required grading of ditches to be done as one of the first items of work. The Contractor did grading work on days 41, 92, 93 and 160.

The work was delayed by inclement weather conditions and we granted an additional day of contract time for each day on which the Contractor was delayed by such conditions. Item No. 11 in the Special Provisions states "No Additional Compensation will be made to the

Contractor for delays caused by the effects of inclement weather.”

In their letter of August 24, 1997, requesting that the charging of contract time be suspended for two weeks as a “dry out period” and that the project conditions be reevaluated at the end of the two weeks, the Contractor agreed not to seek any compensation for this time. The Department did not promise to “redesign the project” as alleged by the Contractor.

We agreed to a suggestion from the Contractor to substitute an additional thickness of asphalt base for stabilizing of the soil under the pavement widening. This was in recognition of the effects of the inclement weather.

It is our position that there was not a problem with design of the project. The project was ultimately constructed to the lines and grades shown in the plans. The actual problem was as a result of inclement weather. The Contractor should have anticipated some drainage problems.

The Contingency Work Order covering increasing the thickness of the asphalt base course contains the following clause: “The Contractor accepts the terms of the Supplemental Agreement as related to cost determinations as full compensation for all cost of equipment, manpower, materials, overhead, profit and delay damages and for all their costs.

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

- a) A letter from the Department dated January 31, 1999 which suspended charging of contract time between January 27, 1997 and February 9, 1997 states the reason as “wet conditions resulting from drainage problems”. (Emphasis added)
- b) The Special Provision quoted by the Department, “No additional compensation will be made to the Contractor for delays caused by the effects of inclement weather” is an addition to Standard Specification Subarticle 8-7.3.2 (Contract Time Extensions) and deals only with delays caused by inclement weather.

- c). The Department did delete from the work the operations of stabilized subgrade and shoulder pavement, after it became obvious that the underlying soil could not support construction equipment due to excessive moisture in the underlying soil.
- d) The plans addressed phasing of the grading work on a plan sheet covering Maintenance of Traffic.
- e). During the hearing, the Board offered the Department the opportunity to address the matter of damages in a post-hearing letter. The Department maintained that no compensation is due.
- f) Lack of an adequate outfall for stormwater was a major contributing factor to the wet subsoil conditions.

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 the sum of \$ 85,000.00 for his claim. This amount includes interest due.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 281.50 for Court Reporting Costs.

Tallahassee, Florida

Dated: 10/4/99

Certified Copy:

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

10/4/99
 DATE

S.A.B. CLERK
 OCT 4 1999
 FILED

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

Bill Deyo
 Bill Deyo, P. E.
 Member

John P. Roebuck
 John P. Roebuck
 Member

5-99

STATE ARBITRATION BOARD
STATE OF FLORIDA

ANDERSON COLUMBIA CO., INC.)	
)	
)	
)	
- and -)	PROJECT NO. 58005-3505
)	LOCATION: Santa Rosa
)	County, Florida
)	
DEPARTMENT OF TRANSPORTATION)	

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Tuesday, August 17, 1999

PLACE: Cummings & Snyder
1004 Desoto Park Drive
Tallahassee, Florida

TIME: Commenced at 10:15 a.m.
Concluded at 11:40 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
(904) 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. Joseph H. Anderson, III
 Mr. Ken Sweet

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Dan Sweeny
 Mr. L. E. Benson

ALSO PRESENT:

Chet Conklin, Attorney for DOT
 Greg Jones, Attorney for DOT

* * *

I N D E X

EXHIBITS	PAGE
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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 a member of the Board by the
6 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 Chairman.

12 Our terms began July 1, 1999 and end June 30,
13 2001.

14 Will all persons who will make oral presentations
15 during the hearing please raise your right hand and be
16 sworn in.

17 (Whereupon, all witnesses were duly sworn by the
18 Chairman.)

19 CHAIRMAN COWGER: The documents which put this
20 arbitration hearing into being are hereby introduced as
21 Exhibit No. 1. That consists of the request for
22 arbitration that was submitted by the contractor and
23 all the attachments thereto.

24 We have Exhibit No. 2 which is the DOT's primary
25 rebuttal statement.

1 This morning we had some additional exhibits that
2 were presented by the parties, and we have a package of
3 information here titled chronology of project events
4 which was submitted by the contractor's attorney, which
5 consists of a notebook of various documentation that
6 occurred on the project.

7 And the best I can tell in glancing through this,
8 there's nothing in here that both parties shouldn't
9 have seen before because it's all correspondence back
10 and forth between the contractor and the DOT. There
11 may be a little bit of internal DOT correspondence in
12 here, too, which apparently came out of the lawsuit or
13 in discovery, I suppose. Anyway, we are going to
14 introduce that as Exhibit 3.

15 Would you all please mark your exhibits with the
16 numbers so you will know what we are talking about as
17 we go on through this.

18 In regard to this document or this Exhibit No. 3,
19 we will offer DOT the opportunity to express whether or
20 not they are willing to have this document submitted.

21 MR. BENSON: The Department, even if it's things
22 we have seen, we would like to object and provide a
23 written rebuttal to this at a later date.

24 CHAIRMAN COWGER: The Board takes note of that,
25 and we will offer you that opportunity. At the end of

1 the hearing it would be very helpful, after everything
2 is out on the table -- I will probably forget, so if
3 you all could remember to make a statement in closing,
4 whether or not you really want to do that. In other
5 words, it is kind of going to unfold as we go through
6 the hearing whether it's significant or not.

7 If you clearly want to have the opportunity to
8 rebut only anything that comes out of this Exhibit No.
9 3, we will offer that to you. I need to know so we can
10 proceed on. That will stretch things out a little bit
11 if we do that.

12 Okay. I have four exhibits here that were
13 presented by the DOT this morning. The one entitled
14 contract provisions we will identify as Exhibit 4,
15 settlement and release -- excuse me, let me back up.

16 Suspensions of contract time we will make
17 number 5, settlement and release we will make number 6,
18 and circuit court for Santa Rosa County we will make
19 number 7.

20 (Whereupon, Exhibit Nos. 1 through 7 were received in
21 evidence.)

22 CHAIRMAN COWGER: If you would, please,
23 contractor, as we go through the hearing, pay
24 particular attention to these and at the end of the
25 hearing, rather than making a decision on it right now,

1 at the end of the hearing if you all want the same
2 opportunity that DOT had on your exhibit, we will
3 certainly grant it to you.

4 You would have the opportunity to prepare a
5 rebuttal confined strictly to something that's in this
6 document, in these documents that you didn't have time
7 to respond to adequately today.

8 We will proceed on from there. During this
9 hearing the parties may offer such evidence and
10 testimony as is pertinent and material to the
11 controversy, and shall produce such additional evidence
12 as the Board may deem necessary to a determination of
13 the matter before it.

14 The Board shall be the sole judge of the
15 relevance and materiality of the evidence offered.

16 The parties are requested to assure that they
17 receive properly identified copies of each exhibit,
18 which we have just gone through, and please retain
19 these exhibits. The Board will not furnish you a copy
20 of the exhibits.

21 We will furnish you a copy of the court
22 reporter's transcript at the time we send you the final
23 order of the Board. We will not furnish you the
24 exhibits because you've already got them. So, please
25 retain them.

1 The hearing will be conducted in an informal
2 manner. First the contractor's representative will
3 elaborate on their claim, then the Department of
4 Transportation will offer rebuttal.

5 Either party may interrupt to bring out a
6 pertinent point by coming through the Chairman.
7 However, for the sake of order, I must instruct that
8 only one person speak at a time.

9 Okay. We are ready to start. Off the record a
10 minute.

11 (Discussion off the record)

12 (Whereupon, Mr. Conklin and Mr. Jones were excused from
13 the room.)

14 CHAIRMAN COWGER: What we agreed to is in regard
15 to Exhibits 3 through 7 the parties will have ten days
16 from today to submit any rebuttal they may deem
17 necessary.

18 Of course, when you submit that rebuttal, please
19 send a copy of it to the other party. DOT, send it to
20 the contractor, you all send it to whoever at DOT you
21 need to send it to because we will allow them some time
22 to make, as the attorney called it, a surrebuttal.

23 We don't want to get into a letter writing deal.

24 MR. ANDERSON: I'm going to have to have an
25 interpreter then.

1 CHAIRMAN COWGER: We had one at another hearing
2 where we had four pieces of correspondence going back
3 and forth. An attorney on each side wrote two
4 letters -- well, anyway, I will make a note of this so
5 I don't forget it.

6 We are ready for the contractor now, unless
7 either one of the Board members has any comments, to
8 begin their presentation.

9 MR. SWEET: My name is Ken Sweet. I was the area
10 manager on this project, Avalon Boulevard, 58005-3505.
11 I want to talk about the general building of it and the
12 time and money.

13 This thing started out at \$270,843. The
14 Department allotted 70 days contract time to ultimately
15 do the work. It took 284 days.

16 On October 31, '94, when this thing was being
17 looked at for bid, they came up with 59 days on the
18 initial contract. When it was let out for bid, in
19 April -- on April 3, '96, they allotted 70 calendar
20 days to do it. It actually took 284.

21 The job consisted of paving, roadway widening,
22 shoulder work, stabilization, drainage, ditch work,
23 painting. When we started this job, we started --

24 CHAIRMAN COWGER: May I interrupt you a second?

25 MR. SWEET: Yes, sir.

1 CHAIRMAN COWGER: What is the significance of
2 telling us about the 59 days versus 70?

3 MR. SWEET: I just thought I would say it because
4 it's in item number 3, Exhibit 3.

5 CHAIRMAN COWGER: Okay. I understand.

6 MR. SWEET: When we got to this job we started
7 erosion control and we started pipe work. After that,
8 we got a considerable amount of rain.

9 What hindered us on this project more than the
10 rain did, more than anything else, was we couldn't get
11 the water off of us. All the surrounding property on
12 this project drained straight to the DOT property
13 except on two side roads.

14 The plans called for ditch work inside the DOT
15 property from point A to point B and in between them
16 two intersections, which the plans do note. And the
17 ditch work stopped. We couldn't get the water on down
18 the road. We couldn't get it around the registers. We
19 tried that.

20 In one instance, Santa Rosa County came out and
21 actually graded and took the Grade-All and cleaned
22 their ditches out on the two roads that led west of the
23 property to try to help drain that water.

24 CHAIRMAN COWGER: This is beyond the limits of
25 the job?

1 MR. SWEET: Yes. Every time it rained, we just
2 could not get the water off of us. So, we asked, and
3 the Department granted the time to stop the time on
4 this job, suspend it and evaluate it.

5 During this time we had made numerous trips out
6 to see if we could help the situation, to get this
7 water off of us.

8 Every time we went out -- and after a significant
9 rain, we couldn't do anything with it. So, we talked
10 to the Department about suspending the time again, and
11 they did. They elected to do it.

12 During that time we asked if they couldn't help
13 or redesign something to make that job work to where we
14 could get the water off of us in the construction area.

15 And all we could ever get was rain delay days is
16 all we ever got for ages and ages, which their dailies
17 will correspond and show that. Their daily reports
18 even showed the soil conditions was even too wet to put
19 the shoulders on to start with.

20 MR. ANDERSON: Wasn't that one of the reasons we
21 asked for the suspension one time was to relook at the
22 plans and do something about the design?

23 MR. SWEET: Right. To try to reevaluate the
24 drainage problem.

25 MR. ANDERSON: Isn't there a letter in there?

1 MR. SWEET: Yes, there is a letter to that effect
2 in Exhibit 3. And during that suspension there was
3 nothing redesigned to get the water off of us. Every
4 time the Department called and asked us to go out and
5 try to do anything, we did.

6 We left equipment there a number of times setting
7 idle. We would try to go out, try to grade the ditch,
8 try to carry the water north, which is the way it was
9 running, and try to make that job work, but we just
10 could not contend with that water.

11 It was not only the water that was falling, it
12 was the water that was draining in on the project from
13 surrounding property.

14 So, we elected and talked to the DOT about the
15 stabilization on the five-foot shoulders adjacent to
16 the widening. We pointed out that if we cut that out
17 and tried to mix it, to get the stabilization, it would
18 all turn to mush, so to speak.

19 MR. ANDERSON: And the talk about the
20 stabilization was the water.

21 MR. SWEET: About the water table in the ditch.

22 CHAIRMAN COWGER: Which all relates to each
23 other?

24 MR. SWEET: Yes, sir. They looked at that,
25 agreed, came back and said we will delete the

1 stabilization and we will go back with ABC, the design
2 thickness for the required stabilization on the 12
3 inches on the Type B.

4 Then it kept on raining. The water kept coming
5 out of the surrounding properties. We couldn't get it
6 off of us.

7 They finally decided to delete the shoulders
8 altogether, which was a good bulk of our asphalt work.

9 CHAIRMAN COWGER: Let me interrupt you a minute.
10 They deleted the paved shoulders, right?

11 MR. SWEET: That's correct.

12 CHAIRMAN COWGER: What did the typical section
13 call for that paved shoulder to consist of?

14 MR. SWEET: Twelve inches of Type B
15 stabilization, ABC mix.

16 CHAIRMAN COWGER: ABC and then --

17 MR. SWEET: Structural.

18 MR. ROEBUCK: Was there any photographs taken of
19 this terrible mud problem?

20 MR. SWEET: I have some photographs in the
21 office. I didn't bring them with me.

22 During this time that all this water was going on
23 and we couldn't get it off of us, a representative of
24 DOT, who is not here today -- I'm not sure if I'm
25 saying his name right, Mitchum -- he came out and we

1 walked this project.

2 And I physically dug holes six inches deep where
3 this proposed widening was going. Before I could get
4 the hole diggers out, it would fill up with water. It
5 was just impossible. There wasn't any place for the
6 water to go.

7 Even the ditches -- we tried several operations
8 on the ditches. We tried cutting them with dozers,
9 with backhoes. We even had to put a plate on a backhoe
10 bucket with teeth on it, bring in a big trackhoe.

11 Everywhere the cleats on the dozer left an
12 imprint, it would stop the water from trickling. The
13 plans will indicate that.

14 There was no back slope on those ditches. They
15 are still there to this date. All the water in the
16 woods comes right on the DOT property and you've got no
17 way to control it.

18 CHAIRMAN COWGER: Explain to me, if you would
19 real simply, when you say the ditch had no back slope,
20 I don't quite understand what you are saying.

21 MR. SWEET: The design in the plans called for
22 the front slope to come off of the proposed widening,
23 come down the flat bottom ditch and come up to natural
24 ground, which natural ground was flat.

25 There was no raised incline to keep the water

1 from the surrounding private property from coming on
2 the DOT --

3 CHAIRMAN COWGER: There was nothing like a berm
4 or anything out there like that?

5 MR. SWEET: No, sir.

6 CHAIRMAN COWGER: You did cut a ditch.

7 MR. SWEET: We did cut a ditch.

8 CHAIRMAN COWGER: What you are saying is you
9 didn't have a berm or anything to keep the water from
10 coming through.

11 MR. SWEET: The back slope of the ditch went to
12 natural ground. We did not have any berm piled up on
13 the adjacent private property to keep the water off of
14 us.

15 CHAIRMAN COWGER: Thank you. Good enough.

16 MR. SWEET: To go on, the water was a
17 never-ending problem. And we fought it from day one.

18 And the Department in, I guess their thinking, or
19 if that's the way you want to put it, they was
20 continuously giving us weather days. I mean the job
21 went from 70 days, calendar days, to 280 something
22 days. That's what it took us to build that.

23 Once they finally decided, the Department finally
24 decided to delete the five-foot shoulders, delete the
25 stabilization, it took us about two weeks to finish

1 that job.

2 CHAIRMAN COWGER: From the time they deleted the
3 stabilization?

4 MR. SWEET: From the time they deleted the
5 stabilization and did away with it.

6 MR. ANDERSON: Right here (indicating on
7 diagram).

8 CHAIRMAN COWGER: Mr. Anderson is showing us the
9 picture of the typical section.

10 MR. ANDERSON: This and all of this was deleted.

11 MR. SWEET: That's correct. Part of this -- this
12 is the five-foot shoulders right here. The
13 stabilization under these five-foot shoulders was
14 deleted.

15 MR. ANDERSON: And the five-foot shoulders.

16 MR. SWEET: And the widening shoulder was deleted
17 under the stabilization part. We just plowed it up and
18 filled it up with ABC mix.

19 CHAIRMAN COWGER: My concern was you made the
20 statement about that after the stable -- the decision
21 was made to eliminate the stabilization, it only took
22 you two weeks to finish the job?

23 MR. SWEET: Somewhere in that neighborhood, yes.

24 MR. ANDERSON: Mr. Cowger, and shoulders.

25 CHAIRMAN COWGER: And shoulders, right?

1 MR. ANDERSON: Rain days and the suspension was
2 asked for pretty quick into the job. We seen there was
3 a problem right up front in the job, asked for a
4 suspension. Was it Howard Mitchum?

5 MR. SWEENEY: Mr. Miller. He is a roadway
6 inspector.

7 MR. ANDERSON: All right. I'm wrong about him.
8 Anyway, that's what their suspension was for, was to
9 get the road -- to get things back in line to finish
10 the job. We waited out there a lot of days. Ken is
11 way more familiar with the whole job than I am, but we
12 waited several days, looks like a couple hundred, close
13 to it, on a decision.

14 That's what it's about. The whole issue is
15 waiting on a decision. I think there's documents in
16 here that covers the rain days and all of that. We
17 knew where we was headed with rain days. Some of this
18 is about the rain days.

19 We knew when they went to giving us some hundred
20 rain days and all of that where we was headed.

21 MR. SWEET: We knew something was wrong with the
22 project then when we kept getting rain days, rain days,
23 rain days, and we couldn't build this 70-day project in
24 285 days.

25 And even in Exhibit 3 on Sheet 16 a letter from

1 Mr. Eric here he says the same thing that I have been
2 saying since I got here about the drainage.

3 CHAIRMAN COWGER: What was the number of that
4 exhibit?

5 MR. SWEET: Exhibit 3, Sheet 16, Index 16 there.

6 MR. ROEBUCK: Were there any liquidated damages
7 assessed on this job?

8 MR. SWEET: No, sir, never even talked about.
9 The only thing we could ever get was rain days.

10 CHAIRMAN COWGER: That kept you from getting
11 liquidated damages, because they were not charging a
12 large number of days, and that kept you out of
13 liquidated damages.

14 But that's not what we are here to talk about
15 today. We are here to verify there were no liquidated
16 damages involved.

17 Now, go ahead.

18 MR. SWEET: Okay. Has everybody read Exhibit 16?
19 Have they got any questions about it?

20 MR. DEYO: You mean Tab 16, Exhibit 6?

21 MR. SWEET: Yes, sir.

22 CHAIRMAN COWGER: That's the e-mail where they
23 eliminated the shoulders? Is that what you are looking
24 at?

25 MR. SWEET: That and they was talking about, you

1 know, it had been running a significant time, and about
2 the standing water, and about we had already did and
3 fulfilled our obligation by cutting the ditches to line
4 and grade per the plans and specs.

5 CHAIRMAN COWGER: I don't see all of that. Was
6 that 16? Is that in Exhibit 3?

7 MR. SWEET: Yes, sir, right under the tab, the
8 first sheet.

9 CHAIRMAN COWGER: Okay. Withdraw the question.
10 Who was Brian Blanchard -- no, who is Eric Benson?

11 MR. DEYO: Over here.

12 MR. BENSON: Resident engineer for the
13 Department.

14 MR. DEYO: Brian Blanchard is the district design
15 engineer.

16 MR. ANDERSON: What is his name?

17 MR. DEYO: Blanchard. I have a question. In
18 Exhibit 2, which we will get to with the Department,
19 there is an Anderson Columbia letter to the Department
20 dated January 10th. Did you get a written response to
21 that request to change to three-inch ABC in place of
22 Type B?

23 I think it's probably in one of your exhibits,
24 too. I haven't looked through -- one of the tabs in
25 here. It is a January 10, '97 letter, potential

1 problem, high moisture due to vibratory compaction,
2 ACI requests to use three inches of ABC-3 in place of
3 Type B, request payment the same as Type B.

4 MR. BENSON: Attachment 4 in the Department's
5 rebuttal.

6 CHAIRMAN COWGER: Right. That's where we are.

7 MR. DEYO: My question is did they get a response
8 to that?

9 MR. SWEET: Yes, we got a response to it.

10 MR. BENSON: That's it.

11 MR. DEYO: A work order?

12 MR. ANDERSON: There's a letter in here --

13 MR. SWEET: It's in Section 18, April 18, 1997.

14 MR. DEYO: Not from January until April I guess
15 is the question. They wrote the request January 10th,
16 but then you didn't get back to them until April or
17 May? This is a question with regard to the response
18 time.

19 CHAIRMAN COWGER: Where are you, Bill?

20 MR. DEYO: It's --

21 MR. ROEBUCK: Isn't this 3 in the DOT rebuttal?

22 MR. DEYO: It's in DOT's rebuttal.

23 MR. ANDERSON: Who wrote that letter?

24 MR. DEYO: Brian Yerby, project manager, Anderson
25 Columbia.

1 MR. SWEET: We received one that was wrote on
2 April 18th. We received it April 23rd of '97,
3 commenting on the ABC.

4 MR. DEYO: That's the earliest response you got
5 to the proposal to eliminate the Type B? I'm just
6 getting my chronology straight.

7 MR. SWEENEY: Are you getting that off the
8 supplemental agreement?

9 MR. DEYO: There is a letter dated January 10th
10 where they recommended making a change. I'm just
11 looking at the response.

12 MR. BENSON: That's in Exhibit 4, in the
13 Department's --

14 MR. DEYO: What we've marked as Exhibit 2.
15 I guess you pointed out it's Tab 4.

16 MR. ANDERSON: What was that supplemental
17 agreement, now?

18 MR. SWEENEY: That's the work order.

19 MR. DEYO: Supplemental number 1. It's a
20 recommendation --

21 MR. ANDERSON: Work order number 1, Bill?

22 CHAIRMAN COWGER: Let's -- so we are looking at
23 the same place, in Exhibit 2, Attachment 4, the second
24 page is a work order for unforeseen additional work,
25 and it bears a supplemental agreement number 1.

1 What it did was eliminate the stabilizing
2 altogether and replace the stabilizing under the paved
3 shoulder with the additional thickness of ABC, is that
4 correct? I notice that's dated 4-21-97.

5 MR. DEYO: The presentation part -- my question
6 was you said it was a couple of hundred days before
7 they got around to it -- this project started
8 December 6th.

9 CHAIRMAN COWGER: It began time in December of
10 '96.

11 MR. DEYO: We are talking about January of '97
12 you put them on notice and it took until April or May?

13 MR. BENSON: We can respond now or when it's our
14 turn.

15 MR. DEYO: He made the comment it was a couple
16 hundred days before he got in but it only took them two
17 weeks to finish the work.

18 MR. SWEENEY: We will address that.

19 MR. BENSON: We will answer that question when
20 it's our turn.

21 CHAIRMAN COWGER: Okay. Do you have anything
22 else, Bill?

23 MR. DEYO: No, I'm okay for now.

24 CHAIRMAN COWGER: One thing about this work order
25 we were just looking at. It talks about a pro rata

1 unit price.

2 I assume that what you did is you had an asphalt
3 base course in there that was so thick, shown in the
4 plans or whatever it was, and you added some inches to
5 it, and you merely prorated the unit price to get the
6 \$7.80 that I see in there.

7 So, there was no contract item. Did the
8 supplemental agreement then ultimately establish a new
9 unit price?

10 MR. ANDERSON: It took the place of Type B
11 stabilization. They just called three inches Type B.

12 CHAIRMAN COWGER: I understand what is happening,
13 I think. That's good enough. Okay.

14 Mr. Contractor, do you all have anything else to
15 present? You will have the opportunity to come back
16 later.

17 MR. SWEET: We can come back later.

18 CHAIRMAN COWGER: I think we need to hear DOT's
19 side of it now. It probably will generate some more
20 conversation.

21 MR. BENSON: I would anticipate that.

22 CHAIRMAN COWGER: Who is going to open up for
23 DOT?

24 MR. BENSON: Eric Benson, resident engineer,
25 Pensacola construction office of DOT. We've got a few

1 items to discuss. I'm trying to remember your
2 questions, and I will try to respond to them
3 specifically.

4 One thing I want to preface the comments with is
5 to say what we have is basically a fundamental
6 difference. The contractor is saying it's poor design,
7 inadequate design, faulty design that caused these
8 problems on the project.

9 The Department says that the actual problem was
10 as a result of inclement weather. We think the
11 contractor -- because they understand that there is no
12 time -- or no compensation other than time for weather,
13 inclement weather that, you know, this is a way to kind
14 of circumvent the spec prohibition for money for
15 weather.

16 Be that as it may, the Department has never, ever
17 denied the impacts of weather on a project. We agree
18 with Mr. Sweet in his original comments talking about
19 the storms and the weather and the standing water, the
20 inclement weather, the thunder storms, things like
21 that. We don't deny that occurred. That's borne out
22 by the daily diaries. It's documented. We couldn't
23 deny that if we wanted to. That happened.

24 The Department is saying, though, that the
25 contractor is basically saying that they encountered

1 poor drainage conditions almost immediately when he got
2 on the job. That's a fact.

3 Go ahead and hold that up, Danny. The scope of
4 the work that the contractor was supposed to -- and
5 that's in the contract provisions -- but the contractor
6 knew going in, whenever he bid the project that part of
7 the thing was to improve drainage on the project.

8 So, obviously, you know, that's not to be
9 unexpected that he would encounter some drainage
10 problems.

11 The contractor was called for to, as some of the
12 first orders of business, was to grade all the ditches
13 in our project records, and we've included that in --
14 I think Attachment 2 of our rebuttal, that shows we
15 documented four days where they were -- where our
16 inspectors documented on the diaries where they did
17 ditch grading.

18 The contractor, as Mr. Sweet said, did do the
19 drainage work within the limits of the project. They
20 didn't exceed the project limits in their work.

21 One of the things --

22 CHAIRMAN COWGER: May I interrupt you a moment.
23 You mentioned phasing of the work. What did the
24 contract specifically say about phasing of the work?

25 MR. BENSON: I can show you the phasing on the

1 plans. The project phasing -- it's in conjunction with
2 the MOT phasing. The project phasing is included in
3 the contract plans on Sheet No. 12. We can pass it
4 around so you can look at it. It's in the upper
5 left-hand corner of plan Sheet 12. It gives a summary
6 and sequence of the operations on the project.

7 CHAIRMAN COWGER: That's all I needed to know.

8 MR. BENSON: One of the things that concerns the
9 Department is the contractor has attempted to
10 characterize an early time suspension in the project as
11 a redesign suspension.

12 The exhibit that we are showing here shows where
13 the contractor proposed a time suspension for dry-out,
14 a dry-out period time suspension.

15 What is noteworthy is that they initiated the
16 design, or the time suspension. They are now
17 characterizing it as a design suspension or redesign
18 suspension.

19 What concerns the Department as well is at the
20 end of the letter the contractor says they will request
21 no additional compensation for this suspension.

22 Well, now their claim includes additional
23 compensation for this delay that they had previously
24 indicated to the Department would be -- would result in
25 no additional compensation or no claim.

1 CHAIRMAN COWGER: That relates to their request
2 back in January of '97 for a suspension?

3 MR. BENSON: For a design -- well, pardon me,
4 I misspoke. I think their letters characterize it as a
5 dry-out period. The Department granted that request,
6 issued a letter, as we do with all time suspensions,
7 asking that the contractor sign off waiving future
8 claim and things like that.

9 Of all the time suspension letters that the
10 Department sent to the contractor, this one we didn't
11 receive back where he had agreed to that, but the
12 Department proceeded on the contractor's word as
13 contained in that letter saying no claim.

14 One of the questions came up earlier, I believe
15 regarding the time frame between the contractor's
16 original January letter, I think, regarding
17 stabilization substitution.

18 Obviously there was a difference of agreement in
19 how the compensation to the contractor should take
20 place, whether it's a pro rata increase, whether it's
21 completely new price or whatever it was.

22 And that accounts, Mr. Deyo, for some of the time
23 lag between the time they sent the letter in to us.

24 If you will look in their number 3 I believe it
25 is, their Exhibit 3, and I can't find it, but there's a

1 March -- here it is. There is a March 31 letter, again
2 to the Department, to Mr. Sweeny.

3 At this point in time they propose a particular
4 price for the work. You can see it in the last
5 paragraph. They propose a -- I think that's between
6 Tabs 9 and 10. That's when they actually propose a
7 price.

8 Then it was shortly thereafter that the
9 Department executed a work order -- not supplemental
10 agreement but one of our contingency budget work orders
11 to do the work, giving the contractor additional
12 compensation for the work associated with it, because
13 obviously it cost more for the ABC than it does for the
14 stabilization.

15 So, that -- I hope that helps explain a little
16 bit why there was such a time lag. I'm sure there
17 was --

18 MR. DEYO: In the January 10 letter they say
19 substitute ABC, three inches of ABC-3 for the Type B at
20 the same pay. Then you are saying here later in March
21 proposing an increase?

22 MR. BENSON: Right, for a different price.

23 CHAIRMAN COWGER: How was that all resolved? Was
24 there ever anything other than a pro rata adjustment on
25 the base course?

1 MR. BENSON: If you go back and look at
2 Attachment 5 of the Department's rebuttal, there's a
3 work order there for that work. There was actually an
4 increase to the project of over \$11,500.

5 CHAIRMAN COWGER: But it was still on a pro rata
6 basis?

7 MR. BENSON: Yes, sir.

8 CHAIRMAN COWGER: That's all I needed to know.
9 Did the contractor agree to that?

10 MR. BENSON: Yes, sir.

11 CHAIRMAN COWGER: Okay.

12 MR. BENSON: We have -- this is a copy of the
13 Department's contingency budget, supplemental
14 agreement. And we've also got a copy of the work order
15 that was executed May 2nd, 1997, where the contractor
16 signed and agreed to the prices. There was no
17 additional time granted for that.

18 CHAIRMAN COWGER: This all occurred in the
19 January to April of '97 time frame?

20 MR. BENSON: Yes, sir, absolutely.

21 CHAIRMAN COWGER: The job wasn't finished until,
22 when, September?

23 MR. BENSON: Yes, sir. There were -- in that
24 time period the actual work was not proceeding. There
25 were time suspensions for a curing period, time

1 suspensions for RPMs and things like that. The work
2 ended some time before that.

3 CHAIRMAN COWGER: Some time in August most
4 likely. That's good enough.

5 MR. BENSON: Yes, sir, in that time frame I would
6 say.

7 To get back on track --

8 CHAIRMAN COWGER: Would you excuse me just a
9 minute.

10 (Brief pause)

11 CHAIRMAN COWGER: Go ahead.

12 MR. BENSON: The other thing brought up was the
13 elimination of the paved shoulder. I want it clear on
14 the record that we did not change the line and grade of
15 the typical section.

16 In other words, the shoulder point is the
17 shoulder point. The ditch grade is the ditch grade.
18 The back slope -- the tie point is the tie point. The
19 centerline of construction is still the centerline of
20 construction.

21 The only thing the Department eliminated, in
22 addition to making a substitution for the ABC for the
23 stabilization, that the contractor agreed to, the
24 Department eliminated the paved shoulder itself.

25 So, in lieu of the paved shoulder, the Department

1 just basically grassed. We increased our grassing.
2 That was done -- the contractor was directed on
3 April 18th to do that.

4 The Department handled payment to the contractor
5 for overrun and underrun of quantities that's provided
6 elsewhere in the specifications. No document was ever
7 drafted, just a simple letter from the Department
8 directing him to do so.

9 One of the things the contractor has -- is the
10 reason we are here, the contractor is requesting
11 additional compensation for the impacts.

12 We are saying due to inclement weather, and
13 there's no doubt that there was substantial inclement
14 weather out there, standing water and things like that.
15 The Department submits that it was not faulty design,
16 but it was the effect of the inclement weather.

17 By specification, the Department, when we
18 determined that the contractor's major item of work or
19 controlling item affected more than 50 percent, all
20 I can do is give him weather days. I think whenever
21 there is inclement weather out there, the contractor
22 takes on the risk of the money part and the Department
23 takes on the risk of time.

24 We gave him just what the contract allotted for.
25 There were a number of those days, but there never was

1 really any protest from the contractor saying that we
2 are giving them too many days, never, not that we saw.
3 To the contrary, you've got a letter from Mr. Yerby
4 that seems to kind of contradict that. I will pass
5 these out. There's one for all the Board members.

6 Essentially what it says is that -- and this is
7 dated July 2nd, '97. It says that due to the heavy
8 thunderstorms that have occurred in the last several
9 weeks, progress has been hindered.

10 We agree with that. It says not only does it
11 affect soil conditions at the job site but on the
12 borrow pit, too. Obviously the Department didn't
13 design the borrow pit.

14 It says that the contractor believes that the
15 standard factor for recovery time does not allow for
16 the weather delay. They respectfully request that the
17 factors be considered and contract time compensated as
18 granted.

19 This seems to say that, you know, there's not a
20 problem with the weather, as a matter of fact, you are
21 not giving us enough. The factor is not enough to
22 compensate for the weather. Apparently you are not
23 giving us enough.

24 That kind of confuses us that we gave them too
25 much weather or we gave them weather to hide something

1 or to avoid paying, and now we get a letter back in
2 July saying that it's the inclement weather, the heavy
3 thunderstorms that caused the problem.

4 The Department has never really intended --

5 MR. DEYO: Can I interrupt? The last sentence
6 you read that contract time compensation be granted.
7 That's just the request for granting the additional
8 time?

9 MR. BENSON: Well, no, sir. The way I interpret
10 this is we have -- we don't give a contractor, with our
11 factors that we give, we don't give them more than
12 seven days a week. Well, the question is that we have
13 given him -- and we have ream after ream of time
14 extension letters.

15 All I can say is that we looked at the factors
16 and grant -- the contract time be granted.

17 So, from that I gathered that maybe they weren't
18 satisfied they were given enough time because of the
19 impacts of the weather on their borrow pit as well as
20 the project.

21 I think it's a little odd that they would on the
22 one hand say we gave them weather to keep from giving
23 them money, and then on this hand they say that, you
24 know, maybe we should be giving them more time.

25 Again, the Department's basic contention is that

1 the water that was on the project was due to inclement
2 weather. I don't think there's anything --
3 (Brief pause)

4 CHAIRMAN COWGER: Go ahead.

5 MR. BENSON: All right. I guess the Department
6 takes exception to the contractor's original letter to
7 the Arbitration Board that they were actually being
8 held hostage on the project, that we are really just
9 trying to administer the contract and abide by the
10 terms and conditions of the project.

11 One statement the contractor does make in his
12 letter to the Arbitration Board, the Department
13 abandoned its design completely and redesigned the
14 project.

15 That couldn't be further from the truth. We did
16 make two substantive changes, I would say. One is the
17 elimination of the stabilization. That's something the
18 contractor agreed to. By the supplemental agreement
19 and also by the work order, they waived any claim for
20 that.

21 The other thing that was happening was that we
22 did eliminate the paved shoulder.

23 The project was still built to the line and grade
24 on the project. The Department simply eliminated the
25 paved shoulder for two reasons. First of all, we

1 understood the impact the weather was having on the
2 project, on the contractor. We eliminated the shoulder
3 to eliminate its exposure to those elements.

4 Additional, the Department has a project upcoming
5 that will widen that area of the -- of Avalon Boulevard
6 from the interstate up to U.S. 90. It was in
7 anticipation of that that we would eliminate the paved
8 shoulder.

9 The Department's basic position is that all of
10 the damage or all of the delays caused to the
11 contractor were strictly caused by the effects of the
12 weather, not by faulty design, and that per the
13 specifications in the contract we granted them all that
14 we could, that being the time.

15 CHAIRMAN COWGER: I think we have probably heard
16 enough for the moment.

17 MR. BENSON: I think I have said enough.

18 CHAIRMAN COWGER: What you have just said is the
19 bottom line.

20 Quick question, when was the first time the
21 contractor gave notice to the DOT of intent to file
22 claim?

23 MR. DEYO: I just read that here. I can tell
24 you.

25 MR. BENSON: While you are looking, I will tell

1 you that the Department received the claim from the
2 contractor, notice of intent --

3 MR. DEYO: September 4, '97.

4 MR. BENSON: The Department received the claim,
5 and I think we acknowledged the receipt, then spoke
6 with Mr. Yerby --

7 MR. DEYO: Tab 29.

8 MR. BENSON: We had discussions with
9 Mr. Brian Yerby, who was running that area for Anderson
10 at the time. When it became apparent to him, I think
11 the Department's view of the claim, that he had been
12 compensated like he was supposed to; that is, there is
13 no time or money for weather, then they basically went
14 through their claim with the Department.

15 So, the Department never actually performed an
16 indepth analysis of the contractor's claim, but we did
17 say on the face of it there was no --

18 CHAIRMAN COWGER: That's one of the documents you
19 used today in your presentation? You did look at that?

20 MR. BENSON: I don't --

21 CHAIRMAN COWGER: That's not pertinent. The
22 contractor never formally withdrew that claim, did he?
23 Is there a letter anywhere that says we dropped that
24 claim?

25 MR. ROEBUCK: One letter that he --

1 MR. BENSON: I'm not sure if it's in the
2 contractor's -- I know it's not in ours.

3 CHAIRMAN COWGER: Let's not worry about that. We
4 can --

5 MR. BENSON: We can respond to that in the ten
6 days if you need it.

7 CHAIRMAN COWGER: Let's not do that.

8 MR. DEYO: You are asking the question, though,
9 just in reading through their Exhibit 3 that we got
10 today, they put DOT on notice September 4th, then the
11 next time I see it is October 13th, where they've
12 reiterated that. Then there is nothing that --

13 MR. BENSON: We have something in our records
14 that indicates --

15 MR. DEYO: I would say the Department needs to
16 address those requests.

17 MR. ROEBUCK: Any responses you made to the
18 contractor's claim.

19 CHAIRMAN COWGER: What we are asking now, and
20 correct me if I'm wrong, Bill, we would like for the
21 DOT in their rebuttal statement to address the
22 September 4, 1997 letter from Anderson in which they
23 initially requested additional compensation, and
24 particularly the only thing we are interested in
25 knowing now is whether or not there was ever a response

1 to that from DOT and whether the contractor ever
2 formally in writing withdrew that request.

3 MR. DEYO: And also this October 13th, '97 letter
4 from Anderson.

5 MR. BENSON: Where is that in the -- which tab?

6 MR. DEYO: Two tabs in Exhibit 3, September 4th
7 letter under Tab 9, and the October 13th letter is
8 under Tab 33.

9 CHAIRMAN COWGER: Okay.

10 MR. BENSON: Reading in that letter, the
11 October 13th letter -- well, while I can't produce the
12 response, it's obvious that if you look at page 2, the
13 last paragraph, it says ask the Department to
14 reconsider its position for approved payment for
15 Anderson for this claim.

16 Apparently there's been some conversation.
17 I can't produce that, but I'm sure in essence it says
18 no compensation is due, absolutely. We will look for
19 that and get it to the Board.

20 MR. ROEBUCK: Did either party do any topo work
21 in the general surrounding area to confirm this
22 overriding drainage condition?

23 MR. SWEENEY: Yes, we did.

24 MR. ROEBUCK: You did?

25 MR. BENSON: Yes.

1 MR. ROEBUCK: Is there any evidence of that here?

2 MR. BENSON: We didn't bring that, but we can if
3 the Board is interested.

4 MR. ROEBUCK: Did you confirm there was a general
5 drainage problem in the area?

6 MR. SWEENY: Yes.

7 MR. ROEBUCK: There was a general drainage
8 problem?

9 MR. SWEENY: Let me make a comment. We all know
10 the whole problem out there was drainage. It was
11 holding water. Okay, like Ken said a while ago, we all
12 knew it from day one.

13 My question is and still is today, we didn't
14 do -- in a 70-day contract, we didn't do any grading to
15 attempt to get that water out until contract day number
16 60. That's contract day number 60, now. That's the
17 only time -- that's when they started the first day of
18 grading the ditches.

19 MR. BENSON: That's in the Department's exhibit.

20 MR. SWEENY: Throughout the entire job, there was
21 three and a half days -- I'm not talking about full
22 days, but three and a half days where somebody
23 attempted to grade ditches and that was all.

24 MR. ROEBUCK: Didn't you mention the County came
25 in and did some --

1 MR. SWEENY: You mentioned some survey work. We
2 went in there and did some survey work there, and found
3 out that the corner of that road where the County had
4 come in and did some work was about a foot and a half
5 high. That's why that water couldn't come out.

6 Now, if it was -- it was holding water. Then
7 where the County was at, where they done their work,
8 was lower than what our job was, yet they got in there,
9 cleaned the ditches out, and in three days that project
10 was drained out.

11 CHAIRMAN COWGER: When about in time did that
12 occur?

13 MR. SWEENY: I would have to look at my records.
14 I've got it wrote down in the dailies.

15 MR. BENSON: Do you all have that written down
16 when the County came in and did that?

17 CHAIRMAN COWGER: Was it before or after the
18 contractor came in to cut the ditches? You said he
19 didn't begin to cut the ditches until day 60, is that
20 right?

21 MR. SWEENY: That's correct. I imagine the
22 County came in there after that.

23 CHAIRMAN COWGER: It would seem logical. When he
24 cut the ditches and that didn't help, people then went
25 looking for other solutions to the project.

1 MR. SWEENY: We went in there, got some grades
2 out there to find out why it wouldn't drain. It was on
3 the road, the County road. We asked the County to do
4 some grade work to get that water out of there.

5 While they was doing that, they went on our
6 property -- we wasn't there at the time. They had that
7 suspension of work. They went on our project and came
8 out, something that the contractor didn't attempt to
9 do.

10 CHAIRMAN COWGER: Did the contract call for them
11 to do it?

12 MR. SWEENY: Yes.

13 CHAIRMAN COWGER: Did they cut some of the
14 ditches he was supposed to cut? Is that what you are
15 saying?

16 MR. SWEENY: Yes.

17 CHAIRMAN COWGER: They also cut beyond the limits
18 of the project?

19 MR. BENSON: Certainly.

20 CHAIRMAN COWGER: One thing I'm very much
21 interested in it. We've talked about it, but I'm not
22 sure I'm satisfied with what we have heard as being
23 adequate to make a decision.

24 From January until several months later there was
25 a water problem. The contractor says it's deficiency

1 in the design, the DOT says it was just strictly
2 weather.

3 What happened -- and I know that you changed some
4 of the design, you eliminated the stabilizer and you
5 deleted the paved shoulders. Now after that was
6 accomplished, what happened that the contractor could
7 finally get the job finished? What -- was it dry
8 weather?

9 MR. SWEENEY: Ninety percent was because of the
10 County doing that work there.

11 CHAIRMAN COWGER: The project dried out because
12 the County did that work?

13 MR. SWEET: The County did the work -- can
14 I interrupt?

15 CHAIRMAN COWGER: Sure.

16 MR. SWEET: When we cut that ditch on the west
17 side of that road, I'm the one the County come out
18 there and talked to. They cut the ditches leading
19 west. They didn't get out there on my project and cut
20 the ditches.

21 MR. SWEENEY: They got on the State right-of-way
22 and cut it.

23 MR. SWEET: If they did, they did it adjoining
24 the project. They didn't get in the same ditch I was
25 in. They didn't do it until after I was gone and

1 finished.

2 CHAIRMAN COWGER: Let's not get into that any
3 deeper at all. The Board will deal with that. I don't
4 think it's pertinent enough to argue about a lot.

5 I want to verify one thing you said, though. You
6 said what really happened is that after the County
7 cleaned those ditches downstream from the project, then
8 things dried out, correct?

9 MR. SWEENEY: Yes.

10 MR. ROEBUCK: That's what it sounded like.

11 MR. SWEENEY: It dried out. There was still some
12 work to be done, now, grading-wise from the County road
13 back upstream. There wasn't much ditch work done on
14 that project as far as for drainage.

15 CHAIRMAN COWGER: There was not much ditch work.

16 DOT, how do you address -- I haven't heard you
17 say anything -- how do you address the contractor's
18 statement about all of this water that was coming to
19 the project from off site? True or not?

20 MR. SWEENEY: That's true.

21 MR. BENSON: It was a preexisting condition. It
22 was something that I'm sure that should have been
23 apparent to them at the time they bid the project. It
24 was evident there were no berms. Obviously from
25 looking at the project, you can see the topography and

1 things like that.

2 While that may be the case, it's not a hidden
3 situation. The contractor knew full well when he bid
4 the project or bid, that he knew what the conditions
5 were.

6 CHAIRMAN COWGER: You didn't give him any --
7 normally you don't give him a lot of topography outside
8 the limits of the job?

9 MR. BENSON: No.

10 MR. SWEET: We were on the DOT right-of-way only.

11 CHAIRMAN COWGER: This project doesn't have a
12 drainage map? The plans don't have a drainage map,
13 which is typical for a project of this size?

14 MR. BENSON: It's typical they don't have one?

15 CHAIRMAN COWGER: Yes.

16 MR. BENSON: That's correct.

17 MR. SWEENY: May I say that now that this project
18 is done, all that area is dry, dry as a bone.

19 MR. ROEBUCK: Even when it rains?

20 MR. SWEET: They went through there and put a big
21 pipeline down. They tore all of that up, didn't they?

22 MR. SWEENY: If they've done anything there, it
23 didn't have anything to do with drainage, didn't have
24 anything to do with drainage in there.

25 MR. DEYO: You still have ditches?

1 MR. SWEENY: Yes, it's just like it was. They
2 might have put a waterline down in correlation with the
3 Garson Point Road, the project, that bridge.

4 CHAIRMAN COWGER: Now, the contractor couldn't
5 put his asphalt structural course down until he
6 completed the widening of the existing base, correct?

7 MR. SWEENY: No.

8 CHAIRMAN COWGER: Do you have a rough idea when
9 they put the asphalt down, the structural course?
10 Obviously after the base was completed for the
11 shoulders -- I mean for the widening.

12 MR. SWEENY: There wasn't no problem there.

13 CHAIRMAN COWGER: All right. That's a good
14 point. When they came to place the base widening, even
15 though it was three inches deeper, they didn't have any
16 problem in doing that? They didn't have water pumping
17 up?

18 MR. SWEENY: No, sir. You have to understand
19 when they put the shoulder widening on there, we had to
20 put -- build the shoulder up a little bit with dirt.

21 CHAIRMAN COWGER: I'm talking about the base
22 widening.

23 MR. SWEENY: The base widening had no effect.

24 CHAIRMAN COWGER: The groundwater didn't affect
25 the base operation?

1 MR. SWEENEY: Not that I can recall.

2 CHAIRMAN COWGER: Do you have anything to say
3 about that?

4 MR. SWEET: The groundwater in the roadway
5 widening was wet when we cut it out. That's the reason
6 they thickened up on the asphalt. When we went to put
7 the shoulders in, we couldn't put it in for water.

8 CHAIRMAN COWGER: What about when he came to
9 place the base that you did place --

10 MR. SWEET: For the shoulder or the widening?

11 CHAIRMAN COWGER: You never placed any for the
12 shoulders.

13 MR. SWEET: When we placed it on the widening, we
14 thickened up on the base.

15 CHAIRMAN COWGER: When you placed that first
16 three inches or whatever you did of hot mix, did you
17 have any problem getting compaction?

18 MR. SWEET: You didn't get compaction. You came
19 in, put it in, rolled it, came across on the top again
20 to get it on up.

21 MR. SWEENEY: We have a rolling pattern.

22 CHAIRMAN COWGER: You are not requiring density
23 in that first course?

24 MR. SWEET: Not in the first three inches.

25 CHAIRMAN COWGER: You didn't run trucks down

1 there, you side dumped it or pushed it in somehow?

2 MR. BENSON: Mr. Cowger, you are probably looking
3 at one of the Department's exhibits, a work order or
4 maybe a letter I wrote to Mr. Strickland, the shoulder
5 that we addressed the Type B stabilization to ABC
6 substitution.

7 It's my understanding the standard indexes call
8 for the three inches that we placed to be placed into
9 two lifts. We changed that to go to one lift in
10 consideration for any potential problems that could
11 occur as a result of inclement weather and water out
12 there.

13 That's just one more thing that we tried to do to
14 eliminate any potential problems that may have
15 occurred. Apparently it did what it was supposed to
16 do. They were to bridge over any possible problem
17 areas.

18 CHAIRMAN COWGER: Okay. I think we are getting
19 close to hearing everything we need to hear, but I want
20 to give either side the chance to say anything more
21 they want to say.

22 MR. SWEENY: May I say one more thing. In the
23 beginning of the project, the first thing we did on
24 that thing, of course, you had the MOT. But the
25 second order of work was we placed the pipe, might have

1 been -- Anderson subcontracted that work out.

2 In those days the subcontractor didn't have any
3 problem putting their pipes down, putting their
4 structures down. They come out there, dewatered what
5 they had to dewater and they got to work, got out
6 there.

7 CHAIRMAN COWGER: What kind of pipes, side
8 drains, cross drains?

9 MR. SWEENEY: Side drains.

10 CHAIRMAN COWGER: Strictly side drains? Were
11 there any -- that's good enough, leave that.

12 Mr. Contractor, do you all have anything more to
13 say?

14 MR. SWEET: Well, you know, we had a lot of rain
15 on that job. Referring to Mr. Sweeney about the sub
16 came in and laid the pipe, he was on a different side
17 of the road than this problem occurred on. He was
18 working on the east side of the road with his trunk
19 line and his mitered ends and not in the ditch where we
20 had the problem in on the west side.

21 And also we got numerous letters from the
22 Department talking about inclement weather days and no
23 design problems. We got -- there's numerous letters in
24 this Exhibit 3 from the Department stating, you know,
25 due to the off-site drainage -- and we have done

1 everything we can do to line and grade. It says due to
2 this obvious design problem. There's numbers of them
3 in here.

4 CHAIRMAN COWGER: They mention design problems
5 several times?

6 MR. SWEET: Yes, sir.

7 CHAIRMAN COWGER: Now they are denying it. Is
8 that what you are saying?

9 MR. SWEET: Exhibit 3 is full of letters from the
10 Department going back to a design problem, not
11 inclement weather. They talk about inclement weather
12 days, but they also -- due to obvious design problems.
13 There are numbers of them in this exhibit.

14 CHAIRMAN COWGER: Let's let DOT explain that.

15 MR. BENSON: Give us some examples so we can
16 respond to that.

17 MR. SWEET: Well, on Index 17, that one. There's
18 numerous ones. I can show you four or five occasions.

19 CHAIRMAN COWGER: I don't think we need to get
20 into a lot of specifics.

21 DOT, can you answer us why it is that you take
22 the position that there was no design problem?

23 MR. BENSON: But for the water out there that
24 fell during the project, Mr. Cowger, the project could
25 have been built, but for the water, for the inclement

1 weather.

2 CHAIRMAN COWGER: Yeah, if it hadn't rained.

3 MR. BENSON: That's what we're talking about.

4 We're talking about inclement weather. If there's no
5 water, no falling water --

6 CHAIRMAN COWGER: I've got you.

7 MR. BENSON: You laugh and it seems simple, but
8 it is simple.

9 CHAIRMAN COWGER: That's the reason I'm laughing,
10 because it's so simple.

11 MR. BENSON: The contractor essentially built the
12 project according to line and grade.

13 MR. ANDERSON: We eliminated Type B, added ABC.

14 MR. BENSON: At your request.

15 MR. ANDERSON: The whole point of this meeting,
16 it ain't about the \$10,000 supplemental change order,
17 work order number one, and it's not about inclement
18 weather, it's about 284 days versus 70 days.

19 The reason Ken said 59 days is what the designer
20 set up on the job to start with, I'll guarantee you
21 everybody at this table, or whoever, if Anderson
22 Columbia done something to screw this job up for 284
23 days, an arbitration wouldn't have settled the matter.

24 That's my closing statement, I think, you know.

25 It's a decision thing, a time thing. I mean all we

1 want is an answer when we want an answer. Time is
2 money here for every one of us. I mean the Department
3 today, they're paying for time.

4 CHAIRMAN COWGER: Which side of the project did
5 you all say that the water was coming at you from, the
6 west?

7 MR. SWEET: West.

8 CHAIRMAN COWGER: Okay. The job was running
9 south to north, so that would be on the left side?

10 MR. SWEET: Correct. They were also --

11 CHAIRMAN COWGER: Go ahead.

12 MR. SWEET: Some water problems on the east, but
13 not near as bad as there was on that west.

14 CHAIRMAN COWGER: Okay.

15 MR. SWEET: The northeast corner of that project
16 took a lot of water from runoff, and there was a pretty
17 good size metal building there that they called a
18 bowling alley.

19 CHAIRMAN COWGER: I have one more question. The
20 contractors detailed cost analysis where he arrived at
21 the \$245,000 he's claiming, DOT did not respond to any
22 of this as far as making any analysis of these costs?

23 I understand that's because they say there's no
24 entitlement, period, the end. So, they didn't say
25 this, but the inference is, well, there's no use

1 addressing the cost because there's no entitlement.

2 I have a couple of questions, though, about this
3 detailed cost analysis. You have some numbers in here
4 that you don't have any details for, maintenance of
5 traffic, you've got a number, there's nothing to
6 support that number that I can find.

7 MR. SWEET: I think the way that we come up with
8 that MOT, maintenance of traffic, we initially took the
9 70 days, the money we had into it, divided it into the
10 days it actually took.

11 MR. ANDERSON: It's up at the top, Mr. Cowger.
12 The price is 357, there's 25,000 divided by 70 is 357 a
13 day.

14 CHAIRMAN COWGER: You multiply that by how many
15 days?

16 MR. SWEET: By 185. It's in the back side of
17 that Exhibit 3.

18 MR. ROEBUCK: We have some breakdown on it.

19 CHAIRMAN COWGER: Okay. What tab is it at?

20 MR. SWEET: The very back pages of that exhibit.

21 MR. ANDERSON: The last page.

22 CHAIRMAN COWGER: Okay. Maybe that will save us
23 some time. Let me take a quick look. That was not --
24 somehow or another that didn't get into the package
25 that I have anyway. Okay.

1 MR. DEYO: And the stuff they've got today.

2 CHAIRMAN COWGER: So, I need to see Tab 33.

3 I guess the only other thing then has to do with on
4 Item No. 1 which was idle equipment and No. 2 and No.
5 3, idle equipment, survey crews, cleaning and drainage
6 structures.

7 Idle equipment is documented by an attachment
8 here that shows -- called mobilized equipment. You are
9 saying that's equipment that was idle?

10 MR. SWEET: That's correct.

11 CHAIRMAN COWGER: Survey crews -- okay, I may be
12 answering my own question here. I'm going to leave it
13 at that. I think I've got enough now.

14 Okay, does anybody else have anything?

15 MR. BENSON: Is there a question on the table for
16 the Department to -- I think you may have asked a
17 question about what the Department considered?

18 MR. DEYO: It's in this Exhibit 3 that you got a
19 chance to look at now, ten days.

20 MR. BENSON: Do you want us to address the issue
21 of compensation?

22 MR. DEYO: If you see fit.

23 MR. BENSON: On the surface we would say what do
24 you base documentation -- obviously in civil court
25 you've got a copy of the documentation there. The

1 Department made two motions, and one was to dismiss,
2 obviously the suit, the other was to compel the
3 contractor to provide documentation, financial records
4 to document.

5 CHAIRMAN COWGER: Did he ever do that?

6 MR. BENSON: No, they dismissed the suit in Santa
7 Rosa County in an effort to not open that up. The
8 Department still hasn't seen anything to analyze it.

9 CHAIRMAN COWGER: Gentlemen, I don't think we
10 need anything else. What else do we have? Anything
11 else? Both parties have had an opportunity.

12 Do any of the Board members have any questions or
13 comments?

14 MR. SWEET: We have a little project chronology
15 here of what happened. It's basically saying what it
16 says, in Exhibit 3.

17 CHAIRMAN COWGER: Is that several copies of the
18 same thing?

19 MR. SWEET: Yes, for everybody to have.

20 CHAIRMAN COWGER: Pass that around. We will
21 identify this chronology as Exhibit No. 8. That's a
22 project chronology submitted by the contractor.
23 (Whereupon, Exhibit No. 8 was received in evidence.)

24 CHAIRMAN COWGER: Okay. I think we have
25 everything we need now. Both parties have had the

1 opportunity -- will have the opportunity between --
2 before August 27th to submit to me as Chairman any
3 rebuttal statement that they want to make, only, again,
4 in regard to anything submitted today. Don't go back
5 and rehash anything.

6 MR. ROEBUCK: We have at least three copies of
7 every page.

8 CHAIRMAN COWGER: This hearing is hereby closed.
9 The Board will meet to deliberate on this claim in
10 about six weeks, and you will have our final order
11 shortly thereafter.

12 (Whereupon, the hearing was concluded at 11:40 a.m.)

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CERTIFICATE OF REPORTER

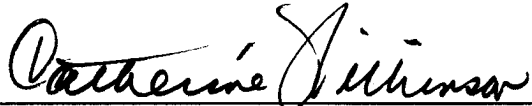
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STATE OF FLORIDA)
COUNTY OF LEON)

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
a true record of the testimony given.

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 2nd day of September, 1999.



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