

STATE ARBITRATION BOARD

1022 LOTHIAN DRIVE
TALLAHASSEE, FLORIDA 32312
PHONE: (904) 385-2852

29 April 1992

+++ NOTICE +++

36019
12-3-07
MBW

In the case of Holloway Construction Company versus the Florida Department of Transportation on Project No. 97864-3315 on the Florida Turnpike from Mile Post 138 to Mile Post 190, both parties are advised that State Arbitration Board Order No. 1-92 has been properly filed on April 29, 1992.



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

Copies of Order & Transcript to:
J.B. Lairscey, Jr./Director of Construction FDOT
Mark E. Young, Agent/Holloway Construction Co.

STATE ARBITRATION BOARD

ORDER NO. 1-92

RE:

Request for Arbitration by
Holloway Construction Company on
Job No. 97864-3315 on
Florida Turnpike from Mile Post 138 to Mile Post 190

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

H. Eugene Cowger, P. E. Chairman
Kenneth N. Morefield, P. E. Member
John Roebuck, Member

This claim was originally scheduled for Arbitration on
May 14, 1991. In accordance with an order issued by the
Circuit Court of the Ninth Judicial District, in conjunction
with a lawsuit between the prime contractor and a
subcontractor, the hearing was postponed. The parties to
that lawsuit have entered into a Joint Settlement Stipulation
and the Contractor requested that the hearing be rescheduled.
Pursuant to a written notice, a hearing was held on a request
for arbitration commencing at 9:00 a.m., on Tuesday, March
10, 1992.

The Board Members, having fully considered the evidence
presented at the hearing,, now enter their order No. 1-92 in
this cause.

ORDER

The Contractor presented a request for arbitration of
a six part claim for additional compensation totaling \$
95,180.99.

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

PART I (1) \$434.39

We were required to remove and reset 90 feet of chain
link fence at Location 4-A. Our claim is based on the actual
labor and equipment costs for this extra work.

PART II (2) \$35,846.35

We were required to do additional work consisting of
grading and grassing to repair erosion of areas in the

vicinity area of 37 of the 39 culvert extensions. The amount claimed is for labor, equipment and insurance costs incurred by us during the three weeks (March 20, 1989 through April 9, 1989) we worked on these repairs.

In sodding around the first two culvert extensions, we were allowed to place sufficient sod to cover the area disturbed by construction. We were then instructed by the Department to place sod at subsequent locations in accordance with Standard Index No. 281. At that time we advise the Department that this plan detail was in error and that we would not be responsible for soil erosion resulting from insufficient utilization of sod.

No significant erosion occurred in the vicinity of the first two culvert extensions where sufficient sod was placed initially, but, at the other locations where the quantity of sod placed was restricted by the Department, severe erosion occurred.

PART III (3) \$6,782.36

We incurred additional mobilization costs due to the additional days we worked on the project as the result of delays caused by failure of the Department to obtain a permit in a timely manner and in repairing erosion (See Part II).

PART IV (4) \$5,651.88

We incurred additional maintenance of traffic costs during the days we worked on the project beyond the original contract time. Our claim is based on a daily rate calculated by dividing the Lump Sum amount for Maintenance of Traffic by the number of days allowed by the contract.

PART V (5) \$9,500.40

The plan quantity for reinforcing steel was substantially in error because the quantity for several of the culverts was calculated incorrectly by the Department of Transportation. An incorrect skew angle was used. This plan

error was not discovered until after all reinforcing steel was fabricated and delivered to the job site.

We claim compensation at the contract unit price for Reinforcing Steel for the difference between the plan quantity for the this item (156,374 lbs.) and the quantity for which the Department has paid us (140,540 lbs.).

PART VI (8) \$37,400.00

We are claiming release of all liquidated damages and penalties assessed for 34 calendar days, the number of days charged contract days exceeded the number of contract days allowed by the original contract, as adjusted by the Department. (34 Days @ \$550 + 34 days @ \$550).

The Department has refused to grant additional contract time for the 24 day period during which we were repairing erosion as described in Part II of this claim.

Our operations were stopped for 22 days while the Department was obtaining a permit from the North St Lucie Water Control District. The Department granted only eight additional days of contract time for this delay. We claim 10 additional days.

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

PART I (1)

We agree to the Contractor's entitlement for additional compensation and to the amount claimed.

PART II (2)

It is our position that the Contractor has some responsibility for repair of erosion at the culvert sites because he has a responsibility for maintenance of the work during construction.

We documented from our records that the cost incurred by the Contractor in repairing these eroded areas was approximately \$30,000. In our judgement there should be a

50-50 split of these costs.

PART III (3)

The work described in the Standard Specifications as covered by the item Mobilization is not affected by additional time on the job.

PART IV (4)

The work did not require lane closures, so no temporary barricades were used. The Contractor erected six signs each day operations were under way at a work site.

PART V (5)

The quantity included for payment was the quantity actually placed in the structures (134,284 lbs.) plus the quantity delivered to the project, but not installed (14,574 lbs.), reduced by the ratio between the invoice price and the bid unit price.

The Contractor should not be paid for the difference between the plan quantity of reinforcing steel and the quantity actually delivered, because he did not purchase that quantity of reinforcing steel.

PART VI (8)

There were 15 working days during the three week period that the Contractor was working on repair to eroded areas. As we stated in regard to Part II of the Contractor's claim, in our opinion, a fair allocation of responsibility here is 50-50. Thus, we can justify granting only 7 additional days.

Our project records indicate that contract time was suspended for Christmas vacation during ten of the 22 days work was delayed while awaiting obtaining of a permit from the North St Lucie Water Control District. There were several other days when the Contractor did not work due to other reasons. Therefore, we can justify only the eight days previously granted for this reason.

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

PART II (2)

There was a concern by the Department during construction of the project about over running the plan quantity of Sodding.

PART IV (4)

The contract did not include unit price pay items for the signs required at work sites.

PART V (5)

The Contractor incurred additional handling and administrative costs as a result of the error in the reinforcing steel.

PART VI (8)

The Contractor completed other grading work on March 17, 1989 and completed regrading and grassing of the eroded areas on April 10, 1989, a period of 24 calendar days.

The delay awaiting the North St Lucie Water Control District permit extended from December 22, 1988 through January 12, 1989. The Time Suspended section of Exhibit No. 3 indicates that, during this period, charging of contract time was suspended for vacation on only 12-25-88, 12-26-88, 1/1/89 and 1/2/89 not ten days as stated in the DOT testimony.

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

The Department of Transportation is ordered to compensate the Contractor for the various parts of his claim as follows:

PART I (1) \$ 434.39
PART II (2) \$30,000.00

PART III (3) Nothing

PART IV (4) \$ 1,500.00

PART V (5) \$ 5,098.80 The result of this additional payment shall be that the Contractor is compensated for the quantity of reinforcing steel actually delivered to the project at the contract unit price for Reinforcing Steel.

PART VI (8) Release Liquidated Damages in the Amount of \$ 15,400.00

Release Penalties in the Amount of \$15,400.00

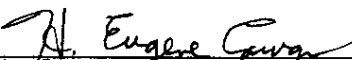
The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 190.00 for Court Reporting Costs.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$ 40.00 for Court Reporting Costs.

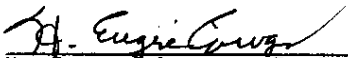
Tallahassee, Florida

Dated: 29 April 1992

Certified Copy:


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

29 April 1992
Date


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


K. N. Morefield, P. E.
Member


John P. Roebuck
Member

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STATE ARBITRATION BOARD
STATE OF FLORIDA

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HOLLOWAY CONSTRUCTION CO.)

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DEPARTMENT OF TRANSPORTATION)

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PROJECT NO. 97864-3315

LOCATION: Florida Turnpike

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Tuesday, March 10, 1992

PLACE: 1007 Desoto Park Drive
Tallahassee, Florida

TIME: Commenced at 9:00 a.m.
Concluded at 10:15 a.m.

REPORTED BY: LAURA MOUNTAIN
Court Reporter
Notary Public in and for
the State of Florida at
Large

WILKINSON & ASSOCIATES

Certified Court Reporters
P.O. BOX 13461
Tallahassee, Florida 32317
904-224-0127



APPEARANCES:

APPEARING ON BEHALF OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman
 Mr. Ken Morefield
 Mr. John "Jack" Roebuck

APPEARING ON BEHALF OF THE CONTRACTOR:

Mr. James A. Feak

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Eugene R. Perry
 Mr. Neil Condy
 Mr. Bud Hibbard
 Mr. Charles Peterson

* * *

I N D E X

EXHIBITS	PAGE
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P R O C E E D I N G S

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

Mr. Ken Morefield was appointed as a member of the Board by the Secretary of the Department of Transportation. Mr. John "Jack" Roebuck was elected by the construction companies under contract to the Department of Transportation.

These two members chose me, H. E. "Gene" Cowger, to serve as the third member of the Board and as Chairman.

Our terms of office began July 1, 1991 and expire June 30, 1993.

Will all persons who intend to make oral presentations during this hearing please raise your right hand and be sworn in.

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

CHAIRMAN COWGER: The documents which put this hearing into being are hereby introduced as Exhibit No. 1. This is the request for arbitration, the notice of arbitration forms and all of the information that was attached to the notice of arbitration.

Does either party have any information it wishes

1 to put into the record as an exhibit?

2 (Off the record)

3 CHAIRMAN COWGER: While we were off the record,
4 DOT presented two exhibits. One is a copy of standard
5 index number 281 which we will mark as Exhibit No. 2.

6 Another exhibit presented by DOT is the estimates
7 office record of final plans and documents. Dated at
8 the bottom is approved 1-30-90, which we will mark as
9 Exhibit No. 3.

10 Does either party have any additional exhibits
11 that they wish to enter at this time?

12 (Whereupon, Exhibit Nos. 1, 2 and 3 were received in
13 evidence.)

14 CHAIRMAN COWGER: During this hearing the parties
15 may offer such evidence and testimony as is pertinent
16 and material to the controversy and shall produce such
17 additional evidence as the Board may deem necessary to
18 an understanding and determination of the matter before
19 it.

20 The Board shall be the sole judge of the
21 relevance and materiality of the evidence offered.

22 The hearing will be conducted in an informal
23 manner. The contractor will elaborate on his claim and
24 then the DOT will offer rebuttal. Either party may
25 interrupt to bring out a point by coming through the

1 Chairman. However, for the sake of order, I must
2 instruct that only one person speak at a time.

3 Also, so that our court reporter may be able to
4 produce an accurate record of this hearing, please
5 introduce yourself the first time you speak.

6 Before the contractor begins, I would like to
7 make a couple of statements. When you start your
8 testimony or your statement, would you please state the
9 total amount of your claim as the first thing you tell
10 us.

11 MR. FEAKE: The claim per item or the total
12 amount?

13 CHAIRMAN COWGER: The total amount. Now, before
14 you start that, let me ask a couple of questions.
15 Looking at the summation of the claim as presented in
16 the January 31, 1992 letter, apparently there was
17 agreement between DOT and the contractor on part one of
18 the claim.

19 MR. FEAKE: That's correct.

20 CHAIRMAN COWGER: Does that agreement still
21 stand, DOT?

22 MR. CONDY: Yes

23 CHAIRMAN COWGER: So we do not need to discuss
24 part one, is the point that I'm getting to. Is there
25 agreement on any other parts that we can skip over here

1 today?

2 MR. FEAKE: I am in agreement on claim five, also,
3 at this point.

4 CHAIRMAN COWGER: DOT, does your offer of
5 \$5,098.80 on part five still stand?

6 MR. PETERSON: Yes, if he is in agreement with
7 what we originally offered. We made that in good faith
8 and if he agrees with that, we see no problem with
9 that. We're talking about \$5,098, is that correct?

10 MR. FEAKE: That's right. And 80 cents.

11 CHAIRMAN COWGER: Now, that is the amount that is
12 contained in a letter from --

13 MR. PETERSON: Just a minute. Neil, did you --

14 CHAIRMAN COWGER: Wait a minute, let me finish.
15 That's as contained in a letter from Mr. Wegman,
16 Turnpike Construction Engineer, to Holloway, dated
17 August 16, 1990, and there was an offer there by DOT to
18 settle that part five for \$5,098.80.

19 Now, proceed. What were you going to say?

20 MR. CONDY: I believe that it should be
21 considered as a lump sum settlement with all the
22 claims. I mean, there's other considerations to be
23 made with this claim.

24 MR. FEAKE: With that particular part?

25 CHAIRMAN COWGER: I don't understand that

1 statement. Are you saying that you are withdrawing
2 that?

3 MR. CONDY: No, not that we're withdrawing it.
4 I think that it should be brought out in the open and
5 discussed for consideration by the Board.

6 MR. ROEBUCK: It was fairly objective, though, it
7 was just a matter of reinforcement steel, right or
8 wrong, and apparently you both agreed to accept this.

9 MR. FEAK: If Neil wants, we can bring what
10 happened and why.

11 CHAIRMAN COWGER: Okay, I'll tell you what.
12 Let's say that we will discuss it, then, to some
13 degree.

14 Okay, you may proceed then with whatever opening
15 statements you want to make.

16 MR. FEAK: You want me to give my name, is that
17 right? I'm Jim Feak, anyway, with Holloway
18 Construction. And I don't know if everybody has a copy
19 of regrading and final dressing, the problem that we
20 had with it.

21 Anyway, I'll read it. "Holloway Construction
22 Company sodded structures 1-A and 2-A properly and used
23 more than planned quantity. These structures never
24 eroded. At that time we were instructed to lay only
25 planned quantity at each structure, which we did

1 accordingly.

2 "As a result, all the structures eroded and we
3 were instructed to redo them. Our letter of November
4 30th, 1989 states emphatically how we felt about this
5 directive."

6 I wrote a letter and said at that point that it
7 didn't meet the soil erosion standards anywhere in the
8 United States. But anyway, we said that we would go
9 ahead and do it.

10 And we did go along to all of these box culverts
11 and redress them and sod them. The sod quantities were
12 wrong. Obviously some of them we didn't have enough to
13 put two foot of sod in front of the structure and some
14 was more.

15 In any event, we did all of these structures and
16 we had a rain storm and washed them all, and we were
17 instructed to redo them, which we did. And we put the
18 paperwork in to file a claim and all this and that.
19 And it took us -- I forget how many days we were asking
20 for on that.

21 But we did do it all, and they didn't give us any
22 working days for that at all. And we turned in a claim
23 for some \$35,000 for that. And they offered us
24 \$15,000, which doesn't even cover the labor on the
25 thing.

1 In my mind, we did it because they said we had to
2 do it. But we wanted to sod them all. The first two
3 that we did, we sodded, they did not wash. The rest of
4 them, when we didn't, they all washed.

5 Now, if anybody -- Gene Perry was the one that
6 wanted me to sod the first two, which we did. Then
7 Jerry -- what's Jerry's last name?

8 MR. PERRY: Swabek.

9 MR. FEAKE: Swabek said no, we just want whatever
10 the plan says. Well, the plans, what engineering came
11 out with, it said 160 feet times varies. Well, there's
12 not a calculator in the world that tells you what it
13 ought to be when you add it like that. Or it may say
14 something else, times varies, every location. But then
15 they give you a quantity that you would lay at this
16 particular structure.

17 Some of them was almost enough, we had some that
18 we didn't even have enough to go along the road.

19 CHAIRMAN COWGER: Let me interrupt you if
20 I could, please, sir. First off, would you please
21 state for us the total amount of your claim.

22 MR. FEAKE: Okay, I'm sorry about that. The total
23 number was 35,800 --

24 CHAIRMAN COWGER: No, the total amount of all
25 claims.

1 MR. FEAKE: All right, \$95,180.99.

2 MR. MOREFIELD: That includes claim one.

3 CHAIRMAN COWGER: Okay. Okay. I understand now.
4 The other thing I wanted to bring out here was in
5 looking at the documentation on this, is there a
6 dispute over the fact that compensation is due the
7 contractor and is the dispute confined strictly to how
8 much?

9 MR. CONDY: The dispute lies -- the majority of
10 the dispute lies in who bears the responsibility for
11 the extra work.

12 CHAIRMAN COWGER: So we both have a -- we have
13 both an entitlement and an amount to dispute here?

14 MR. CONDY: Right.

15 CHAIRMAN COWGER: I thought that maybe we could
16 do away with the entitlement. But go ahead.

17 MR. FEAKE: Basically that's -- unless you want to
18 get into all these other letters that I did send. But
19 that's basically it. We were instructed to do it. We
20 didn't agree with it, emphatically, like I said, and as
21 a result it did all wash.

22 And we even spent money on seed, hoping it might
23 grow, out of our pocket. But we did have to redo them
24 all. And as a result we filed a claim which I'm sure
25 that you have all the documents that we filed.

1 And I have with them here with me, also, as to
2 the cost of doing this. And we filed a claim for that
3 dollar value.

4 CHAIRMAN COWGER: I think that the Board can
5 understand what the dispute is about. I read somewhere
6 in the correspondence that this erosion occurred at 39
7 culvert sites. Is everybody in agreement that that's
8 the number?

9 MR. PERRY: That's very close.

10 CHAIRMAN COWGER: Go ahead, Ken.

11 MR. MOREFIELD: You want to let DOT?

12 CHAIRMAN COWGER: That's the next thing. DOT,
13 we'd like to hear your rebuttal. And confine yourself,
14 if you could, to the entitlement part of it. Then
15 we'll come back and talk about the dollars.

16 MR. ROEBUCK: And this is restricted to claim
17 two, only, related to the erosion of culverts.

18 CHAIRMAN COWGER: Yes, we're talking about claim
19 two. I'm sorry.

20 MR. CONDY: Several considerations. One, the
21 planned quantities for sod, they weren't very definite.
22 But on direction from DOT, we went out and directed the
23 contractor to place sod around these structures in
24 reasonable conformance with index 281 of the '87
25 indexes which shows sod behind the head walls, around

1 the sides of the head walls, and down in front on the
2 slopes.

3 We also placed sod along the edge of the shoulder
4 to try to prevent runoff from the shoulder and roadway
5 from hitting these areas.

6 We feel that the contractor bears some
7 responsibility in the maintenance of the sod. This was
8 something that was set up by index that's used commonly
9 in DOT designs. And the contractor has some
10 responsibility maintaining those sodded areas to
11 establishment. The DOT was willing to pay those sodded
12 areas. He is required to establish them.

13 There were also areas in question that were well
14 beyond the limits of construction. There were berm
15 areas and diked areas in these ditches that were
16 disturbed due to the contractor's method of
17 construction. He elected to place dikes in the canals.
18 He should be required to restore those areas back to
19 preexisting condition because of his method of
20 construction.

21 These areas were left bare by the contractor.
22 They were also disturbed by these rainstorms and we
23 don't feel that the Department is responsible for
24 compensating the contractor for his repairs.

25 MR. MOREFIELD: Let me ask a question. You are

1 saying there was other areas that the contractor was
2 claiming, not just around head walls?

3 MR. CONDY: No, what it is is the areas that were
4 actually disturbed around these end walls were well
5 beyond the limits of construction, areas he stockpiled
6 material, fill material, equipment that we don't feel
7 that the Department should be responsible for the
8 restoration of.

9 And these areas were included in the total cost
10 that he is claiming for compensation, which we feel is
11 his responsibility to restore to preexisting
12 conditions.

13 CHAIRMAN COWGER: As I understand your testimony,
14 then, the erosion that occurred and that the contractor
15 had to repair and is now claiming compensation for
16 those repairs was in areas other than immediately
17 around an end wall?

18 MR. CONDY: Correct.

19 CHAIRMAN COWGER: And this erosion was in roadway
20 ditches near the end wall but not immediately adjacent
21 to the end wall?

22 MR. CONDY: Generally the side slopes along the
23 pavement where the box culvert extensions were confined
24 to a hundred feet along the roadway, but the
25 contractor's method of operation disturbed other

1 grassed areas along the shoulder in excess of that
2 hundred feet.

3 Now, the erosion also occurred in the areas that
4 he disturbed and should have been responsible for the
5 restoration of.

6 MR. MOREFIELD: Was this referred to in the plan,
7 the index?

8 MR. CONDY: Yes.

9 CHAIRMAN COWGER: Mr. Feak, I think that we ought
10 to give you the opportunity now to --

11 MR. FEAK: Well, I don't agree with that because
12 we did stockpile material there, yes. I didn't
13 stockpile very much on my job. There was another
14 contractor, he stockpiled. I hauled it in, put it
15 there. I agree that we did disturb some areas.

16 However, when it rained very hard, in my mind,
17 what I had to fix where the erosion was was where the
18 box culvert was. Obviously that's the high part that
19 we built and where it sloped off on the side of the
20 road and that's the area that repaired, in my mind.

21 If it was out in the flats somewhere because we
22 had disturbed it out there, that wasn't what was
23 eroding, anyway.

24 CHAIRMAN COWGER: Does anyone have anything
25 further to say about the entitlement issue or do either

1 one of the Board members have any questions about the
2 entitlement issue? I want to move on to the
3 compensation.

4 MR. ROEBUCK: Just so it's clear, you did this
5 under their supervision, per the plans?

6 MR. FEAKE: Yes.

7 MR. ROEBUCK: You only did the first two fully
8 sodded and then continued per plans.

9 MR. FEAKE: That's correct. Gene and I felt that
10 they should all be sodded and we sodded them all.

11 MR. ROEBUCK: The first two you did, then they
12 said quit, go back and just put the sod in as called
13 for in the plans?

14 MR. FEAKE: That's right.

15 MR. PERRY: Excuse me, because it would overrun
16 the quantity. That was the reason that we stopped.
17 But we felt at the time, even, between the two of us,
18 that an overrun of sod at that time would have been a
19 much less expensive thing than doing what we did.

20 MR. MOREFIELD: How long had this sod been down
21 before the rain occurred?

22 MR. PERRY: Sometimes 30 minutes, sometimes two
23 or three days. It depended, because it was such a long
24 stretch of area, 39 different --

25 MR. MOREFIELD: Are you telling me the one that

1 was down the longest was only down a couple of days
2 before the rain hit?

3 MR. PERRY: The one that was down the longest
4 were the first two that were sodded were down maybe
5 three days before the rain hit.

6 MR. MOREFIELD: So they didn't have time to get
7 established?

8 MR. PERRY: No.

9 MR. MOREFIELD: And the specifications say what,
10 on acts of God, as far as who is responsible?

11 MR. PERRY: That was discussed. I don't know
12 that --

13 MR. PETERSON: It says that the Department may,
14 may pay.

15 MR. CONDY: I mean, a typical rainstorm in south
16 Florida may not be considered an act of God if it's not
17 a torrential downpour, something above the norm. At
18 the time we were doing the sodding, it was the typical
19 time of year where we have rain every afternoon.

20 MR. PETERSON: The specifications say that the
21 Department may pay the contractor for an act of God.
22 It's their discretion.

23 CHAIRMAN COWGER: Has your question been
24 satisfactorily answered?

25 MR. MOREFIELD: Uh-huh.

1 CHAIRMAN COWGER: Another question, then. At two
2 sites where you sodded in excess of the amounts shown
3 in the plans, I assume this is the first two sites that
4 were done. What was the erosion situation at those two
5 sites?

6 MR. FEAK: There wasn't any.

7 MR. PERRY: Never had to be repaired.

8 CHAIRMAN COWGER: How did you sod those sites
9 that was different from what the plans showed? I know
10 you sodded them much more extensively. Did you sod --

11 MR. PERRY: He was directed by me to sod the area
12 that I felt, as an experienced superintendent for
13 contractors for many years, to protect those from
14 erosion.

15 And this was not a tremendous amount of excess.
16 It was excessive of the plan quantity but we found as
17 we went on down the line that the specified areas for
18 each culvert end was not necessarily what would have to
19 be used to protect it in any manner. Some of them were
20 excessive and some of them were short of the quantity
21 we felt would be necessary.

22 So as it turned out, we have an as-built in the
23 final estimate that shows the areas that were sodded
24 after that and leaving the areas that were bare left
25 bare because of this specification.

1 CHAIRMAN COWGER: Let me ask you one other
2 question, then, if I could. Going back, again, to
3 those two initial sites that were, we might say in
4 quotes, fully sodded, was there any of this disturbance
5 beyond the limits of construction that was referred to
6 earlier at those sites?

7 In other words, did the contractor stockpile any
8 materials, did he build any dikes and ditches or
9 anything at those sites?

10 MR. PERRY: Yes, they did. In fact, these
11 happened to be two of the steepest slopes on the
12 project. The first two were two of the steepest and
13 it's one of the reasons that we took this special
14 effort to sod them, because we expected them to erode
15 sooner than the rest of them would because of the
16 steepness of the slopes.

17 In those areas, there were areas that were bare
18 and left bare which were below on the slope lower than
19 the sod extended. And to my knowledge or as I remember
20 it, he didn't have to go back and redo those areas,
21 either. I don't know whether he ever went back to
22 those or not.

23 MR. FEAKE: No, I may have sprinkled some seed on
24 them.

25 MR. PERRY: I know you reseeded them, but as far

1 as regrading them, I don't remember you doing that.
2 But the area below the sod, in those two particular
3 places, didn't have a substantial amount of erosion.
4 There was, I'm sure, some.

5 CHAIRMAN COWGER: If the Board members don't have
6 any further questions on this, I would like to move on
7 to the area of compensation, because it appears like
8 that at one point DOT made an offer to settle this
9 matter, recognizing some degree of responsibility.

10 And that's not an issue here today, but I think
11 we need to flesh out a little bit the testimony here
12 about why such a difference between the 35,000-plus
13 that the contractor asked for in his claim and the
14 15,000-plus that DOT offered.

15 Can you tell us -- let's let DOT testify on that
16 part first to tell us why you feel that the cost
17 figures the contractor submitted are improper.

18 MR. CONDY: Upon receipt of his claim we went
19 back and reviewed the daily reports of construction,
20 all the records that we're required to keep for the
21 project, the time spent regrading, the equipment and
22 material costs and everything that we had in our
23 records.

24 The offer was made based on -- let's see, his
25 cost estimate came up 35,000. For the total time that

1 we could document in our records, we came up with a
2 cost estimate of about 30,400, 30,500.

3 And based on the reasons presented before, we
4 came up with basically a judgment of how much could be
5 construed as the Department's responsibility and how
6 much we felt was the contractor's responsibility and
7 thought based on lack of any other better numbers, a
8 50-50 split would be appropriate, if not generous.

9 CHAIRMAN COWGER: Okay, Mr. Feak?

10 MR. FEAK: Well, if \$35,000 was the equipment and
11 the labor and at that time when we were doing this,
12 that was the end of the job and we would have been done
13 if it had been -- they'd bought the job at that point,
14 we would have been done and we wouldn't have gotten
15 into this.

16 But then when this rain came, we were instructed
17 that whatever time was spent there, that's what we were
18 doing. We weren't doing anything else on any other
19 part of the job. The rest of the job was completed, to
20 my knowledge, unless you disagree with that.

21 CHAIRMAN COWGER: So what you are saying is you
22 assigned your total labor and equipment costs for that
23 three-week period to this item?

24 MR. ROEBUCK: It's three weeks?

25 MR. FEAK: Yes.

1 MR. CONDY: The majority of it. There were some
2 punchlist items going on through the final inspection;
3 realignment of guardrails and fixing posts and things
4 like that.

5 MR. FEAK: But I believe we did do these items
6 first because the punchlist items were -- it wasn't for
7 acceptance, we had to do these items. So I was not
8 spending my time doing that, I was getting this
9 regrading done. For which we never received any
10 working days, either, which I forgot to add.

11 CHAIRMAN COWGER: Let me ask you a couple of
12 questions. In looking at part two of the claim as
13 contained in this package, there is a letter, November
14 18, 1989, which is probably 30 pages or so down into
15 the package, to Metric from Mr. Feak, in which he
16 breaks out the cost of this claim.

17 MR. ROEBUCK: '88?

18 CHAIRMAN COWGER: Did I give you the wrong --

19 MR. ROEBUCK: '88, yeah.

20 CHAIRMAN COWGER: '88. I can't read this
21 morning. I'm sorry. The second page of the data shows
22 the equipment costs. If we could all get to there, I
23 had a couple of questions about that. Are we
24 essentially -- is everybody there?

25 As I understand it, Mr. Feak, you used Blue Book

1 rates to calculate these equipment costs.

2 MR. FEAK: I did not do this at all. Our manager
3 did it.

4 CHAIRMAN COWGER: Somebody did.

5 MR. FEAK: Somebody did, yes.

6 CHAIRMAN COWGER: As I understand it, it was
7 based on the Blue Book weekly rates, as far as the
8 charge for the equipment is concerned.

9 And my question is, why did you use the weekly
10 rates? I think Mr. Morefield is looking that up right
11 now. Doesn't the Standard Specifications say something
12 about using the monthly rates?

13 MR. MOREFIELD: That's what I was looking for.
14 I know I've seen it. I don't remember where it was.

15 CHAIRMAN COWGER: It makes some difference in
16 the equipment costs if you go to monthly. And
17 traditionally this type of thing where a contractor has
18 the equipment on the job and all and it's contractor
19 owned equipment, we've used the monthly rates in
20 dealing with claims.

21 So is there any particular justification in this
22 case, is my question, for --

23 MR. FEAK: The only thing I could say is the
24 reason was because it only took us three weeks to do
25 it, so we did it --

1 CHAIRMAN COWGER: Okay, and I also note that in
2 calculating the operating expense, we switched or the
3 person who prepared this then switched over to the
4 hourly rate, which is higher yet.

5 In other words, the rates, the monthly is the
6 least expensive rate, the weekly is a little bit more
7 and the hourly is the most expensive rate. I wondered
8 why that was done.

9 DOT, have you looked at that?

10 MR. CONDY: When we did our calculations I recall
11 going through the specifications for force account
12 work. It's on page 87.

13 CHAIRMAN COWGER: Okay, now we're there. Go
14 ahead. Okay, I stand corrected. I'm sorry. I did not
15 remember what the book says.

16 MR. ROEBUCK: What does it say?

17 CHAIRMAN COWGER: On page 87, if the total amount
18 of time that the equipment is committed is less than 30
19 days, then we do use the weekly rate.

20 MR. FEAKE: Have you got anyplace that I can get a
21 drink of water or anything?

22 CHAIRMAN COWGER: We'll take a quick break.

23 (Off the record)

24 CHAIRMAN COWGER: Okay, we'll go back on the
25 record now, Mr. Condy.

1 MR. CONDY: I don't think in the determinations
2 of the total amount of his claim versus our claim,
3 I don't think that the discrepancy lies in the
4 calculations in accordance with the specifications.
5 I think it may just be record keeping of what our
6 inspectors and engineers stated the time used for each
7 item was.

8 CHAIRMAN COWGER: Okay. For the record, I want
9 to withdraw my question about the equipment rental
10 rates and therefore all of the testimony that followed
11 that really isn't pertinent to this matter.

12 If no one has any further questions, comments or
13 anything on part two, I think the Board has enough
14 information to make its decision, and I would like to
15 move on to part three. Any objection to moving on to
16 part three?

17 No objection heard, we'll move on. Mr. Feak?

18 MR. FEAK: I'm probably in error on this and not
19 allowed anything, but due to the fact that we were
20 there that much longer, I took what the original dollar
21 value I had for mobilization and the fact that we were
22 there 52 days longer and calculated it out that way.

23 However, I guess, after reading the book, I'm
24 probably wrong about it.

25 CHAIRMAN COWGER: So you are saying that you

1 really don't think that you are right in this part?

2 MR. FEAK: Well, naturally I would like
3 everything that I can get, but --

4 MR. PETERSON: Answer the question, now.

5 CHAIRMAN COWGER: The only question I had about
6 the thing I think you've answered, but I'm going to ask
7 it, anyway. How was your mobilization cost affected by
8 the 52-day overrun in time?

9 MR. FEAK: Well, there again, reading your book,
10 I expect that it wasn't, and we probably need to pass
11 over it, and I'll say it don't hurt to throw a little
12 extra in sometimes.

13 MR. PETERSON: Are you sure that's zero?

14 CHAIRMAN COWGER: He admits to pass over that
15 one. I don't think that the Board is going to consider
16 that one any further. Part four.

17 MR. FEAK: Well, this is maintenance of traffic
18 and the fact of the matter is that we were there that
19 much longer than the original 230 days. We did
20 maintain traffic, we were responsible for any accidents
21 to the guardrail or anything else out there.

22 We maintained traffic all the time that we were
23 working there and that's why I put a claim in for it,
24 at the dollar value per day from the original \$25,000.

25 CHAIRMAN COWGER: Was that contract amount for

1 the bid item of maintenance of traffic, \$25,000?

2 MR. FEAKE: Yes.

3 CHAIRMAN COWGER: And you divided it by 230 and
4 you came up with this daily rate?

5 MR. FEAKE: Yes.

6 CHAIRMAN COWGER: DOT?

7 MR. CONDY: We feel that during the duration of
8 the project, that there were no changes in the scope of
9 the work resulting in modifications to that MOT plan.
10 The MOT plan went along just as expected at the
11 preconstruction meeting.

12 Any extensions of time would only affect the
13 length of barricades and construction signs and things
14 like that. It would have to remain in place and those
15 items were paid for separately under separate MOT
16 items.

17 I don't really follow Jim's estimate of the time
18 extensions. You say that you were there 52 days
19 longer. Our calculations, we've given time extensions
20 totaling 47 days.

21 MR. FEAKE: Yeah.

22 MR. CONDY: We granted time for weather, errors
23 in the reinforcing steel, the permitting with the water
24 control district, and a general time extension, for
25 just quantity overruns, which total 47 days.

1 Also, the original bid, the \$25,000 was based
2 on the 230 days of which six had been taken away from
3 Mr. Feak for failure to provide documentation at the
4 beginning of the contract, which would only give you an
5 actual time extension out there of 41 days.

6 MR. FEAK: Well, if it will pay anything on this,
7 I'm also asking for more working days in all of these
8 items. That's an item that I didn't bring up.

9 In the regrading, we did all of this work and
10 charged liquidated damages for all these extra days
11 that we did this.

12 CHAIRMAN COWGER: Okay, may I interrupt and ask
13 that we defer any further discussion of the matter of
14 liquidated damages and all until we get to part eight?
15 Let's not get them mixed in.

16 MR. FEAK: All right.

17 MR. MOREFIELD: Let me ask a question, just to
18 clarify. During the time -- how long did it take them
19 to repair the damage?

20 MR. CONDY: Well, the way I understand Jim's
21 claim is this isn't a claim based on the repair or the
22 regrading.

23 MR. MOREFIELD: I understand, but he did repair
24 the damage, right?

25 MR. CONDY: Right.

1 MR. MOREFIELD: Was he paid for the maintenance
2 of traffic signs, those barricades, per day while he
3 was out there repairing?

4 MR. PETERSON: Yes.

5 MR. MOREFIELD: Because from what I understand,
6 he's asking for payment on his lump sum items.

7 MR. PETERSON: Right.

8 MR. MOREFIELD: But he was paid for the signs and
9 whatever barricades that he had out there during the
10 time that he was repairing it?

11 MR. CONDY: Construction signs. He wasn't using
12 any barricades.

13 MR. MOREFIELD: But he had the work zones signed,
14 properly marked?

15 MR. PERRY: Yeah, there were some barricades used
16 but they were paid for per day.

17 CHAIRMAN COWGER: And even though the allowable
18 contract time, even though he was out there beyond the
19 allowable contract time as extended, he was paid right
20 on through to the end of the project for the unit price
21 maintenance of traffic items?

22 MR. PERRY: He was paid for the barricades as a
23 pay item on a per-day basis, per unit, per day.

24 CHAIRMAN COWGER: For any day that he had
25 anything in place throughout the work, including that

1 time that was beyond the allowable contract time as
2 extended?

3 MR. CONDY: I can't swear to the fact that he was
4 paid for time that went beyond the allowable contract
5 time.

6 CHAIRMAN COWGER: You say you cannot?

7 MR. CONDY: I cannot swear for that. I know in
8 the specifications you're not supposed to pay for signs
9 beyond the allowable contract time. I don't think we
10 would have.

11 MR. MOREFIELD: Is your 46 days contrasting to
12 his 52? He is not paying 52 above the 46? Is the
13 number just 52 and 46?

14 MR. CONDY: Yes. Actually, 41.

15 MR. MOREFIELD: I'm just trying to make sure that
16 his time is not added on to your 46.

17 MR. CONDY: Right.

18 MR. ROEBUCK: His is 47 less 6 is 41.

19 CHAIRMAN COWGER: Let me make sure that
20 I understand that. The DOT is saying that the period
21 was 47 days. The contractor is saying that same period
22 was 52 days.

23 MR. MOREFIELD: That's what I understand. He
24 says that he took six days away for other things at the
25 beginning of the contract.

1 CHAIRMAN COWGER: Oh, that was the question? His
2 allowable contract time was reduced from 230 to 224
3 days because of late execution or --

4 MR. CONDY: Correct.

5 CHAIRMAN COWGER: I think we've about got enough
6 on that. Go ahead, though, Mr. Condy.

7 MR. CONDY: Just one more comment. The majority
8 of the days were based on a supplemental agreement for
9 general overruns and underruns. Now, there is normally
10 a clause in the supplemental agreement stating that
11 this is final settlement for any and all compensation
12 and delays based on these overruns and underruns.

13 I don't know if just -- if a consideration can be
14 made for those 23 days.

15 CHAIRMAN COWGER: Of the 47 days that the
16 contract time was extended, 23 of them were by
17 supplemental agreement, is that what you are saying?

18 MR. CONDY: Correct.

19 CHAIRMAN COWGER: And the remaining 24, then,
20 were by letter?

21 MR. ROEBUCK: I thought that we were going to
22 wait until claim eight for that.

23 CHAIRMAN COWGER: Okay, let's wait until we get
24 to part eight and come back.

25 Let's stay on the entitlement part of the thing

1 just one more minute and then we'll move on.

2 Just to be totally fair to Mr. Feak, you have
3 heard what DOT has said. Do you have anything further
4 to say about why you feel you should be paid additional
5 for some number of days, whether it be 47 or 52?

6 MR. FEAK: Whatever the days that it ends up,
7 I feel I should be paid. You said that we got paid for
8 barricades. I've got maintenance of traffic in here
9 and construction signs mounted, which were on both ends
10 of the job. There's no pay item here for barricades
11 that I can see in here, unless I am crazy.

12 MR. PERRY: You may be right, Jim.

13 MR. FEAK: Whatever was there was part of
14 maintenance of traffic.

15 MR. PERRY: Okay. At the time that contract was
16 written, you are probably right. It would be in that
17 lump sum. Okay, I stand corrected because I realize
18 this came up in the specs later on and the structure of
19 contracts came up after that. I am doing a lot of MOT
20 right now and that's the way it is now.

21 CHAIRMAN COWGER: So as I understand it, there
22 was no separate pay item for maintenance of traffic?

23 MR. MOREFIELD: For signs, yes.

24 MR. FEAK: But not for barricades or anything we
25 did for closing lanes or whatever.

1 MR. MOREFIELD: Do we have any documentation on
2 what was out there?

3 MR. CONDY: Our daily reports.

4 MR. MOREFIELD: Did you have something out there
5 while you were doing this particular repair? Did that
6 cause the lane closure?

7 MR. FEAK: No, but I believe that we had signs up
8 that said shoulder work or something wherever we were
9 working.

10 MR. MOREFIELD: The signs did have an item in the
11 plans, right? The signs did have a per day item?

12 MR. PERRY: The construction signs do but again,
13 those were not the ones that we were talking about.
14 These were permanent construction signs of which they
15 had one at one end of the job and another contractor
16 had one at the other end of the job.

17 MR. FEAK: They were a hundred miles apart.

18 MR. PERRY: In 121 miles, we had one sign at each
19 end because there was work going on every few feet,
20 really, along the 121 miles. So this item for
21 construction signs pertains only to one sign. It has
22 nothing to do with the temporary signing on a daily
23 basis.

24 MR. ROEBUCK: So the only item for maintenance of
25 traffic was the lump sum?

1 MR. PERRY: Basically that's correct, yes.

2 CHAIRMAN COWGER: I'm not sure that
3 Mr. Morefield's question was answered. During this
4 either 47 or 52-day period, were there signs other than
5 this sign at the beginning of this project in place?
6 In other words, what kind of maintenance of traffic
7 costs did you incur during that time?

8 MR. FEAK: Whatever we had to put up every day.
9 If we were working on a box culvert, we had some signs
10 there. We weren't just working off the shoulder of the
11 road with nothing there, as I remember. We had
12 construction ahead signs or whatever. We had them on
13 trailers, of course, which made it easy, but --

14 MR. CONDY: Do you recall, Gene?

15 MR. PERRY: Well, for each day they would work
16 they would have had at least three signs in each
17 direction because they had to cross the median. And
18 they had work going on within two feet of the shoulder,
19 so they would have had to have those out. In fact, the
20 Florida Highway Patrol would have insisted on those.

21 So there would be at least six signs on each site
22 being worked. But again, those were the ones that
23 I thought were paid for on a per-day basis. There
24 would be six, I'm sure, at a minimum.

25 CHAIRMAN COWGER: Okay, does anybody have any

1 further questions about this part four of the claim?

2 Let's move on to part five, then.

3 As I understand this part five, now, there was an
4 error in the plans that caused the quantity for
5 reinforcing steel in the various box culverts to be in
6 error.

7 The contractor purchased and had delivered to the
8 project site reinforcing steel in accordance with the
9 quantity shown in the plans. And the contractor is
10 claiming compensation for the difference between the
11 amount that he -- well, he is claiming compensation for
12 the difference between the planned quantity for
13 reinforcing steel and the quantity that was paid to him
14 on the final estimate.

15 Now, is that basically what it amounts to,
16 Mr. Feak?

17 MR. FEAK: Yes, that's basically it. And the
18 reason being, the plan was wrong because the skew was
19 wrong. Of course we had everybody bent and delivered
20 to the job and then we find out the plan was wrong.
21 They had to makeshift the thing in order to make it fit
22 the box culvert that was there, even after they finally
23 got the right plan.

24 In any event, we had a meeting down at --
25 I forget what the place was down there -- and

1 Jerry Swabek emphatically said that because of all of
2 the troubles we had, we should be paid the unit price
3 for the dollar value of what we purchased in the amount
4 of reinforcing steel that we purchased.

5 And he instructed you to do that. And in your
6 offer here, that's what you have offered me and I say
7 that I am satisfied with that. But you wanted to bring
8 something else up about it.

9 MR. CONDY: No, it was just a clarification. The
10 original planned quantity of steel was 156,000 pounds
11 and during the course of the project we received
12 invoices from Mr. Feak for steel that he purchased of
13 149,000 pounds.

14 The actual steel placed in the box culverts was
15 calculated to be 134,000 pounds. Based on these two
16 numbers, we came up with an unused steel, a waste,
17 whatever, of almost 15,000 pounds, which we assumed to
18 be waste due to the design error.

19 I mean, there is other waste on the project, but
20 we assumed all those 15,000 pounds to be waste due to
21 this design error.

22 What we've paid so far is the 134,000 pounds
23 installed at the contract unit price of 60 cents a
24 pound and we paid the additional in waste, the 15,000
25 pounds, at the purchase price of 24 cents a pound plus

1 6 percent tax.

2 That's been paid to Holloway so far. I don't
3 know, have you gotten your final estimate? But that's
4 what we submitted on the final estimate.

5 The offer was that we would pay that additional
6 14,000 or 15,000 pounds at the installed price of 60
7 cents a pound. And that was the \$5,098.

8 In his claim he is asking for 156,000 pounds and
9 it just doesn't seem like we should be paying for steel
10 that was never purchased by him.

11 MR. FEAK: In that time. But like I said, I go
12 along with what you say now. I didn't know what we had
13 purchased at that point and I knew what the planned
14 quantity was. We made all this out 500 years ago, and
15 it's hard to remember it all.

16 MR. ROEBUCK: Your statement was that they used
17 174,000 but there's 15,000 of waste, which made the
18 149. You said that he had been paid for that 149? You
19 paid for 140, right?

20 MR. CONDY: Well, the 140 is based on the
21 equivalent weight of steel at 60 cents a pound. That's
22 the only way we can put it in the DOT system. What
23 we've paid for is that 15,000 pounds at his purchase
24 price, the 24 cents a pound, not 60 percent, which is
25 the installed price. We paid for it at his purchase

1 price.

2 MR. ROEBUCK: But his offer here reads 60. So
3 what it was, it was more steel, but only at 25 cents a
4 pound. It's an equivalent dollar value.

5 MR. CONDY: Right.

6 CHAIRMAN COWGER: And the invoice price was 25
7 cents a pound.

8 MR. CONDY: 24 plus tax, correct.

9 CHAIRMAN COWGER: And was that delivered? Did
10 that include the delivery cost of 24 plus tax?

11 MR. CONDY: Yes.

12 CHAIRMAN COWGER: Now, give me that quantity
13 again. You say the invoices totaled out to be --

14 MR. CONDY: 149,038.

15 CHAIRMAN COWGER: And the actual amount put into
16 the structure?

17 MR. CONDY: Is 134,284.

18 CHAIRMAN COWGER: So that 15,000 pounds, in
19 making the offer that you made at one point in time,
20 you took that 15,000 pounds, plus or minus difference,
21 converted it to dollars at 25 cents plus or minus a
22 pound --

23 MR. CONDY: No, what he has been paid for is the
24 installed price on what he installed, the invoice price
25 on what he didn't install and that went in -- that was

1 submitted that way on the final estimate.

2 The basis of the settlement offer was based on
3 changing that 15,000 from the 24 cents a pound, pay him
4 at the 60 cents a pound, which is the installed price.
5 And that was just a basis of settlement.

6 CHAIRMAN COWGER: I think that we've got enough
7 information to make a decision, but as I understand it,
8 Mr. Feak, you would be satisfied if you got paid for
9 that additional 15,000 pounds at 60 cents a pound?

10 MR. FEAKE: They have already paid part of it at
11 24 cents, but the balance is what we're talking about.

12 MR. CONDY: \$5100.

13 MR. ROEBUCK: That's your figure, 5,000, is what
14 all that nets out to.

15 MR. CONDY: That's the other 35 cents.

16 CHAIRMAN COWGER: Anybody else want to discuss
17 anything further on item number or part number five of
18 the claim? Let's go on, then, if we might.

19 Excuse me, let's go off the record for a second.
20 (Off the record)

21 CHAIRMAN COWGER: Okay, let's go on, then, to
22 part eight.

23 MR. ROEBUCK: We've been trying to get there on
24 the claim and now we've finally got there.

25 MR. FEAKE: We finally got there.

1 CHAIRMAN COWGER: Before we start any testimony,
2 let me make sure I understand for sure, now, what the
3 situation is on this contract.

4 The original contract time was 230 calendar days.
5 DOT has subtracted six calendar days from that so now
6 we're at 224. You have added back, by supplemental
7 agreement, 23, and you have granted 24.

8 MR. ROEBUCK: Now, where is that 24? Where is
9 that?

10 MR. CONDY: The little numbers down here.

11 CHAIRMAN COWGER: Is that the way it is?

12 MR. CONDY: Correct.

13 CHAIRMAN COWGER: Okay. Now, in looking at the
14 claim, about the fourth page of the document, we've got
15 a contract time analysis form in there which was
16 prepared by the contractor. Some of those numbers
17 don't seem to jive perfectly because of the fact that,
18 DOT, you say that there was really six days subtracted
19 from that original contract time so it would be 226.

20 MR. CONDY: 224.

21 CHAIRMAN COWGER: 224. Excuse me. So the time
22 allowed would really be 271.

23 MR. MOREFIELD: That jives with DOT.

24 CHAIRMAN COWGER: The total contract time charged
25 was 311, according to this sheet, so that would mean

1 that there was 40 days assessed. What does that final
2 estimate show?

3 MR. FEAK: 34.

4 CHAIRMAN COWGER: 34. How do we explain this
5 difference? Is there an explanation as to how the 34
6 days was arrived at?

7 MR. MOREFIELD: In lieu of 40, you are saying.

8 CHAIRMAN COWGER: In lieu of 40, right. My
9 calculations would indicate it should have been 40.

10 MR. CONDY: On here there's 305 calendar days
11 elapsed.

12 MR. ROEBUCK: That's that six I think that's
13 flipping around there a little bit.

14 CHAIRMAN COWGER: So what you're saying is there
15 was only 305 calendar days charged.

16 MR. MOREFIELD: The six days is still in the 40.

17 MR. ROEBUCK: Right.

18 CHAIRMAN COWGER: Okay, but when you do the
19 subtraction, now you are back down to 34 again.

20 CHAIRMAN COWGER: So what's wrong with this time
21 analysis sheet is the total contract days charged were
22 really 305, not 311. Can somebody verify that?

23 MR. CONDY: Right.

24 CHAIRMAN COWGER: I think maybe this Exhibit 3
25 will do that, won't it?

1 MR. PETERSON: It indicates 305.

2 CHAIRMAN COWGER: Okay, we've got that.

3 Now, let's talk a little bit about those 24 days,
4 if we could, that DOT granted. What was the basis for
5 those 24 days?

6 MR. CONDY: There were 13 days granted as weather
7 days in accordance with the specifications. There were
8 three days granted due to the design error in the skew
9 of the box culverts, resulting in errors in the
10 reinforcing steel. And there were eight days granted
11 due to failure of DOT to obtain permits from North St.
12 Lucie River Water Control District.

13 CHAIRMAN COWGER: Okay, now we've got it. And
14 that totals out to be 24. Okay, I want to get all that
15 down on the record here so when we start talking about
16 the contractor's claim we can sort everything out a
17 little better, maybe.

18 Okay, Mr. Feak, since we haven't let you talk on
19 claim eight -- I'm sorry, but we've got everything in
20 the record now, I think, that we need. Tell us a
21 little about it.

22 MR. FEAKE: Well, anyway, as it states right here,
23 St. Lucie, I don't know if you are aware, there was no
24 permit. And it happened to be around the Christmas
25 holidays and we did not receive a permit for 22 days.

1 Our contractor, my subcontractor, had moved in
2 there. That was one of the bigger box culverts to be
3 done, and he was there. And they allowed us eight days
4 and said we're off on vacation. But the point of the
5 whole thing is, that work was stopped at that area for
6 22 days.

7 Now, they could have packed up and moved up the
8 road 25 miles, or whatever, but they were stopped. But
9 yet we were only granted eight days and we didn't
10 receive a permit for 22 days. That's that part of it.

11 The other part of the claim is for the redressing
12 that we did under item two, the regrading. All of that
13 we don't feel that we were responsible for any of that
14 and yet they didn't grant us any days at all for that.

15 In fact, their letter, in stating that, said that
16 they would offer so many dollars, but no working days.
17 Yet we were, you know --

18 CHAIRMAN COWGER: I think all of that is fairly
19 clear in the documentation that you submitted.

20 DOT, let's talk about each part standing alone.
21 Let's talk about the permitting problem first. The
22 contractor is contending he is due 22 days.

23 You granted him eight days. Therefore, there's
24 16 days that you feel that he is not due. Tell us a
25 little about why that is.

1 MR. CONDY: Based on our records, we look back
2 and see --

3 MR. MOREFIELD: 14 days.

4 MR. CONDY: -- what the total delays were, based
5 on the contract records that we maintain. We came up
6 with eight days justified. Of that 22 days, ten of
7 those days were suspended -- the contract time was
8 suspended due to Christmas holidays. DOT doesn't see
9 any justification for granting additional contract days
10 which are not chargeable contract days in the first
11 place.

12 Based on our records, there were several other
13 days that the subcontractor had no intention of working
14 due to other reasons.

15 CHAIRMAN COWGER: Can you tell us a little more
16 about that?

17 MR. CONDY: At the time the subcontractor was in
18 somewhat of a dispute with Holloway over payment and he
19 said that they weren't going to be there until Jim
20 wrote him a check.

21 MR. FEAK: However, that was Bonn-J Contracting
22 who already had subbed part of their work to Technical
23 Specialties and we had no problems with Technical
24 Specialties.

25 CHAIRMAN COWGER: What work was halted during

1 this period of time? If we assume that truly the
2 permitting problem delayed the work by 22 days, a
3 period of 22 consecutive days, what kind of work was it
4 that should have been going on that wasn't going on,
5 Mr. Feak?

6 MR. FEAK: Constructing these -- I believe that
7 there were three box culverts there that we were --
8 culvert extensions.

9 MR. PERRY: There were three culverts.

10 MR. FEAK: The fact is, they had stopped the
11 water off and prepared the bottom to pour concrete, and
12 somebody said, we've got an experimental station and
13 everything else over here and you can't do it.

14 We ended up pumping the water across the road
15 while they were building it. However, that's what was
16 involved at that time.

17 CHAIRMAN COWGER: I wanted to get that out --
18 I will let you come in in just a second -- because of
19 the other testimony that was given. And what DOT has
20 said is that during this period of time, the
21 subcontractor was refusing to work, in essence.

22 But the question I have is if the contractor
23 would have been willing to work, or the subcontractor
24 would have been willing to work during that 22-day
25 period, could he have worked?

1 MR. HIBBARD: The answer to that is yes, and in
2 fact they did work during that 22-day period. They
3 moved further up the road and began work on different
4 culvert extensions than these particular ones that were
5 halted by the permit.

6 CHAIRMAN COWGER: So the permitting only
7 affected --

8 MR. CONDY: Six locations.

9 MR. HIBBARD: That was part of the analysis that
10 came up with the eight days that was granted to them.

11 The fact of the matter is that the permit was not
12 obtained for 22 days. But that did not stop the work
13 for 22 days.

14 CHAIRMAN COWGER: What was the basis for the
15 eight days, then?

16 MR. CONDY: They were days that the contractor or
17 subcontractor was available and ready to work but was
18 delayed due to these permitting problems.

19 We did have a situation where the subcontractor
20 did go in there and start doing work, stopped the flow
21 of water through these box culverts.

22 The water control district came out and said no,
23 you are not going to be permitted to work here, remove
24 your dikes and let the water flow, and there were
25 delays for that.

1 CHAIRMAN COWGER: DOT's testimony, though, is
2 that that really only delayed a controlling item of
3 work by eight days.

4 MR. CONDY: The ultimate completion --

5 CHAIRMAN COWGER: And the subcontractor either
6 did or could have moved to other sites and done
7 productive work, is that basically what you are saying?

8 MR. CONDY: And did. Correct. We reviewed our
9 records and we looked at it as to what would delay the
10 ultimate completion of the job.

11 CHAIRMAN COWGER: Mr. Feak, what do you have to
12 say about that?

13 MR. FEAK: Well, the only thing I would have to
14 add to that, the contractor could have been working at
15 the other spots and at this one at the same time,
16 because Technical Specialties did have more than one
17 group of people working on box culverts. And as a
18 result, well, he didn't have all the box culverts on
19 the job. He had to go up and concentrate on the small
20 ones up there.

21 I believe he had planned to have more -- in fact,
22 his letter -- but that's all settled now. He stated
23 the fact that I could be up the road working with one
24 crew up here or two smaller ones, and working here.
25 But as a result, he couldn't. He had to stay away from

1 those for those days. Which might have meant that the
2 job got done a little bit faster.

3 MR. PERRY: They in fact did reduce their forces
4 at that time but they still worked.

5 MR. FEAK: That's the only thing that I would
6 have to add to that.

7 CHAIRMAN COWGER: There was a subcontractor
8 called Bonn-J and there was another one called --

9 MR. FEAK: Well, she's a minority and she's
10 allowed to sub half of it or 49 percent to somebody
11 else.

12 CHAIRMAN COWGER: Okay, so that was a subordinate
13 subcontractor. We don't need to know anything more
14 about that.

15 Does anybody else want to hear anything more
16 about sub-part one of part eight, then? If not, we'll
17 move on to the discussion of the time that it took to
18 do the regrading work. And as I understand it, DOT has
19 granted zero days for this.

20 MR. CONDY: Correct. Actually, one day.

21 CHAIRMAN COWGER: Let's let Mr. Feak say first
22 why he feels --

23 MR. FEAK: Well, we're back to the regrading
24 thing. I don't feel that any of this was my problem.
25 If I had been allowed and he had paid for a little more

1 sod, and I was allowed to do them all, when we got done
2 with it, it would have been done, which is obvious,
3 because two of them we did sod that way.

4 But as a result, like I stated way back in
5 November, I didn't feel that I would be responsible for
6 it, but I would do whatever was requested of us.

7 I just don't -- they washed away and I had to
8 repair them and those days that it took me to repair
9 them, they allowed me nothing.

10 MR. MOREFIELD: How many days is that you are
11 claiming for this?

12 MR. FEAK: 24.

13 MR. MOREFIELD: For just the regrading?

14 MR. FEAK: We applied on August 22nd in a claim.
15 We hadn't received an answer when I wrote this, but
16 that's what we're claiming, yes.

17 CHAIRMAN COWGER: So as I understand the claim,
18 Mr. Feak, you are claiming that for that entire three
19 plus or minus week period that you were there doing
20 this regrading work, you should be granted the 24 days
21 additional contract time?

22 MR. FEAK: That's my feeling, yes.

23 CHAIRMAN COWGER: Mr. Condy, or whoever else
24 wants to address this item, let's hear what the DOT has
25 to say about that.

1 MR. CONDY: Reviewing the claim, we went back to
2 the same information we used for consideration for
3 claim number two for his compensation.

4 We looked at the approximately three weeks that
5 he worked on the restoration. We've got 15 work days
6 in there. We had previously granted a weather day and
7 came up with a net of 14 days that could have possibly
8 been granted due to time extensions due to inclement
9 weather.

10 Based on the logic that we used before, our
11 settlement offer, we offered the contractor seven days,
12 based on his responsibility versus the Department's
13 responsibility in the regrading of these areas.

14 CHAIRMAN COWGER: So let me go back.

15 MR. ROEBUCK: Your 50-50 theory is what you were
16 using.

17 MR. CONDY: Right. We came up with 14 days it
18 took for restoration.

19 CHAIRMAN COWGER: Calendar days or working days?

20 MR. CONDY: Working days.

21 CHAIRMAN COWGER: This is a calendar day
22 contract, isn't it?

23 MR. CONDY: Correct.

24 CHAIRMAN COWGER: What's the logic to going to
25 working days?

1 MR. CONDY: Well, in the Department's procedure
2 for contract time extensions due to weather, you don't
3 typically grant weekend days if they didn't typically
4 work weekends.

5 And the contractor would have to have a set
6 schedule for working weekends where the contract would
7 actually be delayed. If he wasn't planning on working
8 Saturdays and Sundays, we wouldn't grant additional
9 contract time for it.

10 CHAIRMAN COWGER: Is the testimony by DOT that
11 you agree that it took 22 calendar days to do this
12 additional work, to do the work of restoring the eroded
13 areas? You granted eight calendar days, which takes it
14 down to 14, based on what? Based on the -- how did you
15 get the eight?

16 MR. MOREFIELD: That's on the permit.

17 MR. CONDY: The eight days, we haven't granted
18 any.

19 CHAIRMAN COWGER: Haven't granted any. I'm mixed
20 up. Excuse me.

21 MR. CONDY: We have granted so far one day in
22 these three weeks that has to do with the regrading, we
23 have granted one day.

24 MR. MOREFIELD: That was for weather, right?

25 MR. CONDY: That's weather.

1 MR. ROEBUCK: You used three working day weeks.
2 Five day, that's 15 less the one for weather, that's
3 14, and split it. That's what they offer, more or
4 less, whereas the contractor says that he had 24
5 calendar days involved in it.

6 MR. HIBBARD: Gene, could I make a statement?

7 CHAIRMAN COWGER: Sure.

8 MR. HIBBARD: Concerning both of those claims,
9 the regrading and the time involved in the regrading,
10 those claims were analyzed on two different occasions.
11 On both occasions the analysis proved up that the
12 contractor was not due any compensation.

13 Subsequent to that, there was a meeting of all
14 parties concerned at the turnpike offices in an attempt
15 to solve these problems and settle these claims. These
16 numbers were arrived at in an attempt to give the
17 contractor some compensation and to resolve all of
18 these claims in a total package. That's part of the
19 reasoning behind these 50-50 numbers.

20 CHAIRMAN COWGER: We understand. And we
21 understand, also, that the testimony that's given today
22 has got to stand alone, regardless of what you may have
23 offered before. But some of the compensation figures
24 we will use if we decide that there is entitlement.

25 Okay, I think we've reached the end, unless

1 Mr. Feak or Mr. Condy, Mr. Peterson, somebody has
2 something else they want to say.

3 MR. ROEBUCK: Were there any other disputed delay
4 days?

5 MR. FEAK: I questioned at the beginning of it
6 but there was one day or two there at the beginning due
7 to the fact that the asphalt claim, but I don't want to
8 get into it.

9 This whole thing -- and I wrote a letter to
10 Mr. Henderson. I've got it with me.

11 CHAIRMAN COWGER: It's in here.

12 MR. ROEBUCK: You were steaming when you wrote
13 that.

14 MR. FEAK: I was steaming when I wrote that. It
15 was not a lie, any of it, in my mind, and so I wrote
16 it. And that's the way it is.

17 MR. ROEBUCK: You see I quickly delegated it.

18 MR. FEAK: And I do not -- I'm really not from
19 Tokyo. They call us a foreign company here, you know,
20 but this is the United States. You don't need to call
21 us a foreign company.

22 CHAIRMAN COWGER: I don't think any of that is
23 pertinent to what we're talking about and I would just
24 as soon not have any more of it in the record.

25 Mr. Contractor, have you completed your

1 presentation, then?

2 MR. FEAK: Yes, I have.

3 CHAIRMAN COWGER: DOT, have you completed your
4 rebuttal?

5 MR. CONDY: Yes.

6 CHAIRMAN COWGER: Mr. Morefield, do you have any
7 further questions?

8 MR. MOREFIELD: No.

9 CHAIRMAN COWGER: Mr. Roebuck, do you have any
10 further questions?

11 MR. ROEBUCK: No.

12 CHAIRMAN COWGER: This hearing in hereby closed.
13 The Board will meet on April 24th to deliberate on this
14 claim and you will have our final order shortly
15 thereafter.

16 (Whereupon, the hearing was concluded at 10:15 a.m.)

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CERTIFICATE OF REPORTER

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STATE OF FLORIDA)
COUNTY OF LEON)

I, LAURA MOUNTAIN, Court Reporter and Notary Public in
and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing proceedings were
taken before me at the time and place therein designated;
that my shorthand notes were thereafter reduced to
typewriting under my supervision; and the foregoing pages
numbered 1 through 53 are a true and correct record of the
aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee,
attorney or counsel of any of the parties, nor relative or
employee of such attorney or counsel, nor financially
interested in the foregoing action.

WITNESS MY HAND AND SEAL this, the 30th day of
March, A.D., 1992, IN THE CITY OF TALLAHASSEE,
COUNTY OF LEON, STATE OF FLORIDA.

Laura Mountain
LAURA MOUNTAIN
Court Reporter
Post Office Box 13461
Tallahassee, Florida 32317

My Commission Expires
September 23, 1994