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DIVISION III
STATE OF WASHINGTON
By _____

No. 32305-6

COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION III

GENERAL CONSTRUCTION COMPANY, a Delaware corporation,

Respondent/Cross-Appellant,

v.

PUBLIC UTILITY DISTRICT OF NO. 2 OF GRANT COUNTY,
a Washington municipal corporation,

Appellant/Cross-Respondent.

**SECOND AMENDED BRIEF OF
RESPONDENT/CROSS-APPELLANT**

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INTRODUCTION

Plaintiff General Construction Company ("GCC") submits this *Second Amended* Brief in response to the Brief of Appellant filed herein by Defendant Public Utility District No. 2 of Grant County ("PUD"), and in support of GCC's cross-review.

This action arises out of a competitively bid project (the "Project") commenced in 2005 to substantially modify and construct a fish bypass within Future Unit No. 11 ("Unit 11") of the Wanapum Dam on the Columbia River for the safe and environmentally appropriate passage of migrating fish. CP 417, 13823. GCC was the lowest responsive and responsible bidder, was awarded the contract ("Contract") and served as General Contractor for the Project. CP 1294-1295. Unit 11 is made up of three "slots," A, B and C, which are next to each other when Unit 11 is viewed from above. CP 18681, 4418, 3072.

Due to significant errors and omissions in the design documents prepared by PUD and its designers, multiple rounds of late-issued changes to the design, and undisclosed but known (by PUD) instability of the existing Dam, the Dam moved in a downstream fashion during construction. CP 1288-1297 (App. R), 1444-1447 (App. S), 18680-18693 (App. T), 2307-2314. As a result, GCC was forced (at PUD's direction) to cardinally alter its construction methods and to perform significant extra work that far exceeded and materially differed from the scope and nature of the Project contemplated by the parties' Contract. *Id.* PUD was at all times promptly notified and well aware that the changes would require

extra work and would give rise to additional costs and delays. *Id.* PUD directed that all such issues must be dealt with via weekly Project meetings and direct discussions between PUD and GCC Project personnel (rather than in formal claim letters, which PUD unequivocally directed GCC not to send during the earliest stage of the Project). CP 13822-13831. Consistent with this directive not to follow the formal contractual notice requirements, several changes and issues were resolved near the end of the Project via a February 2007 Settlement Agreement and Change Orders 2 and 3, which provided for the payment to GCC of millions of dollars in extra compensation and a substantial extension in the Project schedule even though no formal notice was given for those paid items. CP 13822-13831. The claims that were "excepted" from and not resolved in the Settlement Agreement, along with additional items arising later in the Project, were included in GCC's Request for Equitable Adjustment ("REA").¹ CP 5443-5444. PUD's refusal to pay any of the amounts sought in the REA necessitated this action.

This appeal involves nine orders entered in response to PUD's serial motions for partial summary judgment. PUD seeks reversal of the trial court's orders denying five of PUD's motions and motions for reconsideration thereof. Importantly, rather than seeking dismissal of any

¹ The REA was a comprehensive document GCC submitted to PUD pre-litigation detailing the bases for its substantial extra costs and delays, which organized the multitude of changes, impacts and extra work into approximately 16 categories of issues, each detailed in narrative form and accompanied by volumes of supporting corroborating documents, schedules and cost breakdowns. CP 1297, 5443-5444.

particular claim for relief in its entirety, PUD's motions only sought dismissal of discrete portions of the breach of contract claim for relief associated with discrete issues from GCC's REA, which matters PUD's motions characterized as "Claims" (e.g., Claims 1, 2, 10, 11 and 7/16, which numbers are derived from the REA). CP 31, 171, 349, 4817, 4914, 5994, 13508. PUD has failed to meet its burden of establishing reversible error and the five Orders subject to its appeal should be affirmed.

On cross-review, GCC seeks reversal of the four Orders entered by the trial court granting partial summary judgment. Genuine issues of material fact require the reversal of the four Orders on GCC's cross-review.

ASSIGNMENTS OF ERROR AND ISSUES

I. RESPONSE TO PUD ASSIGNMENTS AND ISSUES

PUD's Brief fails to comply with RAP 10.3(a)(4), because none of the Assignments of Error or issues involve a ruling the trial court actually made. Each of PUD's eight assignments of error attribute to the trial court purported "matter of law rulings," which were never made. Instead, PUD's assignments paraphrase (and its Argument section block quotes and cites) statements contained in several *proposed* forms of order prepared by PUD's counsel in connection with its motion for reconsideration, which *proposed orders were never signed by the trial court Judge or entered below*. PUD's Brief attempts to manufacture the appearance of legal error by disingenuously casting as "matter of law ruling[s]" eight statements the trial court never made or adopted. See PUD Brief at 30, 34, 36-37, 40, 42,

45 and 47. Copies of the five Orders that are *actually* at issue (those denying PUD's motions) are found in the record at CP 9724-9758, 9936-9982, 9983-10029, 10030-10076, 10077-10123 and 11015-11021, and with the underlying letter rulings are attached as Appendices D, G, I, J, L-Q.

Similarly, PUD's Brief identifies six "issues," which merely pose questions that attempt to set up the manufactured (and never made) rulings listed in the Assignments. The identified issues ignore not only the true nature and bases of GCC's claims, but also the extensive factual record supporting each such claim.

Without waiving GCC's objections to PUD's fundamentally flawed Assignments of Error, the following is an accurate summary of the trial court's actual rulings that correspond to the general subjects raised in PUD's claimed Assignments.

Assignments Nos. 1 - 4 relate to the "notice of claim" provisions of the Contract, including (a) whether PUD waived the right, if any, to require compliance, (b) whether the clauses apply to the few REA issues against which PUD moved, (c) what the clauses mean and require and in what circumstances, (d) whether the clauses apply where GCC performed at PUD's direction extra work outside the scope of the Contract and (e) whether the foregoing present questions of fact to be decided by the jury.

The trial court ruled that questions of fact precluded entry of partial summary judgment for PUD on its motions. The court correctly ruled that the notice provisions only applied where the subject work was within the Contract's original scope, that the issue of whether particular work giving

rise to a claim is extra work outside the scope of the original Contract is a *question of fact*, and that there are genuinely disputed facts in the record as to each of the claims at issue. CP 9724-9758, 9936-9982, 9983-10029, 10030-10076, 10077-10123, 11015-11021 (Apps. D, G, J, L, Q).

Assignment No. 5 contends that sub-components 1 and 3 of the REA issue which PUD labels as “Claim 2” should have been “dismissed” because GCC’s witnesses testified that those particular sub-components do not have their own economic and time impacts, but that the time and money impacts only directly flowed from sub-component 2. First, even if those sub-components were “dismissed” (which would be inappropriate since GCC has not asserted a separate claim for relief based exclusively on those sub-components), the relief GCC seeks for Claim 2 would be unaffected. Moreover, evidence regarding all three sub-components provides a broader picture of the context in which the monetary and schedule impacts arise. *See* CP 5303-5304, 5279-5280, 5360.

Assignment No. 6 mischaracterizes the testimony of GCC’s CR 30(b)(6) designee and the nature and basis of “Claim 2” to aid PUD’s misplaced argument that the subject costs were “within the scope of the contractor’s original contract obligation,” an argument that is simply incorrect. As GCC’s CR 30(b)(6) designee (and other witnesses) confirmed, Claim 2 seeks additional costs GCC incurred in performing extra PUD-directed work outside the scope of the Contract that was necessitated by inaccuracies and omissions in the PUD-furnished design documents. CP 5357-5360, 6827-6828, 8027-8028; *see also* CP 5392-

5394, 5303-5304.

In **Assignment No. 7**, PUD mischaracterizes GCC's "Claim 10" as being based on a "changed conditions" theory, which it is not. The "Coffer Cell Claim" seeks additional compensation and an extension of time for extra costs and delays that GCC incurred as a result of PUD's interference with GCC's performance of work activities which sequentially had to be completed before the coffer cell could be removed, including directing GCC to perform work which PUD admitted was not required by the Contract Documents, directing GCC's means and methods of performance, and imposing upon GCC concrete cure time periods not required in the Contract Documents. CP 2291-2293, 1253-1254, 8033.

For similar reasons, **Assignment 8** lacks merit. Contract Provision SR-11 is inapplicable to GCC's actual Coffer Cell Claim, which is not based on "extreme river conditions." *Id.*; CP 2293.

II. GCC CROSS-ASSIGNMENTS OF ERROR

Cross-Assignment No. 1. Based upon manifest genuine issues of material fact, the trial court erred in entering the Order of March 5, 2010 Granting PUD's Motion to "Dismiss" [sic] Selway Paint Claim (CP 15136-15143) and Order of June 24, 2010 Denying GCC's Motion for Reconsideration (CP 4606-4607, App. A), including in failing to rule that PUD waived the formal claim notice requirements of the Contract;

Cross-Assignment No. 2. Based upon manifest genuine issues of material fact, the trial court erred in entering the Order of January 12, 2012

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Granting PUD's Motion for [Partial] Summary Judgment: GCC Superior Knowledge Claim (CP 16800–16805, App. E);

Cross-Assignment No. 3. Based upon manifest genuine issues of material fact, the trial court erred in entering the Order of April 13, 2012 Granting PUD's Motion for [Partial] Summary Judgment: GCC's Mistake Claim (CP 17055–17059, App. H); and

Cross-Assignment No. 4. Based upon manifest genuine issues of material fact, the trial court erred in entering the Order of January 12, 2012 Granting PUD's Motion for [Partial] Summary Judgment: Writing on Blackboard as Notice (CP 1679 –16799, App. F).

III. ISSUES PERTAINING TO CROSS-ASSIGNMENTS OF ERROR

1. The factual record establishes that PUD expressly waived notice provisions under the Contract, and demanded that GCC rescind notices that it attempted to provide. Was the entry of an order granting partial summary judgment (i.e. the Selway Paint Claim) based upon the issue of notice inappropriate when there are material issues of fact in the record that evidence PUD's waiver of notice provisions? (**Assignment of Error 1**);

2. The factual record establishes that PUD possessed material information regarding the stability of the Dam prior to Project advertisement and bid and during the course of construction, but failed to disclose that information to bidders, including GCC. The factual record also establishes that a stability event occurred during the course of

construction that was *directly related* to the undisclosed superior knowledge of PUD. Was the entry of orders granting partial summary judgment on the issues of superior knowledge and mistake inappropriate when the record contains substantial evidence that PUD possessed material information regarding the stability of the Dam, that PUD failed to disclose that information to GCC, and PUD's failure to disclose that information was directly relevant to the significant issue of Dam stability during the course of construction which ultimately caused significant damage to GCC? (**Assignments of Error 2 and 3**);

3. The factual record establishes that GCC wrote one of its written notices of claim on a blackboard in the Project trailer during a meeting among representatives of GCC, PUD and PUD's engineer. Was the entry of an order granting partial summary judgment inappropriate given that the record evidences, without contradiction, that (notwithstanding PUD's waiver and the inapplicability of the Contractual notice provisions to the issue) GCC provided a written notice of claim on the jobsite blackboard, PUD received such notice and blackboard writing was not prohibited by the Contract? (**Assignment of Error 4**); and

4. Does the existence in the record of genuine issues of material fact, applying the standards of CR 56, require the denial of PUD's motions for partial summary judgment? (**Assignments of Error 1 through 4**).

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STATEMENT OF THE CASE

I. FACTS

A. PUD's Undisclosed, Superior Knowledge of Material Stability Concerns.

PUD had been conducting stability analyses of the Dam for years prior to the Advertisement for Bids for the Project and the Contract award to GCC. CP 18681-18689. Prior to the Project, the Federal Energy Regulatory Commission ("FERC") required PUD to perform an upgraded stability analysis of the Dam. *See, e.g.*, CP 18683, 6852-6853. The process that followed from FERC's requirement was completed in 2004, and certainly by early 2005, well before the Project was advertised for bid. CP 18683-18688. The FERC process required PUD to engage an independent consulting engineering firm, Acres International ("Acres"). CP 18682-18684. The result of the process was that PUD, Acres, and FERC reached a "consensus" that identified the highest, most serious, potential failure mode ("PFM") involving possible catastrophic failure of the entire Dam. CP 18683-18684, 6853-6858. That PFM involved potential corrosion of the thirteen "temporary" tendon anchors in each of the future units.² *Id.*; CP 6855

The process that yielded this "consensus" was a series of meetings among PUD, Acres, and FERC which involved review and analysis of a large volume of PUD documents. CP 18683-18685, 6858. These meetings

² The Project involved modifications to one of the future units -- Unit 11. CP 18681.

resulted in the consensus that tendon anchor failure posed the most significant risk of catastrophic Dam failure. CP 18835-18836, 18850-18852, 18938-18939, 19054-19058. The group determined that if the thirteen “temporary” tendon anchors in each future unit (CP 18844) were at only 30% of their original *strength*, the top of the Dam would move 0.07 inches downstream, via rotation around its bottom downstream corner. CP 18683-18684, 6903, 6909. Alternatively, the total *loss* of 5 of the 13 anchors – a 38% loss – would cause the top of the dam to move .036 inches downstream, again via rotation around its bottom downstream corner. CP 6903, 6909.

The consensus reached during the private meetings regarding the potential for catastrophic failure of the Dam was *never conveyed* to GCC or to PUD’s design engineers for the Project, Jacobs Civil, Inc. (“Jacobs”). CP 3620-3621, 3630-3631, 3637-3640, 3647-3648, 3656-3657, 3672-3676, 4035-4036, 2830, 18685-18691, 1290, 6861, 6899.

Jacobs, without knowledge of the meetings or PFM consensus, considered installing additional anchors in Unit 11 during construction of the fish bypass Project to improve stability during construction. CP 18684-18685. That proposal to install additional anchors was rejected by PUD after a cost/benefit analysis. CP 18685, 19104-19107. The cost-saving rejection occurred despite the fact that if the anchors were deteriorating, the deterioration would have an adverse effect upon Dam stability during construction. CP 18683-18685, 18688-18689, 6860, 6863.

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All of the above occurred – or, in the case of PUD informing Jacobs, did not occur – *before* PUD advertised the Project for bids. *See, supra.* Nothing in the Project plans or specifications disclosed the potential that the anchors had corroded. CP 18685, 18687-18690, 1289-1292, 1296. Nothing in the Project plans or specifications disclosed that corrosion of the anchors could lead to catastrophic failure of the Dam in its *in situ* condition. *Id.* Nothing in the Project plans or specifications disclosed that corrosion of the anchors could lead to movement of the top of the Dam downstream, or even the Dam’s catastrophic failure, during construction. *Id.* Nothing in the Project plans and specifications informed bidders that there was information relevant to the Dam’s stability available to bidders. *See* CP 18685, 1289-1292, 1296.

The plans and specifications issued by PUD invited and contemplated that bidders might develop construction sequences (including dewatering and placement of concrete) different from the “general framework” provided in the plans and specifications. CP 18688, 19015-19016, 19115-19116, 19151, 1290, 6860, 6871, 4029-4031, 2307-2313.

As explained in more detail in section I.C(1) below, before submitting its bid to PUD, GCC asked if a concurrent, two slot at a time (“Two-Slot”) method of construction would be acceptable. CP 1292-1293. PUD, without mentioning anything regarding the anchors or their significance to Dam stability under normal circumstances or construction, and without mentioning even the existence of its superior knowledge, said in substance “yes, you may submit a Two-Slot concurrent method based

bid and we will work with you.” CP 18685, 18687-18690 (App. T), 1292-1295 (App. R), 2308, 2311-2313.

Had PUD disclosed its knowledge related to the risk of potentially catastrophic Dam failure that would accompany significant corrosion of the anchor tendons, GCC could have considered the increased risk of re-sequencing work in Unit 11. CP 18689-18690. GCC also could have had the ability to evaluate for itself the feasibility of its concurrent, Two-Slot Method construction sequence upon which its bid was based. *Id.* PUD’s superior knowledge was not disclosed in the Jacobs-prepared Stability Analysis, because PUD withheld that same vital information from Jacobs. CP 18685-18690, 3620-3621, 3630-3631, 3637-3640, 3647-3648, 3656-3657, 3672-3676, 4035-4036.

During construction in early 2006, the top of the Dam moved downstream via rotation around the downstream bottom corner of Unit 11 approximately .05 inches. CP 18689-18690, 1445-1446, 4527, 8978, 6903, 6909-6910. This Dam movement caused PUD to stop work on the Project and direct GCC to stop performing according to its then-accepted Two-Slot Method. *See, generally*, CP 1296, 1445-1447, 4527, 8978, 20148, 2903, 2914-2915 (Apps. R, S, EE, FF, LL, OO). But PUD did *not* inform FERC of the Dam movement. CP 4078-4080, 4086-4087, 2906-2908.

B. PUD’s Waiver of Contractual Notice Provisions

GCC mobilized to the Project site in July, 2005. CP 13823. In August of 2005, Mr. Dana Jeske, PUD’s Project Engineer/Manager and principal on-site representative, directed that issues arising during the

Project would be dealt with between the parties in the course of Project meetings and related discussions, ultimately to be resolved by agreements between him and GCC's representatives "in the field." CP 13771-13772, 13904-13907 (Apps. MM and NN). Mr. Jeske stated to GCC on multiple occasions that PUD did not want to receive claim letters. *See* CP 13904-13905, 13909-13910, 13823-13824.

By early September, 2005, GCC began to discover design errors and omissions with respect to the Project plans and specifications upon which GCC based its bid. CP 13903-13917. One such design issue concerned rock excavation. *Id.* GCC's proposal, as accepted by PUD and incorporated into the Contract Documents, specifically excluded rock excavation. *Id.* However, early in the Project, PUD took the position that GCC would be required to perform rock excavation. CP 13904-13905.

GCC directed a letter to Mr. Jeske to advise PUD of the rock excavation claim. CP 13904-13906, 13909-13910 (Apps. DD and MM). Mr. Jeske demanded, without any equivocation whatsoever, that GCC withdraw the claim letter. CP 13905, 13911 (App. MM at 3, 7). Mr. Jeske further directed that he did not want to receive any claim documentation on the Project, but rather that GCC should instead focus on performing the work. CP 13905-13906 (App. MM at 3-5, 9, 14). He emphasized that any issues that arose would be dealt with between the parties in the course of Project meetings. CP 13906-13907. Mr. Jeske threatened that he had the power to remove anyone who disobeyed his directives, and later in 2005,
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he ordered GCC's Project Manager removed from the Project. CP 13905-13907, 13911-13916.

Throughout 2005, 2006 and 2007, PUD required and re-confirmed that GCC adhere to the alternative PUD-directed procedure for raising Project issues and claims in an informal fashion as referenced above, and as further evidenced by the exchange between PUD and GCC regarding Request for Information ("RFI") 207 (CP 13879-13880, 13899-13902), the execution of Change Order No. 3 (CP 13941-13950; CP 13823-13824) and the NACE/Selway Paint claim (CP 13770-13777; 13823-13831). PUD directed the method of Contract issue and claim presentation and resolution, at the consequence of project management removal if GCC did not comply. *Id.*; CP 13905-13907. GCC fully complied with the method of claim handling in the field as mandated by Mr. Jeske. CP 13771-13772.

Consistent with Mr. Jeske's unequivocal directives concerning the PUD-required method for GCC to approach design changes and issues on the Project, such design changes and issues were discussed both informally with PUD and in meetings held to negotiate change orders and to monetize the amount of change orders as well as the extensions in Contract time. CP 13771, 13824-13825, 13779-13783. Any departure from that process was strongly and unequivocally discouraged by Mr. Jeske from the outset of the Project in 2005, as referenced above. CP 13905, 13911. GCC relied upon and complied with the above-referenced directives of PUD. CP 13771-13772, 13906-13907, 13823-13824.

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Pricing and extensions of time for changes on the Project were negotiated *after* the subject work had commenced, and *before* formal written change orders were issued. CP 13771-13772, 13823-13824, 13904-13905, 13879-13880. With respect to most of the changes that had arisen by that point in the Project, the negotiations took place in February of 2007 and culminated with the execution of a Settlement Agreement and Change Orders 2 and 3, which resolved several of the then-existing claims with PUD agreeing to pay GCC an additional approximately \$6 Million and granting an extension of time of more than 350 days. CP 13771-13776, 13824-13830, 13868-13872.

During that process, the parties (in accordance with Mr. Jeske's dictated method of issue resolution) collected all of the then outstanding claim issues, which numbered more than two dozen. *Id.* Although Mr. Jeske originally submitted a declaration in this matter stating that there was contemporaneous notice given for all of those issues resolved in Change Orders 2 and 3 (CP 14003, 14008-14009), PUD's counsel later on the record disavowed that testimony. CP 3585-3587, 3593-3594, 11551, 11555-56, 11567-80, 11602-10 (May 10, 2011 Hrg. Tr.). Approximately 2 years into the Project, PUD executed \$6 Million worth of Change Orders with a nearly one year time extension to address those issues, even though GCC had not provided formal written notice for some of them. CP 13771-76, 13824-13830, 13868-13872, 13904-13905, 13879-13880.

Consistent therewith, PUD's George Thompson during his deposition testified that *no notice was required where PUD was aware of*

and directed the work in question. CP 2931-2938. Specifically, regarding the claims that arose early in the Project but that were paid in early 2007 via Change Orders 2 and 3, Mr. Thompson testified:

Q: So . . . is it your testimony that all of these claims that were paid, all these amounts that were paid in Exhibit 54 [February 2007 Settlement Agreement] had been properly noticed to the District?

* * *

A: No.

Q: They were not properly noticed?

A: No.

Q: Then why were they paid?

A: Some of those claims were District requests that didn't require a notice to GCC.

Q: **Let me get this straight now. So if it was a District request then the notice was not required, is that what you're saying?**

A: **Yes.**

CP 2935-2936 (emphasis added) (App. OO at 12-13)

In fact, there were no formal notices of claim letters sent with respect to virtually any of the issues in Change Orders 2 and 3. CP 13825-13826, 13771. They had been evaluated at the weekly Project meetings, documented in the meeting minutes, and negotiated and finalized in early 2007 in connection with the execution of Change Orders 2 and 3. *Id.* Jacobs prepared a narrative report of the then-outstanding claims and furnished it to Mr. Jeske on Thursday, February 1, 2007. CP 13771-77, 13919-13920, 13943, 13949-13950. The NACE paint inspection/Selway Claim was analyzed at that time, as were the other claims at issue in this action, including the Slot Claim. CP 13771-13777, 13919-13920, 13929-13939.

Other claims were “excepted” in writing from the Settlement Agreement, including the Slot Claim and NACE/Selway Claim, with the undisputed agreement of GCC and PUD that they would be dealt with and resolved at Project completion. CP 13771-13777, 13824-13831. Others had not yet arisen. *Id.*, *see also* sections I.C(2)-(5) below.

C. Summary of “Claims” From GCC’s REA At Issue

1. Claim 1: Slot Claim

Unit 11 of the Dam is made up of three "slots," A, B, and C. The Contract Documents, which PUD prepared and furnished to bidders, proposed a general conceptual method of construction in which some portions of the work in each slot had to occur sequentially (i.e. a "One-Slot" at a time method). CP 1288-1297 (App. R), 1311, 1308, 2307-2313. Addendum No. 1 to the Contract Documents (issued after the Advertisement for Bids but before bid or Contract award) allowed bidders to propose another method of construction, and to provide a schedule and narrative for such other method. *Id.*; 1308-1311. Prior to the bid due date, GCC contacted PUD and specifically asked whether a concurrent two slot at a time construction sequence ("Two-Slot Method") would be acceptable – i.e. whether GCC could work in more than one slot at the same time. CP 1292-1293, 2308, 2312. PUD responded affirmatively. *Id.*

Accordingly, on May 5, 2005, GCC submitted with and as a part of its bid (CP 1390-1443) a "Narrative Report" (CP 1405-1411) and bid schedule (CP 1412-1413) setting forth a Two-Slot Method of construction, which was an express condition of GCC's bid. CP 1293-1295 (App. R at 5-

7, 24-41), 1405-1407, 2312-2313. Utilizing this Two-Slot Method, GCC projected that it could complete the Project earlier, and at a much lower cost to PUD. *Id.*; App. R at 39.

On May 23, 2005, PUD accepted GCC's bid without exception to GCC's schedule, Narrative or the Two-Slot Method. CP 20060, 1294-1295, 2313 (App. X). PUD determined GCC's bid to be "both commercially and technically compliant." CP 20049, 20051 (Apps. U, V, W). GCC's bid was the lowest (by approximately \$8 Million) responsive and responsible bid. *Id.*, 6150-6156, 20045 (App. U). Effective May 23, 2005, the parties executed the formal Contract, which incorporated as "Contract Documents" GCC's bid including the Narrative setting forth the Two-Slot Method. CP 20061-20062 (App. X), 19559.³

After analyzing (with its designer, Jacobs) the structural implications of the Two-Slot Method during May, June and July, PUD designed what it determined to be an acceptable Two-Slot Method. CP 1295, 4506-4515, 20064-20076 (Apps. Y, Z, BB, CC). GCC incorporated that Two-Slot Method into its July 31, 2005 Project Schedule, and also (later) into its approved December 2005 Project Schedule. CP 1295.

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³ The Order of Precedence clause of the Contract (GC-26) provided that "[i]n the event there are any conflicting provisions or requirements" between different Contract Documents, they "shall take precedence in the following order: "Change Orders", "Addenda", "Specific Requirements", "General Conditions," "Technical Specifications" etc. CP 19578-19579. As such, to the extent of any conflict, Addendum No. 1 (which modified Specific Requirement SR-14 and Technical Specification T-11 to invite the alternative proposed methods and call for the schedule and narrative) *governs over any other section of the Contract Documents* other than Change Orders. *Id.*

GCC commenced performance of its work in accordance with the PUD-designed and approved Two-Slot Method (and GCC's approved Schedules). CP 1295-1296 (App. R), 1445 (App. S). The sequence of each item of work was approved by PUD. *Id.* According to GCC's declarations, on January 3, 2006 GCC performed the first substantial concrete pour in accordance with the PUD-designed version of the Two-Slot Method. CP 1445. The pour was performed according to plan and was observed and approved by PUD representatives. CP 1445, 1296.

On January 5, 2006, PUD informed GCC that Unit 11 moved because of the concrete pour and ordered GCC to discontinue work. CP 1445 (App. S), 1296 (App. R), 9337-9338. PUD claimed the movement caused Dam stability concerns (though, as discussed in Statement of the Case (II)(A) above, GCC later learned that PUD had known about such stability concerns for years before the Project and had withheld such information from GCC and Jacobs). CP 1296-1297, 1445-1446, 9338 (Apps. R, S, EE).

PUD demanded a meeting, which occurred the next day on January 6, 2006. CP 1446-1447, 1296, 20148 (Apps. R, S, FF). PUD directed GCC to abandon the Two-Slot Method and to submit for PUD approval a revised sequential (i.e. One-Slot at a time) method. *Id.*, *see also* CP 20153, 20160-20169, 4527. During this face-to-face meeting, GCC notified PUD orally ***and in writing*** on the Project blackboard that PUD's direction to abandon the Two-Slot Method was a change and that PUD would be responsible for the financial and schedule consequences. CP 1446 (App. S).

PUD's George Thompson testified that, prior to Dam movement, GCC was always anticipating performing the slot dewatering work concurrently (the Two-Slot Method) (CP 2889) and that the *concrete placement sequence* (CP 2903) and *concrete pour schedule* (CP 2914-2915) changed as a result of the Dam moving. CP 2889, 2903, 2914-2915 (App. OO). But evidence exists that the impact to GCC's work was much more substantial than that. *See, e.g.*, CP 1290-1297 (App. R).

The details of the changed sequence were developed and memorialized during the remainder of January and February 2006 through the parties' exchanges in connection with Submittal 54A and RFI 62. CP 9301, 9319-9320, 9086-9094, 9108-9109, 9115-9116, 9131-9140 (Apps. II, JJ); *see also* Apps. FF, GG, HH, KK. Thereafter, GCC continued work in Slot B in the manner directed by PUD and based upon PUD's directed and changed (One-Slot) method. CP 1296-1297, 1446 (Apps. R, S). As a result of the material change to the originally-agreed and accepted Two-Slot Method, GCC incurred significant increased costs of several million dollars and a full calendar year of schedule delay. CP 1296-1297.

2. Claim 2: Upstream Stoplog Guiderail Conflicts

Claim 2 seeks additional compensation for extra work GCC performed at PUD's direction to address alleged design deficiencies related to the installation of stoplogs and related components on the upstream side of the Dam. CP 5357-5362, 5392-5395, 5303-5304, 8026-8028.

Long after GCC submitted its bid and after it had flooded Slot B, PUD issued on March 13, 2006 revised guiderail drawings showing

modified locations and installation criteria. CP 5357. The drawings also depicted a smooth upstream concrete face of the dam, without any inconsistencies or bulges. CP 5357-5358, 5392. As GCC commenced performance of the guiderail work in February of 2007, it discovered that the face of the existing Dam exhibited inconsistencies and bulges in the concrete in the locations where the drawings called for the guiderails to be fastened, which bulges were not shown on the drawings or accommodated by the PUD-specified guiderails (which required pre-fabrication). CP 5358, 5392-5393, 8027-8028.

GCC immediately reported this issue, which was not shown in the design documents, to PUD. CP 5358-5359, 5363, 5393, 5396. PUD responded with District Instruction ("DI") No. 2 on February 28, 2007 directing GCC to install the guiderails in locations different than called out in the design documents, to modify the guiderails and stoplogs to accommodate the changes, and to remove interfering concrete bulges and irregularities, which efforts GCC's Project Manager declared were not required or contemplated in the original (or revised) plans and specifications. CP 6827-6828, 5359, 5365-5366, 5393. In response, GCC delivered to PUD Serial Letter 318 dated March 8, 2007 notifying PUD that GCC would seek additional compensation and schedule relief by reason of the resulting extra work. CP 5393-5394, 5401-5402. GCC strictly complied with the revised design and PUD's directives, but in doing so was delayed and incurred additional costs. CP 5359-5360, 5393-5394, 5304.

3. Claims 7 and 16

GCC's Project Manager stated in his Declaration that "Claim No. 7" and "Claim No. 16" both arise from GCC's performance of extra work at PUD's direction, and the resulting delays and inefficiencies caused by errors and omissions in PUD's plans and specifications. CP 5440-5452, 8040-8047. And these design defects manifested themselves as conflicts between different design documents, lack of adequate access and clearances for the work, and other design deficiencies requiring correction and/or clarification. *Id.* The design issues necessitated dozens of RFIs from GCC also asking PUD to correct and clarify inconsistencies and errors in the plans and specifications. CP 5442, 5452; *see also* 5454-5455.

In response, PUD made design revisions, and directed GCC to proceed with the work in materially different ways. CP 5442, 8041-8046. Late in the Project, PUD commenced the issuance of written DIs to respond to RFIs and to give direction. CP 5442, *see also* 5454-5455. For the first nearly two years of the Project, PUD issued a total of one DI, but (after the February 2007 Settlement Agreement) for approximately the final year of the Project, PUD issued more than 260 DIs. CP 5442. GCC did not sign any of the DIs underlying Claims 7 and 16. *See* CP 5443, 5451-5452.⁴

The cumulative effect of the design errors and changes required GCC to perform extra and changed work, which caused additional cost and delay. CP 5443-5444, 5445-5452, 8041-8046. When it became apparent that such issues would have monetary and schedule impacts, GCC notified

⁴ For additional background on DIs, *see* CP 5420-5423, 14765-14771, 14774-14780.

PUD in writing of such claims and their compensation and schedule impacts. CP 5443-5444, 5445-5452.

4. Claim 10 – Coffe Cell Claim

The Coffe Cell Claim seeks additional compensation and an extension of time for extra costs and delays that GCC incurred as a direct result of significant, unilateral changes by PUD to what was called for in the Contract Documents with regard to work activities that had to be sequentially completed before the coffe cell⁵ could be removed. *See, e.g.*, CP 1249-1254, 2289-2294, 8030-8033. Due to PUD-caused delays, GCC could not complete such work activities and remove the downstream coffe cell in the timeframe planned prior to the high water season. *Id.*, 1251-1252, 2291, 2297-2298, 2301, 8032.

For example, GCC’s Project Engineer stated that PUD directed the specific manner (and desired results) of work on the downstream chute and flow spreader protected by the coffe cell that was more labor intensive and expensive to perform than the surface treatments called for in the Contract Documents for those areas. CP 1251-1252, 2291, 2297-2298, 2301, 8032. PUD also held GCC to a standard regarding allowable surface cracking in the surface and vertical walls of the downstream flow spreader protected by the coffe cell, which was more rigorous and more onerous than required by the Contract Documents upon which GCC’s bid and Project schedule

⁵ A “coffe cell” or “coffe dam” is a temporary structure constructed to exclude water from an enclosed area to allow work “in the dry.” CP 99. PUD and its consultants approved GCC’s coffe cell design. CP 1251, 1281.

were based. CP 1251-1252, 2291, 2295-2296, 8032. PUD also directed a 28 day cure time period from the date of placement before final determination of the extent of flow spreader crack repair, which cure period was not contemplated in the Contract Documents or in the schedule. CP 1251, 2292, 8031-8032, 6444-6446.

This changed work directed by PUD was more costly and delayed the Project and prevented GCC from completing its work in accordance with the PUD-approved schedule, including completing work within the coffer cell area by early March, 2007. CP 2290-2292, 1251-1252, 1275. No provision was made in GCC's approved plan or the approved schedule for flooding and subsequent de-watering of the coffer cell, because the work within the coffer cell was scheduled to be completed before flooding of the coffer cell would be an issue. CP 2291.

However, the PUD-directed extra work extended the work within the coffer cell into April, 2007. CP 2291-2293, 1251. PUD flooded the coffer cell, further delaying GCC's work in that area and postponing into the fall of 2007 the completion of the remaining work inside the coffer cell and the subsequent downstream wall extension work. CP 2292-2293, 1253. As a result, GCC was directed to de-water the coffer cell an extra time, clean the coffer cell, and then perform the extra work in the flow spreader area directed by PUD. CP 2292-2293, 1253-1254.

GCC provided prompt notice of the multiple instances of changed and extra work directed by PUD that caused the delays ultimately resulting in the expenses and time associated with the flooded coffer cell. CP 2291,

2293, 2295-2305. Those notices not only addressed the costs and delays of the extra work immediately at issue, but also notified PUD in advance that GCC was likely to incur additional costs and schedule impacts with respect to the coffer cell if the work was extended into the impending high water season. *Id.*

5. Claim 11 – Flow Fairing Changes Claim

REA 11 deals with PUD-directed changes to the flow fairings⁶ area of the Project. CP 6203-6212, 8035-8038, 6374-6380, 6416-6417, 8036. The claim has three components, two of which are at issue: (1) Pre-Fit Requirement, and (2) Shrink Wrap. *Id.*

Pre-Fit Requirement. The Contract Documents permitted for modules 1 and 2 of the flow fairings to be installed in halves because of their size and weight. CP 8036. Before the module installation work began, PUD directed a new requirement (not contemplated in the original erection plan or Contract Documents) that GCC pre-assemble ("pre-fit") the mating module sections before lifting them into their final location. CP 6205, 8036, 8036-8037, 6205. PUD's directive arose for the first time during the submittal process for the flow fairing erection plan (submittals 188A through 188E). CP 6205. After initial rounds of submittals, comments and re-submittals, PUD issued its "Response to Submittal #188A Final Review" on March 22, 2007, which formally directed (extra-

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⁶ The flow fairings are large, rounded fabricated steel components that are installed on the upstream side of the dam to direct water flow into the fish bypass. CP 8036.

Contractually) GCC to pre-fit the module sections prior to placing the modules in their final locations. CP 6205-6206, 6328-6331.

In response, GCC sent PUD Serial Letter 346 on April 2, 2007 notifying PUD of the anticipated time and cost ramifications and providing notice that it intended to seek compensation for the anticipated extra work and resulting schedule impact. CP 6206-6207, 6351-6352.

Shrink Wrap. The original flow fairing construction plan based upon the original Contract Documents did not require shrink wrap around the modules (or any other measure) to restrict fish access. CP 8037, 6207. As such, there was no reason for GCC in the submission of its bid to contemplate procuring, installing or removing shrink wrap. CP 8037. PUD ultimately directed GCC on April 5, 2007 to shrink wrap the modules. CP 6207-6209, 6254, 8037. On April 10, 2007, GCC notified PUD that the shrink wrap requirement was a directed change requiring extra work for which GCC was entitled to additional time and money. CP 6206-6208, 6377-6379, 6389, 6395.

6. Claim 12: Selway

GCC subcontracted for the detailing, fabrication, painting and delivery of flow fairings modules 1-4 for the Project to Selway Corporation (“Selway”). CP 13877, 13824-13825, 13770, 13599. PUD changed the Contract specifications by adding the new requirement that the NACE inspector be an independent third party rather than an employee of the fabricator. *Id.* Although Selway had included the inspection cost in its quotation to GCC, PUD’s directive prospectively added additional expense

and impact as the independent inspector costs were well in excess of the amounts budgeted by Selway for use of an employee. CP 13825, 13877-13880, 13770. Though PUD had waived any such requirements, GCC promptly notified PUD of the issue upon the matter becoming a “claim” (i.e. when, after negotiations, it was excluded from the 2007 Settlement Agreement and Change Orders 2 and 3) and reserved its right to seek additional money and time. *Id.*, *see also* CP 14798-14813.

II. PROCEDURAL HISTORY

In this action, GCC asserts multiple claims for relief, including breach of contract, breach of the implied covenant of good faith, breach of the implied warranty of adequacy of plans and specifications, cardinal change/*quantum meruit*, breach of the duty of non-hindrance, constructive acceleration, *quantum meruit*/reasonable value, and equitable recovery for mistake. CP 1-22. GCC’s prayer seeks more than \$20 Million. *Id.*

In 2009 and 2010, PUD filed the motions for partial summary judgment at issue. CP 31, 171, 349, 4817, 4914, 5994, 13508, 16057.

For the five Orders of which PUD seeks review, after extensive briefing, submission of dozens of declarations and many hundreds of exhibits,⁷ and multiple hearings, the trial court correctly determined that genuine issues of material fact required denial of PUD’s motions and entered the corresponding Orders. CP 9724-9758, 9936-9982, 9983-10029, 10030-10076, 10077-10123 (Apps. I, L, M, N, O). In 2013, PUD moved

⁷ See lists of materials appended to and considered by the trial court in its various Orders and Order Certifying for Appeal. CP 9724-9758, 9936-9982, 9983-10029, 10030-10076, 10077-10123, 10902-11007.

for reconsideration of those Orders, which was denied on January 31, 2014. CP 11015-11020 (App. P). For the four Orders of which GCC seeks cross-review, the trial court granted portions of PUD's motions for partial summary judgment (CP 15136-15143, 26-30, 16794-16799, 16800-16805, 17050-17054) and denied GCC's Motion for Reconsideration regarding the Selway claim (CP 4606-4607). On June 13, 2014, this Court granted the parties' cross-motions for discretionary review.

STANDARDS ON REVIEW AND CROSS-REVIEW

The Court reviews the grant or denial of a summary judgment motion *de novo* and performs the same inquiry as the trial court. *Houk v. Best Dev. & Constr. Co., Inc.*, 179 Wn. App. 908, 911, 332 P.3d 29 (2014). "A party moving for summary judgment bears the burden of demonstrating that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Id.* (citations omitted). The Court must "review all facts and reasonable inferences from the facts in a light most favorable to the nonmoving party" and "[t]he moving party bears the initial burden of proving that there is no genuine issue of material fact." *Kilcullen v. Calbom & Schwab, PSC*, 177 Wn. App. 195, 202, 312 P.3d 60 (2013) (citation omitted).

The Court "reviews a trial court's denial of a motion for reconsideration for abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds or for untenable reasons." *Northwest Wholesale, Inc. v. Pac Organic Fruit, LLC*, 183 Wn. App. 459, 481, 334 P.3d 63, 75 (Div. III 2014) (citation omitted).

ARGUMENT OF RESPONDENT

I. **GENUINE ISSUES OF MATERIAL FACT PRECLUDED ENTRY OF PARTIAL SUMMARY JUDGMENT ON ANY OF GCC'S CLAIMS.**

A. Assignment Nos. 1 and 2.

PUD argues (citing “matter of law rulings” that the trial court *never made*) that GCC failed to follow certain notice of claim requirements of the Contract. PUD omits applicable Washington law and completely ignores the substantial factual evidence in the record. First, as referenced in the Statement of the Case, PUD unequivocally waived the notice and claim requirements of the Contract.

1. PUD Waived Strict Compliance With Contractual Notice and Claim Provisions.

In *Mike M. Johnson, Inc. v. County of Spokane*, 150 Wn.2d 375, 386, 78 P.3d 161 (2003), the Washington Supreme Court reaffirmed the rule that “Washington law generally requires contractors to follow contractual notice provisions unless those procedures are waived.” While waiver by conduct must be unequivocal, *see Am. Safety Cas. Ins. Co. v. City of Olympia*, 162 Wn.2d 762, 770, 174 P.3d 54 (2007), an “owner’s knowledge of the changed conditions coupled with its subsequent direction to proceed with the extra work [evidences] its intent to waive enforcement of the written notice requirements under the contract.” *Mike M. Johnson*, 150 Wn.2d at 388.

In other words, the rule in Washington is that an owner cannot rely on a “no notice defense” when the owner knows of the work *and* authorizes, permits and directs the contractor to perform the work in

question. The Supreme Court confirmed this rule in *Bignold v. King County*, 65 Wn.2d 817, 822, 399 P.2d 611 (1965):

Another finding was that the contractor ‘gave timely notice of the subsurface conditions on the job site.’ In addition thereto, the appellant became immediately aware of the changed conditions as soon as they developed and ordered the contractor to perform the changes and extra work involved on these three items. Under such conditions, the county cannot defeat recovery by a contractor even if no written notice was given.

Id. (citations omitted).

The Supreme Court has expressly acknowledged the continuing validity of this rule from *Bignold* in more recent cases,⁸ including *Mike M.*

⁸ See *Am. Sheet Metal Works, Inc. v. Haynes*, 67 Wn.2d 153, 158-59, 407 P.2d 429 (1965) (holding that waiver was demonstrated by evidence that the owner "contends" the work was the contractor's responsibility, and that the owner "authorized, permitted, and directed [the contractor] to perform the work in question."); *Lindbrook Constr., Inc. v. Mukilteo School District No. 6*, 76 Wn.2d 539, 543, 458 P.2d 1 (1969) (noting that "[t]he trial court held squarely notice in writing had been waived, saying: 'It is clear to this Court that the architect knew of this work, that he directed that it proceed, and at such time he indicated he did not feel that such as an extra; so I do not feel the failure to give written notice set forth in the contract would apply. The fact he was never informed of the actual extra, in my opinion, would not have added anything. I feel the failure of notice had been waived by the manner he handled such orders.' *Bignold v. King Cnty.*, *supra*, supports the trial court in that position." (citation omitted)); see also *Weber Constr., Inc. v. Spokane Cnty*, 124 Wn. App. 29, 35, 98 P.3d 60 (2004) (reversing trial court's entry of judgment based upon finding that "Weber offered substantial evidence that the County, by its conduct, waived strict compliance with the contract terms," since the County "knew that Weber was required to provide a dollar cost estimate," "knew Weber was aware of this requirement and was attempting to meet it," and "Weber requested needed information in order to provide that estimate, but the County failed to give it to Weber."); *Morango v. Phillips*, 33 Wn.2d 351, 357-58, 205 P.2d 892 (1949) ("If any extras were furnished at the express request of the respondent, recovery can be had therefor, as such request would amount to waiver of the contractual provision."); *Barbo v. Norris*, 138 Wash. 627, 635-36, 245 P. 414 (1926) (actions of parties amounted to waiver); *A. Gehri & Co. v. Dawson*, 64 Wash. 240, 243, 116 P. 673 (1911) (approving jury instructions stating "the contract means that unless the other party waives, by his conduct and acts, the right to demand such writing, there shall be no recovery"); *Crowley v. United States Fid. & Guar. Co.*, 29 Wash. 268, 274, 69 P. 784 (1902) (contractual requirement for writing waived by actions of owner).

Johnson, a case upon which PUD heavily relies. There, the Court held:

Contrary to MMJ's contention, the Court of Appeals in *Bignold* did not hold that the owner's actual notice of the changed condition *in and of itself* excused the contractor from complying with the contractual notice provisions. **Rather it was the owner's knowledge of the changed conditions coupled with its subsequent direction to proceed with the extra work that evidenced its intent to waive enforcement of the written notice requirements under the contract.**

Mike M. Johnson, 150 Wn.2d at 388 (italics in original, bold added).

The Supreme Court again reaffirmed this rule in *American Safety Cas. Ins. Co.*, adding that waiver is especially likely if the discussions and/or conduct between the owner and contractor take place *before* the work was completed rather than at the very end of the project, explaining:

We stress that the discussions [here] . . . took place *after* the work ***was completed***, and thus the situation was not one where the City was directing [the Contractor] to perform its obligations under the contract while the parties negotiated the contractual dispute. ***Had the City directed [the Contractor] to focus on performing work rather than worrying about assembling documentation to comply with contractual provisions, then such situation could arguably be construed as implied waiver.***

Am. Safety, 162 Wn.2d at 771, n. 7. This clarification by the Washington Supreme Court is entirely consistent with the material issues of fact evidencing PUD's waiver of notice requirements on this Project.

In sum, where the owner knows of the contractor's contention that the work is changed or extra work but directs the contractor to proceed nonetheless, even if the owner denies that the work is changed or extra, there is at least a genuine dispute of material fact regarding the owner's

waiver of contractual notice requirements. *Am. Safety*, 162 Wn.2d at 771 n.7; *Mike M. Johnson*, 150 Wn.2d at 388; *Lindbrook*, 76 Wn.2d at 543; *Am. Sheet Metal*, 67 Wn.2d at 158-59; *Bignold*, 65 Wn.2d at 822.

Here, in August of 2005 (only two months into the Project), PUD's Project Engineer Dana Jeske indicated that issues that arose during the Project would be dealt with in the course of Project meetings and related discussions, and *not* through written claim letters. CP 13771-13772, 13904-13907 (Apps. MM, NN). ***Mr. Jeske directed that Contract changes and issues were to be discussed informally with PUD at Project meetings and discussions to establish merit of potential change orders, but that GCC should focus on performing the work.*** *Id.*, 13904-13905, 13823-13824. Departure from that process was strongly and unequivocally discouraged by Mr. Jeske. *Id.*, CP 13905-13907, 13911-13916. Mr. Jeske has never directly disputed or rebutted these facts.

During the first two years of the Project through the 2007 Settlement Agreement, that is exactly how GCC and PUD handled the discussion of issues, changes and potential change orders, which is reflected in several examples listed above and documented in meeting minutes, RFIs and Mr. Jeske's contemporaneous Palm Pilot entries. CP 13771-13777, 13824-13831, 13877-13880, 13899-13902, 13941-13950, 13769-13778, 13822-13832. Though there was no notice given for several of the claims included therein, PUD paid millions of dollars and granted a one calendar year extension of time in Change Orders 2 and 3 in 2007 long after that work was complete. CP 13824-13830, 13771-13776, 13868-

13872. These Change Orders were affirmatively approved by the PUD Board. CP 13771-13776, 13824-13830, 13868-13872, 11551, 11555-11556, 11567-11580, 11602-11610.⁹

For example, for the Slot Claim, as the Statement of the Case details (*see* section I.C(1) *supra*), PUD was well aware of GCC's intention to utilize the Two Slot Method long before bids were due, informed GCC that such a Method would be allowed, and accepted without reservation and awarded the Contract to GCC based on GCC's bid and its Narrative and schedule showing the Two Slot Method. CP 1288-1297, 1308, 1311, 2307-2313, 1405-1413, 19559, 20060-20062, 20049, 20051, 6150-6156 (*see, e.g.*, Apps. R, S, X). After stopping work in response to the Dam's movement, PUD directed GCC to proceed with a One Slot Method, knowing that such a directive constituted a material departure from the Contract that would result in substantial additional costs and schedule delays. CP 1445-1446, 1296-1297, 9337-9338, 4527, 20098-20099, 20140-20141, 20148, 20153, 2889, 2903, 2914-2915 (*see, e.g.*, Apps. EE, FF, II, LL). Such knowledge combined with an unequivocal order to proceed with the extra work, especially in light of the earlier directives of Mr. Jeske and the ensuing consistent conduct with respect to handling similar issues Project-wide, is *exactly* the type of conduct that constitutes
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⁹ "It is only actions and interpretations before the controversy arises, conduct during performance, that are 'highly relevant in determining what the parties intended.'" *Liles Construction Co. v. United States*, 455 F.2d 527, 538-39 (Ct. Cl 1972) (*quoting Dynamics Corp. v. United States*, 389 F.2d 424, 430 (Ct. Cl. 1968)).

waiver under Washington law. *Id.* At the very least, genuine issues of material fact preclude summary judgment.

The same sequence played out for Claim 2 (CP 5356-5389, 5392-5402, 8026-8028), Claims 7/16 (CP 5443-5452, 8041-8046), Claim 10 (CP 1249-1254, 2289-2293, 8030-8033) and Claim 11 (CP 6205-6206, 6328-6331, 6254, 8037).

2. GCC Complied With the Contract Clauses At Issue.

Notwithstanding PUD's waiver of notice requirements, for each of the claims at issue, GCC complied with all that is required when the subject Contract clauses are read together and in context (with other clauses and with how PUD does business). PUD first argues that claims are barred where no written change order was issued under GC-14. The plain language of GC-14, especially in context with GC-18 and GC-10, belies PUD's argument. Read as a whole, the Contract requires only a notice of a claim under GC-10 to preserve GCC's rights.

GC-18 provides that:

All claims of the Contractor . . . shall be submitted in writing to the Engineer for determination within the applicable time period specified in the Contract Documents. . . Pending such decision [a decision by the District protesting the Engineer's determination of a claim], ***the Contractor, if required by the Engineer, shall proceed with the work in accordance with the determination or instructions of the Engineer.***

CP 19572 (emphasis added). There is no requirement that GCC obtain a written change order before proceeding with the work required by the Engineer in order that a claim be preserved. To the contrary, whether or

not a claim is made, GCC must proceed with the work as ordered by PUD. PUD's position is at odds with basic construction law. Nothing would be built if PUD's arcane position were correct.

PUD has at least twice interpreted the Contract exactly this way.¹⁰

First, in its Answer to GCC's Third Interrogatories, PUD asserts that compliance with GC-10 is irrelevant when PUD issues a Change Order. CP 2267-2268, 2275, *see also* CP 2935-2936. The opposite is true as well:

¹⁰ The trial court correctly noted that contract "interpretation," the "process in which the parties' intent is ascertained through the admission of extrinsic evidence . . . involves a question of fact. . . ." *Burgeson v. Columbia Producers, Inc.*, 60 Wn. App. 363, 366-67, 803 P.2d 838 (1991); *see also Cole v. Red Lion*, 92 Wn. App. 743, 750, 969 P.2d 481 (1998) (where "inquiry entails interpreting contract provisions, it is normally a questions of fact.").

Extrinsic evidence may be used to aid in contract interpretation. *See Berg v. Hudesman*, 115 Wn.2d 657, 667, 801 P.2d 222 (1990). Though the Supreme Court clarified the extent and details of its adoption in *Berg* of the context rule and the use of extrinsic evidence to assist in determining what the parties to an agreement intended, *Berg* is still good law. *See, e.g., Brogan & Anensen, LLC*, 165 Wn.2d 773, 775, 202 P.3d 960 (2009) (quoting *Berg* in support of the proposition that "a party may offer extrinsic evidence in a contract dispute to help the fact finder interpret a contract term and determine the contracting parties' intent regardless of whether the contract's terms are ambiguous."). Such an exercise is generally not properly a matter to be determined as a matter of law via summary judgment. *See, e.g., Hall v. Custom Craft Fixtures, Inc.*, 87 Wn. App. 1, 9-10, 937 P.2d 1143 (1997); *Lopez v. Reynoso*, 129 Wn. App. 165, 174, 118 P.3d 398 (2005).

In this case, the notice provisions of the Contract at issue, especially when viewed in light of the parties' conduct and other objective manifestations, are subject to more than one reasonable interpretation. In the course of reviewing potential change order items which had their genesis in the early phases of the work all the way through early 2007, to the extent the parties ultimately agreed with respect to the potential change order item and to the extent they were included in change orders and paid, no "claim" ever arose. Significantly, at the direction of PUD, a large portion of that changed work was performed or being performed prior to the parties agreeing upon or executing change orders. *See, e.g.,* CP 13771-13776, 13824-13830, 13868-13872.

To the extent PUD chose to dispute the potential change order items and refused to pay them, the potential change order item, *upon refusal*, became a claim as contemplated by GC-10 and PUD's comments regarding notice in their early reply to GCC's response. Interpretation of GC-10 is a question of fact, and both the parol evidence and alternate readings of GC-10 support GCC's position.

when the PUD does *not* issue a Change Order, all that the Contract requires (unless waived) is that GCC provide notice of its claim. *Id.*, GC-10.

Second, in its Memorandum in support of its Slot Claim motion, PUD asserted: "[h]ere, GCC's contract clearly spelled out both the necessity of a written change order for any item that GCC contended exceeded GCC's contractual obligations (GC-14) **and the procedure that GCC had to follow to submit a claim in the absence of a change order (GC-10).**" CP 180-181 (emphasis added). In other words, when PUD refuses to issue a Change Order, PUD's position is that GCC must provide notice of a claim, but PUD cannot have it both ways.

Moreover, as stated in *Bignold*, the PUD's attempt to invoke the changes clause in GC-14 "comes with exceptionally bad grace." 65 Wn.2d at 823. In *Bignold*, the owner asserted that a specific claim was barred because the contractor had suspended work without a written order. The Supreme Court held:

The insistence of the appellant that the order of its engineer on September 19 (to shut down the work) should have been disobeyed because it was not in writing, comes, it seems to us, with exceptionally bad grace. The contractor, in compliance with the order of September 19 "directed all effort toward preparing the project for a winter shut down." We have here the classic requisites of an equitable estoppel. . . . The appellant is estopped from asserting that the contractor should have known better than to obey the verbal orders of its agents and should be held to "resolute good faith."

Id. at 823-24 (citation omitted).

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Reading GC-14 in context, failure to obtain a change order cannot be a basis for partial summary judgment, and all GCC had to do (assuming no waiver of the notice of claim requirements) was give notice of its claim under GC-10, which provides:

GC-10 DAMAGES

Any claims *arising under the Contract* by the Contractor shall be made in writing to the Engineer no later than ten calendar days after the beginning of the event or occurrence giving rise to the claim. Failure to make written claim prior to the time specified in the Contract Documents shall constitute waiver of any such claim.

CP 19567 (emphasis added). Similarly, G-15 governs extensions of time and provides:

If the Contractor is delayed at any time in the progress of the work by any unforeseeable causes beyond the control of the Contractor, the Contract time shall be extended for such reasonable time as the Engineer shall determine. . . . Except for delays caused by the acts or omissions of the District or persons acting for it, extensions of time granted by the Engineer to the Contractor shall be the Contractor's sole and exclusive remedy for any delay due to causes beyond the control of the Contractor.

All claims for extension of time shall be made in writing to the District no more than 3 days after the Control knows or by reasonable diligence should know of the event causing or likely to cause the delay, otherwise, they shall be waived. *In the case of a continuing cause of delay only one claim is necessary.*

CP 19587 (emphasis added).

There is no definition of the term "claim" in the Contract, no description of what must be included in the written claim provided to the Engineer, no specification of which type of writing it must take the form of, no requirement that the author of the written claim be GCC, and no

prohibition against providing written notice of a claim before the event or occurrence giving rise to the claim. *See* CP 19567, 19587. A particular issue cannot possibly rise to a "claim" unless and until GCC believes it is entitled to extra money or time for a particular piece of work and PUD disagrees and orders GCC to proceed with the work *without* compensation (which for several claims, including the Slot Claim, did not occur until the 2007 Settlement Agreement was being negotiated and certain claims were excepted). *See id.*, *see also, e.g.*, CP 5359, 5393, 5442-5443, 6205-6207, 6376. Otherwise, the undefined term "claim" has no meaning.

Moreover, with respect to extensions of time, G-15 expressly entitles GCC to extensions of time for delays for “unforeseeable causes” or where delays are caused by PUD “or persons acting for it,” which both apply to the GCC claims at issue. In any event, whether or not a cause is “unforeseeable” and to what extent PUD caused the delays at issue present questions of fact improper for summary judgment.¹¹

As discussed above (and notwithstanding PUD’s waiver), GCC gave notice to PUD for each of the subject claims to the extent required by GC-10 and G-15:

Claim 1: CP 1446-1447.¹²

¹¹ *See, e.g., Yong Tao v. Heng Da Li*, 140 Wn. App. 825, 833, 166 P.3d 1263 (2007) (reversing summary judgment and explaining that whether damage is foreseeable is a question of fact); *Weber*, 124 Wn. App. at 35-36 (reversing trial court’s dismissal of contractor’s claim against public owner, in part because Court found "reasonable minds could differ on the issue of foreseeability," which issue must be resolved by the jury).

¹² PUD’s *only* references to the record as to the Slot Claim are to incomplete and misleading excerpts of the deposition of Ben Hugel filed on September 30, 2013 (CP 10452), which was more than *nine months after* the trial court’s December 7, 2012 Order denying PUD’s motion on the Slot Claim (CP 1077). Since such deposition excerpts were

Claim 2: CP 5393-5394, 5359-5360, 5304, 5401-5402.

Claims 7/16: CP 5441-5452, 5445-5452; 5454-5455, 5456-5701.

Claim 10: CP 2291, 2293, 2295-2305.

Claim 11: CP 6206-6207, 6351-6352 (pre-fit), CP 6206-6208, 6377-6379, 6389, 6395 (shrink wrap).¹³

B. Assignment Nos. 3 and 4.

For these assignments, PUD again purports to “quote” “matter of law rulings” from *proposed* forms of order *that were never signed*. The subjects at issue are the non-applicability of Contractual notice provisions to “extra work” claims outside the Contract and the question-of-fact nature of the determination of whether something qualifies as “extra work.”

What the trial court actually ruled is that (a) Washington recognizes the difference between additional work within the scope of a construction contract and “extra” work in various circumstances, (b) where the owner orders “extra” work, contractual notice and claim provisions do not apply and (c) whether work is “extra work” entitling the contractor to additional compensation presents a question of fact. CP 9740-9742, 10114-10115, 9806-9809, 11018-11020 (*see* Apps. D, G, J, P). Each ruling is correct.

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not before the trial court in rendering its decision to deny PUD’s motion, this Court should not consider them in reviewing that Order. RAP 9.12. In any event, when read in context, Mr. Hugel’s deposition testimony supports GCC’s Slot Claim. The entire transcript of Mr. Hugel’s deposition appears at CP 17260-17340.

¹³ PUD also focuses on DI No. 8, which it claims precludes GCC’s recovery on this aspect of Claim 11. But DI No. 8 was issued and signed well before any aspect of Claim 11 arose. CP 6204-6205, 6045-6046. As discussed herein, the PUD directives to perform extra-Contractual work (and GCC’s performance of that work) post-dated (and were separate from and not contemplated in) DI No. 8, so that document could not impact or bar GCC’s claim. CP 6205-6206.

1. Washington Law Entitles a Contractor to Additional Compensation for Performing Extra Work.

The trial court relied on the definition of extra work from the case of *Dravo Corp. v. Metropolitan Seattle*:

Extra work means work done which is not required in the performance of the contract, something done or furnished in addition to or in excess of the requirements of the contract. The distinction between extra work and additional work is that the former is work arising outside and entirely independent of the contract, something not required in its performance; the latter is something necessarily required in the performance of the contract and without which it could not be carried out.

Dravo Corp. v. Metropolitan Seattle, 79 Wn.2d 214, 221, 484 P.2d 399 (1971) (citing 13 McQuillin, Municipal Corporations § 37:165, p. 477 (3d ed. 1950)).

Dravo concerned a gravity sewer interceptor project. Since the sewer was to be buried along an alignment where the depth of the hardpan varied, the contract specified two methods of supporting the sewer and allowed the contractor to install the sewer using whichever of two specified methods was appropriate at a particular place. *Dravo*, 79 Wash.2d at 214-15. The contractor was *not* ordered – that is compelled – by the owner to use either contractually-allowed method, but the contract and owner allowed the contractor (and its subcontractor) to choose. *Id.* at 220. Based on the absence of an order, the court held that:

The work for which extra compensation was allowed by the court was work directly called for by the contract, the laying of a portion of the Enatai interceptor. The fact that some added expense may have been incurred beyond that which the contractor had anticipated does not make the work “extra” as that term is used in a construction contract.

Id. at 222. Thus, *Dravo*'s holding – driven by the fact that the owner did **not** order the use of either particular method – is that extra expense in performing according to a contractor-chosen method is not "extra work."

However, if the facts were different, the outcome in *Dravo* would have been different. That is, *Dravo* stands for the proposition that if the owner **had** ordered the contractor to use one method when a less expensive method also was appropriate, the work would have been "'extra' as that term is used in a construction contract." *Id.* That is because the parties to a construction contract do not typically contemplate that the owner will direct which of various approved or feasible methods a contractor must follow. Such direction constitutes extra work.

The trial court's recitation of Washington law is consistent with federal cases discussing "extra work" principles,¹⁴ and is also consistent with other Washington authority, including *Kieburtz v. City of Seattle*, 84

¹⁴ In federal cases, extra work of this nature is known as "cardinal change." *See, e.g., Edward R. Marden Corp. v. United States*, 442 F.2d 344, 369-3770 (Cl. Ct. 1971) ("[W]here drastic consequences follow from defective specifications, we have held that the change was not within the contract, i.e., that it was a cardinal change . . . If plaintiff's allegations are true, then it performed work which was not 'essentially the same work as the parties bargained for when the contract was awarded . . . based on the sheer magnitude of reconstruction work caused by the alleged defective specifications.'" (citation omitted)); *Rumsfeld v. Freedom NY, Inc.*, 329 F.3d 1320, 1332 (Fed. Cir. 2003) ("A cardinal change can occur even when there is no change in the final product . . ."); *Saddler v. United States*, 287 F.2d 411, 414-15 (Cl. Ct. 1961) ("The nature of this particular contract was so changed by the added work, albeit the same kind of work described in the original specifications, as to amount to a cardinal alteration falling outside of the scope of the contract"); *Northrup Grumman Corp. v. United States*, 50 Fed. Cl. 443, 466 (2001) ("When contract language requires very specific products or services, and bids for the contract were keyed primarily to those requirements, changing such requirements after contract award will be deemed outside the scope, even if such a change does not significantly alter the work being performed.").

Wash. 196, 203-04, 146 P. 400 (1915) and *Bignold*, which are discussed in more detail below.

2. Contractual Notice, Change and Claim Provisions Do Not Apply Where an Owner Orders Extra Work.

At least two Washington cases and multiple other authorities support the trial court's determination that an owner is not relieved by contractual notice and changes clauses of the obligation to compensate the contractor for owner-ordered extra work.

First, *Kiebertz* announces the following rule of law:

It is undoubtedly a general rule that where a municipality lets work of a public nature to a contractor to be performed according to specific plans and specifications at a stated price for the completed work, ***and afterwards radically or materially changes the plan of the work so as to increase the cost of performance, or orders and directs the contractor to perform work or furnish material not within the contemplation of the original contract, the municipality becomes liable to the contractor for the increased cost of the work, or for the extra cost of the labor or material.*** . . . It seems to us that, if this rule is to prevail, ***the bid affords the city no protection.*** The city must either forbear making the desired changes, or else answer to the contractor in a manner different from that specified in the contract.

84 Wash. at 203-204 (emphasis added). Cardinaly changing the "plan of the work" or ordering and directing the contractor "to perform work or furnish material not within the contemplation of the original contract" makes the public owner liable to the contractor. *Id.* Since the owner must "answer to the contractor in a manner different from that specified in the

contract," the contract, including its notice and changes provisions, provides the owner "no protection." *Id.*¹⁵

Similarly, *Bignold* holds that the contractor's recovery (there, in *quantum meruit*) is appropriate when "substantial changes occur which are not covered by the contract and were not within the contemplation of the parties, if the effect is to require extra work and materials or to cause substantial loss to the contractor." 65 Wn.2d at 826 (citation omitted). And that:

Another finding was that the contractor 'gave timely notice of the subsurface conditions on the job site.' *In addition thereto, the appellant became immediately aware of the changed conditions as soon as they developed and ordered the contractor to perform the changes and extra work involved on these three items. Under such conditions, the county cannot defeat recovery by a contractor even if no written notice was given.*

Id. at 822 (emphasis added).

Moreover, the more recent case upon which PUD's various notice arguments are premised, *Mike M. Johnson*, discusses *Bignold* as an "extra work" case in a manner that is consistent with other extra work cases and with the notice/waiver cases of *Mike M. Johnson* and its progeny.¹⁶ The

¹⁵ The *Kieburtz* court also rejected the owner's argument that it should be allowed to avoid liability for extra work ordered, because it reserved the authority to make changes in the work. 84 Wash. at 211. Here, PUD's Contract also contains similar reservations, but only where the "changes are within the general scope of the Contract" or constitute only "minor changes in the work . . . not inconsistent with the purpose of the Contract . . . and do not involve any additional cost . . . or extension of the Contract completion date" (GC-18, CP 19572).

¹⁶ Another case upon which PUD relies, *Hensel Phelps Constr. Co. v. King County*, 57 Wn. App. 170, 174, 787 P.2d 58 (1990) also relies upon and cites *Bignold* as a valid "extra work" case. *Hensel Phelps* is also consistent with the proposition that contract provisions

Supreme Court does so by both quoting *Bignold* as well as using such language itself to describe the *Bignold* decision as an extra work case. 150 Wn.2d at 387-388 (owner ordered performance of “changes and extra work” and “direction to proceed with the extra work”).

3. Whether Or Not Work is Extra or Cardinaly Changed Work is a Question of Fact.

The trial court also correctly ruled that determining whether something is extra work or not extra work presents a question of fact for the jury, which is the law in Washington and in other jurisdictions. *See, e.g., Bignold*, 65 Wn.2d at 820-26 (analyzing "item" by "item" the extra compensation awarded by the trial court based on unchallenged findings);¹⁷ *but see Hensel Phelps*, 57 Wash. App. at 174-176 (opining on distinguishable facts and procedural posture that it is essentially a mixed question of law and fact). This concept is also well established in federal jurisprudence concerning extra work / cardinal change precedent.¹⁸

(including notice and claim clauses) have no application where extra work outside the contemplation of the parties is ordered, in which case there is a “basis to abandon the contract in favor of *quantum meruit*.” *Id.* at 182; *see also* CP 17038-177044 for further discussion of *Hensel Phelps* in relation to the current action.

¹⁷ Another section of the McQuillin treatise, upon which the court relies in *Dravo*, is also consistent on this point. 13 McQuillin Municipal Corporations § 37:163, pp. 538-542 (3d ed. 2008) (explaining “[t]here can be no true test to determine whether certain work falls within the classification in a contract for public work” and “[w]hether the work was necessary . . . and all other relevant circumstances, are factual matters and should obviously be submitted to the jury for their consideration.”)

¹⁸ *Md. Enter., LLC v. United States*, 93 Fed. Cl. 658, 664 (2010) (“The finding of a cardinal change is principally a question of fact.” (quoting *Rumsfeld*, 329 F.3d at 1322)); *Becho, Inc. v. United States*, 47 Fed. Cl. 595, 601 (2000) (Denying government’s motion for summary judgment and explaining “[w]hether a change is cardinal is principally a question of fact, requiring that each case be analyzed individually and in light of the totality of the circumstances”); *ThermoCor, Inc. v. United States*, 35 Fed. Cl. 480, 490 (1996) (denying motion for summary judgment on cardinal change claim, explaining that “[e]ach case must be analyzed on its own facts and in light of its own circumstances,

As discussed above in sections I(c)(1) through (6), GCC has presented substantial and largely unrebutted evidence establishing that PUD ordered GCC to perform work PUD knew (and was notified) was extra work outside the scope of the Contract. The Slot Claim is a prime example, because PUD directed GCC to abandon the concurrent Two-Slot Method which formed the basis of the Contract and to perform thereafter according to a revised sequential (One-Slot at a time) method, despite knowing that such order constituted a cardinal change and would require extra work, extra costs and schedule delay. CP 1446-1447, 1296, 20148; *see also* CP 1445-1446, 1296-1297, 9337-9338, 4527, 20098-20099, 20140-20141, 20153, 2889, 2903, 2914-2915 (Apps. R, S, EE, FF, GG, HH, II, LL, OO). Genuine issues of material fact exist as to whether such changes – and similar directives from PUD -- constitute “extra work.”

The same and similar evidence supports the other claims to which PUD assigns error in this section. *See* CP 5443-5452, 8041-8046 (Claims 7/16); CP 6205-6206, 6328-6331, 6254, 8037 (Claim 11).

C. Assignment No. 5.

PUD argues that sub-components 1 and 3 of “Claim 2” should have been “dismissed” because those particular sub-components do not have their own cost and time impacts. Rather, as organized in the REA, the cost

giving just consideration to the magnitude and quality of the changes ordered and their cumulative effect upon the project as a whole," which "requires a fact-intensive inquiry into the events that led to the excess work and their effect on the parties" (quotation marks and citations omitted)); *Universal Contracting & Brick Pointing Co., Inc. v. United States*, 19 Cl. Ct. 785, 792 (1990) (denying summary judgment motion and noting that "case law makes clear that the court's inquiry regarding whether there has been a cardinal change to a contract depends on the facts and circumstances of each case").

and money impacts only directly flowed from sub-component 2. CP 5303-5304. First, even if those sub-components were “dismissed,” (which would be inappropriate since GCC has not asserted a separate claim for relief based exclusively on those sub-components), the relief GCC seeks for Claim 2 would be unaffected. Moreover, evidence regarding sub-components 1 and 3 provides a broader picture of the context in which the actual monetary and schedule impacts of the “Claim” arose. *See* CP 5303-5304, 5279-5280, 5360. The same is true for the “DI 257” sub-component of Claim 7. *See* CP 5424.

D. Assignment No. 6.

PUD quotes a nonexistent “ruling” *never made* by the trial court, ignores the basis of GCC’s Claim 2 and testimony of its witnesses, and mischaracterizes the well-established principle of construction law known as the *Spearin* doctrine.¹⁹ That doctrine (which is also known as the implied warranty of the accuracy and sufficiency of the plans and specifications) provides that when a contractor is required to build in accordance with plans and specifications furnished by the owner, it is the owner, not the contractor, who impliedly guarantees that the plans are accurate, workable and sufficient and that if followed the contractor will be able to complete the project as designed and on time. *Weston v. New Bethel Missionary Baptist Church*, 23 Wn. App. 747, 753, 598 P.2d 411 (1978); *City of Seattle v. Dyad Constr., Inc.*, 17 Wn. App. 501, 517, 565 P.2d 423

¹⁹ This doctrine is named after the U.S. Supreme Court Case of *United States v. Spearin*, 248 U.S. 132, 39 S. Ct. 59, 63 L. Ed. 166 (1918), and has been adopted in most jurisdictions, including Washington.

(1977); *Tyee Constr. Co. v. Pacific Nw. Bell Tele. Co.*, 3 Wn. App. 37, 40-41, 472 P.2d 411 (1970).²⁰

GCC's Claim 2 is not based upon a "changed condition," but arises from PUD's issuance of defective, late-issued plans and specifications, which required GCC to incur additional costs and delays. The plans and specifications for the stoplog guiderails were defective by specifying precisely shaped and sized guiderails, representing a smooth concrete dam face and detailing locations for the installed guiderails where concrete bulges interfered with installation. CP 5304, 5358-5360, 5392-5394, 6827-6828, 5359, 5365-5366, 8027-8028. PUD, not GCC, must be held responsible for the increased costs and delays caused by the extra and changed work PUD directed to address such design deficiencies.

E. Assignment No. 7.

Contrary to PUD's argument and the *never-made* "ruling" attributed to the trial court, GCC's Claim 10 (the Coffe Cell Claim) is not a "changed conditions" claim. Rather, the claim seeks additional compensation and an extension of time for extra costs and delays that GCC incurred as a result of PUD interference with GCC's performance of work activities that sequentially had to be completed (but were delayed by PUD's actions) before the coffer cell could be removed, including directing GCC to perform work not required by the Contract Documents, directing GCC's

²⁰ See also *S. Comfort Builders, Inc. v. United States*, 67 Fed. Cl. 124, 133 (2005) ("Under the *Spearin* doctrine, when the government provides a contractor with defective specifications, the government is deemed to have breached the implied warranty that satisfactory contract performance will result from adherence to the specifications, and the contractor is entitled to recover costs proximately flowing from the breach.")

means and methods of performance, and imposing upon GCC cure time periods not provided for in the Contract Documents. CP 2291-2293, 1253-1254, 8033.

Washington law recognizes the well-established principle that:

In every construction contract there is an implied term that the owner or person for whom the work is being done will not hinder or delay the contract, and for such delays the contractor may recover additional compensation.

V.C. Edwards Contracting Co., Inc. v. Port of Tacoma, 83 Wn.2d 7, 13, 514 P.2d 1381 (1973); *see also Bignold*, 65 Wn.2d at 825. Owners have consistently been found liable for hindering and delaying contractors by (i) ordering extra work (or methods) outside of the contract documents; (ii) delaying the contractor's operations without justification; (iii) imposing stricter inspection requirements than the contract imposes; and (iv) scheduling other activities in the same area as the contractor's work. *Dyad*, 17 Wn. App. at 518-19; *V.C. Edwards*, 83 Wn.2d 13.

Dyad is particularly instructive. It involved a claim by a public works contractor against the City for, among other things, extra costs and delays incurred by the contractor as a result of the City ordering the contractor to perform work outside of its contractual scope, and directing the contractor's means and methods. As noted by the trial court in findings adopted by Division I:

The City did not have the right to, in effect, become the contractor insofar as supervising and requiring particular methods of construction with regard to the sheet piling operation. The City arbitrarily and without justification ***directed the manner and method of [contractor's] performance. The effect of this improper interference of the City was to materially increase the scope of the***

work required of the Contractor, to delay his operations, and to cause extra costs in labor and equipment. . . . [Contractor] is entitled to recover for the extra expenses incident to the sheet piling operation, plus the costs incident to the delays on the beach that were lost by reason of that operation.

Dyad, 17 Wn. App at 504-505 (emphasis added). The court reiterated that a "contractor who has been delayed in the performance of his contract may recover from the owner of the building damages for such delay if caused by the default of the owner." *Id.* at 513 (quoting *Byrne v. Bellingham Consol. Sch. Dist.*, 301 Wn.2d 20, 31-32, 108 P.2d 791 (1941)).

Here, PUD interfered with GCC's performance of its work on the downstream fish bypass by directing GCC to perform items of work not required by the Contract Documents, directing GCC's means and methods of performance, and imposing upon GCC cure time periods not provided for in the Contract Documents. CP 1251-1252, 2291-2292, 2295-2298, 2301, 6444-6446, 8031-8032. PUD's orders to perform such extra-Contractual work using certain directed methods constitute active interference with GCC's performance. *Id.* Under Washington law, GCC is entitled to recover additional compensation for the extra work performed, for the resulting delays and for the costs incident thereto. *Dyad*, 17 Wn. App. at 513; *V.C. Edwards*, 83 Wn.2d at 13.

The record before the Court does not include any evidence from PUD to address or contradict the true bases for GCC's Coffey Cell Claim. The correct context of GCC's Coffey Cell Claim presents genuine issues of material fact as to whether PUD was solely responsible for these particular

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delays and to what extent the damages and delays caused thereby are a reasonably foreseeable result.²¹

F. Assignment No. 8.

PUD argues that section SR-11 should be construed to bar GCC's Claim 10, but that clause deals with subjects that do not form the basis of that claim. By its plain terms, SR-11B applies only to requests for "time extensions or extra compensation . . . based on river conditions" and refers to "extreme river conditions." CP 101. As discussed above, GCC's Coffey Cell Claim is *not* based upon an allegation of unusually high forebay or tailrace levels, or otherwise upon "extreme river conditions." It simply seeks reimbursement for the costs of the extra work performed as a direct result of PUD-directed changes to what was required by the Contract Documents in connection with several predecessor aspects of the downstream fish bypass work. CP 2291-2293, 1253-1254, 8033. GCC does *not* blame these extra costs on encountering "extreme" or "unfavorable" river conditions for which it was not prepared during the scheduled work. CP 1254, 2293. Rather, GCC seeks to recover the extra costs it incurred as a result of PUD-caused delays. The PUD's breaches, not the river, are to blame. SR-11 is inapplicable.²²

²¹ Whether something is foreseeable is a question of fact. *See, e.g., Tao*, 140 Wn. App. at 833; *Weber*, 124 Wn. App. at 35-36.

²² Though not cited in the Assignment of Error (and, as such, it should be ignored), PUD's brief also relies on clause GC-18 of the Contract, which PUD argues provides a mandatory dispute resolution procedure. GC-18 does no such thing and, in any event, GCC complied with that provision's terms. CP 2291, 2295-2298, 2301-2303.

ARGUMENT ON CROSS-ASSIGNMENTS OF ERROR

I. GENUINE ISSUES OF MATERIAL FACT REQUIRE REVERSAL OF THE ORDER REGARDING SELWAY AND PUD'S WAIVER OF NOTICE PROVISIONS.

Genuine issues of material fact (established by evidence and uncontradicted by PUD) concerning PUD's waiver of notice provisions, as set forth in the Statement of the Case above, require the reversal of the Order regarding Selway (which more broadly concerned PUD's waiver of notice provisions). The Statement of the Case (section I.B) sets forth facts establishing PUD's direct and unequivocal waiver of notice provisions. Additionally, GCC expressly incorporates herein the Argument of Respondent, Section I.A regarding PUD Assignments Nos. 1 and 2 above, which sets forth GCC's legal argument concerning PUD's waiver of the notice provisions.

Notwithstanding that PUD received timely notice of the NACE Paint Inspector Claim, PUD instructed GCC to not follow the Contractual notice of claim provisions, but instead to inform PUD of any issues during Project meetings and discussions, including weekly meetings, in order to preserve such issues. CP 13771-13772, 13904-13907 (Apps. MM, NN). GCC did just what PUD's principal on-site representative Dana Jeske directed and, when some claims were settled and some claims were preserved, all parties' statements and actions were completely consistent with, and thus provide further evidence of, what took place. *Id.*

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Manifest issues of material fact require the reversal of the Order concerning PUD's waiver of notice requirements, which is integral to the Order regarding Selway. *Id.*

II. GENUINE ISSUES OF MATERIAL FACT REQUIRE REVERSAL OF THE ORDER REGARDING SUPERIOR KNOWLEDGE.

As set forth in the Statement of the Case (section I.A), there is substantial evidence that PUD possessed critical and material information concerning the stability of the Dam – particularly in the Future Units, the precise area of the Project – but concealed that information from all bidders, including GCC. *See, generally*, CP 18681-18691, 6856-6860, 1289-1292, 1296. The crux of the legal/factual issues relates to GCC's as-bid and approved plan to work concurrently in more than one slot of Unit 11 at the same time (the "Two Slot Method"). *See* section I(C)(1) above. The question of Dam stability, and what PUD knew and when PUD knew it is of essence in this claim for relief. *See, generally*, CP 18681-18691 (App. T), 6856-6860.

Washington case law fully supports the applicability of the superior knowledge doctrine. *See Jordan v. Corbin Coals, Ltd.*, 162 Wash. 503, 298 P. 712 (1931); *see also V.C. Edwards*, 83 Wn.2d 7 (Port's failure to warn contractor of conflicts between the contract railway work and other sewer contractors in the area about which the Port knew misled contractor and caused delays and increased costs for which the contractor could recover, including in *quantum meruit*).

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Silence is sufficient for superior knowledge liability in all jurisdictions that apply the doctrine, including Washington. The Court of Appeals for the Federal Circuit describes the superior knowledge doctrine as follows:

In government contracts law, under certain circumstances the government owes a duty to disclose critical information to a contractor that is necessary to prevent the contractor from unknowingly pursuing a ruinous course of action. This doctrine of superior knowledge is well established in law, and failure to disclose crucial information can lead to a finding of contract breach by the government.

McDonnell Douglas Corp. v. United States, 182 F.3d 1319, 1329 (Fed. Cir. 1999) (quotation marks omitted) (citing seminal cases of *Helene Curtis Indus., Inc. v. United States*, 160 Ct. Cl. 437, 444 (1963) and *Hardeman-Monier-Hutcherson v. United States*, 458 F.2d 1364, 1371-72 (Ct. Cl. 1972)). “Failure to disclose” means the same thing as “silence,” so silence is sufficient for liability to be imposed.

The Ninth Circuit Court of Appeals, applying Washington law,²³ addressed this issue in *Walla Walla Port District v. H.G. Palmberg*, 280 F.2d 237 (1960), which involved the construction of an industrial site where the contractor encountered subsurface cobbles and boulders, asphalt roadways, trees, telephone poles, fence posts and other miscellaneous debris not shown on the plans and specifications provided to bidders. 280 F.2d at 242-43. These conditions rendered the contractor’s dredging

²³ The Ninth Circuit Court of Appeals concluded that “[t]he Supreme Court of Washington impliedly approved the holdings in [*Hollerbach v. United States*, 233 U.S. 165, 34 S. Ct. 553, 58 L. Ed. 898 (1914)] and [*United States v. Atlantic Dredging Co.*, 253 U.S. 1, 40 S. Ct. 423, 64 L. Ed. 735 (1920)] as applied to the facts existing in those cases.” *Walla Walla Port*, 280 F.2d at 247-48.

operations significantly more difficult and expensive, in part because the dredging equipment selected could not handle undisclosed materials. *Id.* at 242. The Port had in its possession a geotechnical report it had not disclosed to bidders, which showed soil conditions and borings, and additional information from the United States Engineer's Office about the site conditions. *Id.* at 245.

The Ninth Circuit determined that the Port's engineer possessed but failed to disclose certain information supplied by the United States Engineer's Office concerning the presence of rock that would have been helpful to a prospective bidder. 280 F.2d at 245. Similar to this case, the Port "was aware of the type of equipment proposed to be used in the [contractor's] dredging operations . . . and offered no objection thereto." *Id.* On that basis, the Ninth Circuit Court of Appeals affirmed the trial court's refusal to grant the Port's directed verdict motion and upheld the jury verdict on contractor's claim for additional compensation. *Id.* at 249, *see also Jordan*, 162 Wash. 503 (1931).

The contractor's claim in *Jordan* was identical to GCC's superior knowledge claim. The Washington Supreme Court described the contractor's claim as resting on the theory that:

while [the owners] did not, in words, tell him there were no existing underground workings, they remained silent with reference thereto, and failed to inform him of the existence of such workings, knowing of their existence and knowing that [contractor] did not know of their existence.

Jordan, 162 Wash. at 508. The owners challenged the jury verdict in plaintiff's favor on appeal by arguing that "mere silence of [owners] as to

the existing underground working does not render them liable to [contractor].” *Id.* The Washington Supreme Court rejected the owners’ argument and upheld the jury verdict, explaining:

In view of the nature of the undertaking, as contemplated by the contract, and the manifest danger of working over or near the existing underground workings by the steam shovel process of removing the surface material and thereafter the coal, all other methods of removal of the surface and coal being much more expensive, it seems plain to us that the ***withholding from [contractor] of knowledge of the fact of the existence of the underground workings was as effective to render [owners] liable to [contractor] as if [owners] had falsely affirmatively stated to [contractor] that there were no workings under the contracted area.***

Id. at 508 (emphasis added).

The factors considered in the *Walla Walla Port* and *Jordan* cases under Washington law track nearly identically with the well-established elements of the superior knowledge doctrine. Those elements are often set forth as follows:

(1) [contractor] undertook to perform without vital knowledge of the fact that affects performance costs or direction, (2) the government was aware the contractor had no knowledge of and had no reason to obtain such information, (3) any contract specification supplied misled the contractor, or did not put it on notice to inquire, and (4) the government failed to provide the relevant information.

GAF Corp. v. United States, 932 F.2d 947, 949 (Fed. Cir. 1991) (citation omitted).²⁴

²⁴ See also, e.g., *Hardeman-Monier-Hutcherson*, 458 F.2d at 1371-72 (holding the government liable for failing to disclose weather data in its possession and stating that “[i]t is well settled in this court that where the Government possesses special knowledge, not shared with the contractor, which is vital to the performance of the contract, the Government has an affirmative duty to disclose such knowledge. It cannot remain silent with impunity”).

In the seminal case *Helene Curtis*, the Court of Claims held that a superior knowledge claim can be based on “significant information” about “uncertainties” and potential “problems.” 160 Ct. Cl. at 443. The government need not know for certain that the risk will come to pass. *Id.* at 443-44. If the owner knows the bidder is unaware of the information and knows the information is relevant to bidding, the Government cannot remain silent. *Id.* at 444;²⁵ see also *Hercules Incorporated v. United States*, 24 F.3d 188, 196-97 (Fed. Cir. 1994).²⁶

In this case, especially when inferences are drawn and evidence is viewed in the light most favorable to GCC, there are multiple genuine disputes of material fact precluding summary judgment on GCC’s superior knowledge claim. First, PUD possessed superior knowledge concerning the stability of the Dam for years, including specifically superior knowledge concerning the stability of the Dam while under construction for the Project. See Statement of the Case at I.A, pp. 9-10; CP 18681-18689 (App. T), 6852-6853, 6855-6860, 18850-18852, 18938-18939, 19054-19058, 6903, 6909.

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²⁵ 160 Ct. Cl. at 444 (“[T]he Government, possessing vital information which it was aware the bidders needed but would not have, could not properly let them flounder on their own. . . . [T]he Government – where the balance of knowledge is so clearly on its side – can no more betray a contractor into a ruinous course of action by silence than by the written or spoken word.”)

²⁶ 24 F.3d at 196-197 (“[A] claim under the doctrine of superior knowledge is tenable where the government fails to provide a contractor with vital knowledge in the government’s possession which bears upon the costs of the contractor’s performance under the contract at issue. . . . [T]he cases cited for the superior knowledge doctrine concern the withholding of superior knowledge that makes it more difficult to perform under the terms of the contract at issue.”).

Second, PUD knew that such knowledge was directly relevant to the means and methods of constructing the fish bypass, and had material consequences on both bid price and schedule, because, among other things, (a) its consulting Engineer took account of it, and (b) GCC told PUD just that. *See* Statement of the Case at I.A, pp. 10-12; CP 18689-18690, 19104-19107, 6860, 6863, 1290, 1292-1294.

Third, PUD knew that GCC lacked the knowledge that PUD had, because PUD kept the documents from all bidders, and kept other bidders' specific questions and its answers from GCC, and ensured that the material knowledge was kept from bidders by having it classified as CEII that could be received only with appropriate clearance from FERC. *See* Statement of the Case at I.A, pp. 10-12; CP 3620-3621, 3630-3631, 3637-3640, 3647-3648, 3656-3657, 3672-3676, 4035-4036, 2830, 18685-18691, 1289-1292, 1296, 6861, 6899, 19451-19452, 19466, 19470, 19487, 19489, 19169.

Fourth, PUD knew that GCC was misled by the Contract Specifications pre-bid, post-bid but pre-award, and after award, because GCC asked if it could propose, did propose, and then had approved and performed according to the Two-Slot Method, which was incompatible with the superior knowledge PUD had. *See* Statement of the Case at I.C(1), pp. 17-20; CP 18685-18691, 1289-1295. All the while, PUD stated that the Two-Slot Method, or some variation of it, was at least feasible, PUD accepted GCC's bid without qualification knowing it was based on the Two-Slot Method and knowing that it saved PUD \$8,000,000 and months of Project schedule, and then PUD actually designed the specific

Two-Slot Method it ultimately approved. *Id.*, CP 1407, 20049, 20051, 6150-6156, 20045 (Apps. U, V, W).

PUD even went so far as to keep secret from FERC that it was approving a method of construction different from that described in the Project-related documents upon which FERC relied in allowing the Project to proceed (PUD also failed to disclose the Dam movement during the Project to FERC). CP 18689. PUD was not candid with GCC about this too, by stating it could approve the Two-Slot Method on its own (without FERC), and by approving the Two-Slot Method on its own. *See id.*, Statement of the Case at I.C(1), pp. 17-19. PUD failed to provide the relevant information; instead, it accepted GCC's bid (i.e., "snapped up"), knowing it saved PUD \$8,000,000. *See* CP 18685-18690, 1407, 20049, 20051, 6150-6156, 20045, *see also* Statement of the Case at I.C(1), pp. 17-18.

Substantial factual evidence and disputed facts preclude summary judgment in PUD's favor on GCC's Superior Knowledge claim, and the trial court's Order should be reversed.

III. GENUINE ISSUES OF MATERIAL FACT REQUIRE REVERSAL OF THE ORDER REGARDING MISTAKE.

Substantial evidence supports GCC's alternative mutual and unilateral mistake claims that center upon both GCC's and PUD's assumption that Unit 11 was sufficiently stable to tolerate construction using a Two-Slot (concurrent) Method, and this assumption was a basic assumption of the Contract.

A. Mutual mistake.

Under Washington law:

A mutual mistake occurs when the parties, although sharing an identical intent when they formed a written document, did not express that intent in the document. The rationale behind such a rule is that, but for the mistake, the parties would have executed the reformed contracts. The test for mutuality of mistake requires the mistaken fact be the underlying basis of the entire agreement and, when discovered, that the essence of the agreement is destroyed. . . . However, reformation is justified only if the parties' intentions were identical at the time of the transaction.

Seattle Professional Engineering Employees Ass'n v. Boeing Co., 139 Wn.2d 824, 832-33, 991 P.2d 1126 (2000) (quotation marks and citations omitted).

For GCC's mutual mistake remedy to survive summary judgment, GCC needs only to present evidence from which a reasonable trier of fact could infer that the parties entered into their Contract based on a mistake of fact essential to the agreement.

The evidence identified above precludes summary judgment in PUD's favor. First, there is substantial evidence that both PUD and GCC agreed that a Two-Slot Method would work, and that the Two-Slot Method working was essential to the agreement. *See* Statement of the Case at I.C(1), pp. 17-20. Second, there is substantial evidence that both PUD and GCC agreed that the Two-Slot Method would be made part of the Contract offered by PUD and executed by GCC. The factual evidence points exactly to those conclusions. *See, e.g.*, CP 1294 (App. R) (declaring: "Jeske and Voskuilen indicated to us that an award would be made to GCC recognizing the economies provided by the Two-Slot Method."); *see also*

CP 20044-20045 and 20049 (App. U) (GCC's bid saved \$8 million compared to next low bidder), CP 20057-58 (App. W) (PUD accepting GCC's Bid as "the best bid based on the [PUD]'s plans and specifications," and the only one within 15% of the engineer's estimate), 20060 (App. X) (PUD's Notice of Award in which the PUD stated "The [PUD] . . . is pleased to notify you that your Bid has been accepted. . . .").

B. Unilateral mistake.

Washington law provides:

A party to a contract is entitled to reformation if either there has been a mutual mistake or one party is mistaken and the other party engaged in fraud or inequitable conduct. . . . A party has engaged in fraud or inequitable conduct if it conceals a material fact from the other party. However, concealment only constitutes fraud or inequitable conduct when the party possessing the knowledge has a duty to disclose that knowledge to the other party.

Washington Mutual Savings Bank v. Hedreen, 125 Wn.2d 521, 525-26, 886 P.2d 1121 (1994) (citations omitted).

A duty to disclose arises when the parties have a preliminary agreement and the party drafting the agreements fails to inform the other party of facts inconsistent with the agreement or memorialize the terms of the preliminary agreement in the final written agreement. *Id.* at 527-29 (discussing and reaffirming the rules in *Kaufmann v. Woodard*, 24 Wn.2d 264, 163 P.2d 606 (1945) and *Waite v. Salestrom*, 201 Neb. 224, 266 N.W.2d 908 (1978)).

Because all factual inferences must be drawn in GCC's favor, the evidence cited above establishes, for purposes of PUD's motion for summary judgment, that: (1) GCC believed that Unit 11 was sufficiently

stable to tolerate a Two-Slot Method; (2) GCC told PUD it held that belief; (3) GCC believed PUD agreed with GCC and accepted GCC's Two-Slot Method based bid; (4) PUD understood that it was saving at least \$8 million because GCC would perform on a Two-Slot Method basis; (5) the parties agreed that the right to perform according to a Two-Slot Method would be included in the Contract awarded to GCC; and (6) PUD had information it deliberately kept secret from GCC (and other bidders) relevant to the question of whether Unit 11 was sufficiently stable to tolerate a Two-Slot Method. *See* Statement of the Case at I.A and I.C(1).

Just as in *Hedreen*, PUD had a duty to disclose that the Contract it sent GCC to sign did not – only in PUD's post-hoc, litigation-driven view, which is disputed by GCC - provide GCC with the right to perform according to a Two-Slot Method. *See Hedreen*, 125 Wn.2d at 529 (“Hedreen had a duty to inform Washington Mutual about the discrepancy between the Master Lease and the commitment letter. He failed to do so. Thus, he has engaged in inequitable conduct.”). Instead, PUD informed GCC “that your Bid [with the Two-Slot Method] has been accepted.” CP 20060.

Because there are disputed issues of material fact, the trial court's Order regarding GCC's Mistake claim should be reversed.

IV. FACTUAL ISSUES REQUIRE DENIAL OF THE MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING WRITING ON THE BLACKBOARD AS NOTICE.

PUD directed GCC to proceed with the Slot Claim sequence change with full knowledge of the extraordinary additional costs anticipated to be

incurred and the additional construction time anticipated to be consumed as a result of the PUD directive. CP 1293-1296, 1445-1447, 8978, 20148, 9086, 4527, 2889, 2903, 2914-1915 (Apps. R, S, EE, FF, II, LL, OO).

Notwithstanding PUD's waiver of Contractual notice provisions and notwithstanding that such provisions are otherwise inapplicable to the issue (which are discussed above), GCC's Ed Kittle provided written notice of its claim on the Project blackboard immediately upon receiving PUD's direction to abandon the Two Slot Method. CP 1446 (App. S). Nothing in the Contract prohibits written notice on a Project blackboard. Genuine issues of material fact require the reversal of the Order on the narrow issue that writing on a blackboard does not constitute written notice.

CONCLUSION

In denying PUD's five motions for partial summary judgment on review, the trial court appropriately determined that the existence of genuine issues of material fact required the denial of those motions. These factual issues should proceed to trial and the trial court's five Orders should be affirmed by this Court.

However, in granting the four Orders under cross-review, the trial court did not consider (or appropriately apply CR 56 standards to) substantial factual evidence in the record, some of which is referenced herein. The four Orders on cross-review should be reversed, allowing the

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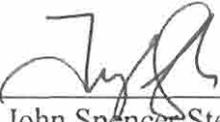
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issues on cross-review to be tried and obviating the need for a further appeal of these orders at a later date. RAP 2.3(b)(1).

RESPECTFULLY SUBMITTED this 16th day of July, 2015.

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APPENDIX

Appendix	Document	CP Range
A	Judge Knodell letter ruling - February 19, 2010	00026-00030
B	Order Granting PUD's Motion to Dismiss GCC's Selway Paint Claim – March 5, 2010 (without exhibits)	15136-15138
C	Order Denying GCC's Motion for Reconsideration – June 24, 2010	04606-04607
D	Judge Knodell letter ruling – May 20, 2011	07793-07807
E	Order Granting PUD's Motion for Summary Judgment: GCC Superior Knowledge Claim – January 12, 2012 (without exhibits)	16794-16796
F	Order Granting PUD's Motion for Summary Judgment: Writing on Blackboard as Notice – January 12, 2012 (without exhibits)	16800-16802
G	Judge Knodell letter ruling - April 12, 2012	08621-08622
H	Order Granting PUD's Motion for Summary Judgment: GCC's Mistake Claim – April 13, 2012 (without exhibits)	17050-17052
I	Order re: Claim No. 10 Coffe Cell Flooding – July 20, 2012 (without exhibits)	09724-09726
J	Judge Knodell letter ruling – July 20, 2012	09803-09809
K	Judge Knodell letter ruling – December 7, 2012	09933-09934
L	Order re: Claim No. 2 – December 7, 2012 (without exhibits)	09936-09938
M	Order re: Claim Nos. 7 and 16 – December 7, 2012 (without exhibits)	09983-09985

Appendix	Document	CP Range
N	Order re: Claim No. 11 Flow Fairing Changes – December 7, 2012 (without exhibits)	10030-10032
O	Order Denying Defendant PUD's Motion for Partial Summary Judgment: GCC Claim No. 1 – Slot Claim (without exhibits)	10077-10079
P	Judge Knodell letter ruling – September 26, 2013	10425-10427
Q	Order Denying Defendant's Motion for Reconsideration and Supplemental Motion for Reconsideration – January 31, 2014 (without exhibits)	11015-11017
R	Declaration of Scott Hanson In Opposition to Defendant Public Utility District No. 2 of Grant County's Motion for Partial Summary Judgment re: GCC's Superior Knowledge Claim, Slot Claim, and Coffey Cell Flooding Claim – June 14, 2010 (exhibit excerpts)	01288-01413
S	Declaration of Ed Kittle In Opposition to Defendant Public Utility District No. 2 of Grant County's Motion for Partial Summary Judgment re: GCC's Superior Knowledge Claim, Slot Claim and Coffey Cell Flooding Claim – June 14, 2010	01444-01448
T	Declaration of Dave Anderson In Opposition to Defendant Public Utility District No. 2 of Grant County's Motions for Partial Summary Judgment re: GCC's Superior Knowledge Claim and Slot Claim – June 14, 2010 (without exhibits)	18680-18693

Appendix	Document	CP Range
U	Memorandum from Leon Hoepner to Tim Culbertson re: Award of Contract – May 5, 2005	20049
V	Email from Chris Akers to Kim Justice re: Contract and Addendum #1 – May 12, 2005	20051-20052
W	Meeting Minutes of Regular Meeting of Public Utility District No. 2 of Grant County – May 23, 2005	20054-20058
X	Notice of Award – May 23, 2005	20060-20062
Y	Email from Dave Bishop to Jim Durnford re: Construction Sequence and Concrete placement – May 26, 2005	20064-20076
Z	Telephone Conversation Report from Dana Jeske to Steve Wittman-Todd re: Pre-Cast Module Interim Submittal – June 16, 2005	20098-20099
AA	Not Used	
BB	Email from Marinus Voskuilen to George Thompson re: Review of Revised Sequence – July 8, 2005	20129-20134
CC	Weekly Progress report – July 17, 2005	20138
DD	Serial Letter 0035 from Dave Bishop to Dana Jeske re: Response to Submittal #20 – September 7, 2005	20140-20141
EE	Email from George Thompson to Dana Jeske re: Today's Inspection Report – January 5, 2006	08977-08978
FF	Date Book for Dana Jeske – January 6, 2006	20148

Appendix	Document	CP Range
GG	Date Book for Dana Jeske – January 10, 2006	09194-09195
HH	Date Book for Dana Jeske – January 13, 2006	09196
II	Jacob Submittal Review Comments – February 15, 2006	09086-09094
JJ	Email from George Thomspson to Reece Voskuilen re: RFI 62 – February 21, 2006	09319-09322
KK	Email from George Thomspson to Ben Hugel re: RFI 62 Response – February 27, 2006	20160-20169
LL	Memorandum for the Record Draft #1 re: Wanapum Claims Document Review – March 17, 2008	04523-04527
MM	Declaration of David F. Bishop In Opposition to Defendant Public Utility District No. 2 of Grant County’s Motion for Partial Summary Judgment – July 9, 2009	13903-13917
NN	Declaration of Scott Hanson In Opposition to Defendant Public Utility District No. 2 of Grant County’s Motion for Partial Summary Judgment Relative to NACE Painting Inspector Claim – July 9, 2009	13769-13821
OO	Deposition of George Thompson – June 15, 2010 (excerpts)	02822-02938

APPENDIX A

**Superior Court of the State of Washington
For the County of Grant
35 C Street N.W.
P.O. Box 37
Ephrata, WA 98823
(509) 754-2011**

EVAN E. SPERLINE, Judge, Dept. 1
JOHN D. KNOPELL, Judge, Dept. 2
JOHN M. ANTOSZ, Judge, Dept. 3
MELISSA K. CHLARSON, Court Commissioner



MINDI FINKE, Court Administrator

February 19, 2010

MARTHA THORNTON
FILED

FEB 19 2010

KIMBERLY A. ALLEN
Grant County Clerk

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2300 S.W. First Ave., Ste. 200
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David E. Sonn
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Wenatchee, WA 98807-1688

RE: General Construction Company v. Grant County PUD No. 2
Grant County Cause No. 08-2-01339-8

Counsel:

On May 31, 2005, Plaintiff General Construction Company (hereafter, Plaintiff) contracted with Defendant Grant County PUD (hereafter, Defendant) to construct a fish bypass on the Wanapum Dam in exchange for \$29,449,100.00. The instant case involves a number of claims arising from that contract. The motion for partial summary judgment before me now involves only one of those claims.

This claim revolves around the construction of fairings on the fish bypass. Fairings are coverings which reduce drag and promote efficient water flow inside the fish bypass. Because conditions inside the fish bypass promote corrosion, the contract required Plaintiff to paint the fairings in an approved way to reduce corrosion and to have the painting inspected by one certified to do so by the National Association of Corrosion Engineers (NACE). Plaintiff subcontracted the fabrication and installation of the fairings to the Selway Corporation (Selway). After this happened, Selway sought permission to use its own quality assurance manager, who was not NACE certified, to perform the required paint inspection. Defendant, through its employee and project manager, Mr. Dana Jeske, refused in a letter dated June 5, 2006. In that letter, Mr. Jeske wrote:

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David E. Somn
Kristin Ferrera
February 19, 2010
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The intent of the specifications in requiring a NACE inspector is to act as a check on the painter's internal QA process. Therefore, as Selway's QA manager, Mr. Bruno cannot serve in the capacity of an independent inspector.

Defendant offered to supply an inspector itself for a nominal amount, but Selway hired an out-of-state inspector. On November 8, 2006, Plaintiff submitted a written work claim to Defendant for the expense of hiring this inspector. Defendant refused to pay. On May 8, 2007, Plaintiff agreed to pay Selway \$67,000.00 for the cost of the inspection.

The parties later entered into negotiations regarding a number of Plaintiff's extra work claims, including this one. Many claims were resolved through this process and Defendant ultimately signed change orders increasing the contract price by \$6,577,513.00. But the parties were unable to resolve the instant claim.

The contract between the parties contains several pertinent provisions governing extra work claims. One provision requires any claims arising under the contract to be submitted within ten days after the "beginning of the event or occurrence giving rise to the claim." This provision states that a failure to follow this procedure constitutes a waiver of claim.

Defendant claims it complied with this provision, arguing the November 8 work claim was the event giving rise to the Selway claim. While the meaning of a contractual provision is ordinarily a question of fact, see *Burgeson v. Columbia Producers, Inc.*, 60 Wn.App, 363, 366-67, 803 P.2d 838, rev. denied, 116 Wash.2d 1033 (1991), the plain meaning and the intent of the parties here admit of only one interpretation: once aware of an impending dispute, Plaintiff was obligated to notify Defendant in order to reduce the chance the matter would blossom into overgrown litigation. Plaintiff has offered no parol evidence or alternate reading. Assuming that Mr. Jeske's letter of June 5, 2006 was a demand for extra work, it was that demand that initially gave rise to the instant claim.

The contract also prohibits Plaintiff from making any claim for extra work unless such work was authorized in writing and in advance of commencing work by either Defendant's District Manager and Division Directors for work up to \$10,000.00, or by Defendant's Board of Commissioners for work exceeding \$10,000.00. The contract specifically provides the project manager is not authorized to approve any work change. Plaintiff does not claim it complied with these provisions in regard to the instant claim. Rather, Plaintiff claims Defendant, acting through its agent, Mr. Jeske, waived these

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provisions. Generally, procedural contract requirements must be enforced unless the benefiting party waives them or the parties agree to modify the contract. See Mike M. Johnson, Inc. v. Spokane County, 150 Wash. 2d 375, 386-87, 78 P.3d 161 (2003). Waiver may be implied from the benefiting party's conduct, but waiver, express or implied, must be unequivocal. Id. at 391. In the instant case, the acts and words Plaintiff attributes to Mr. Jeske (which I accept as true for purposes of this motion) were unequivocal. But so is the language of the contract which provides that any waiver must be in writing, and that no official, employee, agent or representative of Defendants is authorized to approve any change in the contract. Whether Defendant implicitly waived the claim notice provisions of the contract depends on whether, under the circumstances presented here, Plaintiff could rely on the words and actions of Defendant's agent, Mr. Jeske.

Washington recognizes two main types of agents: actual and apparent. There is no evidence before me that would allow me to conclude Mr. Jeske, even if he did and said the things Plaintiff attributes to him, had actual authority from Defendant to do or say them. Rather, Plaintiff argues he had apparent authority. Apparent agents are those who, to third parties, appear to have sufficient powers conferred upon them by the principal to bind the principal. The existence of an agent's apparent authority requires that the principal's objective manifestations 1) cause a third person to believe, actually or subjectively, that the agent has authority to act for the principal and 2) are such that the person's belief is objectively reasonable. See King v. Riveland, 125 Wash. 2d 500, 507, 886 P.2d 160 (1994). The apparent agent's authority to bind the principal is based on the words or conduct of the principal toward a third party. Id. Plaintiff was not permitted under Washington law to infer apparent authority solely from the agent's acts. See Hansen v. Hom Rapids O.R.V. Park of the City of Richland, 85 Wash. App. 424, 430, 932 P.2d 724 (1997).

Here, the parties agreed when they entered into their contract that Mr. Jeske had no authority to modify the contract or approve extra work. There is no evidence before me that Defendant as principal did anything to lead Plaintiff to any other conclusion. Even had Defendant done so, both the standard of proof and the showing necessary to show waiver against a governmental entity such as Defendant is higher than that for a private party. See Kramarevcky v. Dept. of Soc. & Health Servs., 122 Wash.2d 738, 743-46, 863 P.2d 535 (1993). Plaintiff has not addressed whether that standard and showing have been met in this case. I conclude, therefore, as a matter of law, that Plaintiff may not rely on the acts and words of Mr. Jeske alone to establish a waiver of the notice claim provisions of the contract.

John S. Stewart
Thomas A. Larkin
David E. Sonn
Kristin Ferrera
February 19, 2010
Page 4 of 5

Plaintiff next argues Defendant is equitably estopped from asserting the notice claim provisions of the contract. The elements of equitable estoppel are: 1) an admission, statement, or act inconsistent with a later-asserted claim; 2) action by another in reasonable reliance on the admission, statement, or act; and 3) injury to the other party if the party who made the admission, statement, or act is allowed to contradict or repudiate it. See Colonial Imports, Inc. v. Carlton Northwest, 121 Wash. 2d 726, 734, 853 P.2d 913 (1993). The waiver analysis above applies to this argument as well. Defendant did nothing inconsistent with its current claims, except, arguably, through its agent, Mr. Jeske. In the face of the specific contract language I have alluded to, any reliance on Mr. Jeske's words or deeds was not reasonable.

Plaintiff also argues it is entitled to recover for extra work on a quantum meruit theory. Quantum meruit may form the basis of recovery only when substantial changes occur as work progresses which are not covered by the original contract and which were not within the contemplation of the parties when the contract was formed. See V.C. Edwards Contracting Co., Inc. v. Port of Tacoma, 83 Wash. 2d 7, 13, 514 P.2d 1381 (1973). I do not believe Mr. Jeske's letter of June 5 was inconsistent with the parties' contract, but if it was I conclude no rational trier of fact could find the change was substantial, or unforeseeable by the parties. See Dravo Corp. v. Municipality of Metropolitan Seattle, 79 Wash. 2d 214, 221, 484 P.2d 399 (1971).

Plaintiff also argues the related doctrine of cardinal change. See Hensel Phelps Const. Co. v. King County, 57 Wash. App. 170, 182-83, 787 P.2d 58 (1990). To prevail on this theory, Plaintiff must demonstrate a fundamental alteration of the contract beyond its original scope. *Id.* at 182. Here, as in Hensel, there was no change in the scope of the work to be done, and there was no fundamental alteration of the project.

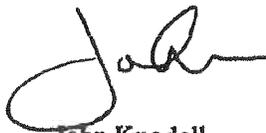
Finally, Plaintiff argues it is entitled to void the claim notice provisions because of mistake. This argument is difficult for me to address. Plaintiff has pled for relief based upon mistake in the formation of the contract. Plaintiff argues now that even if it was bound by and failed to comply with the claim notice requirements of the contract, it is nonetheless entitled to the relief it seeks in the Selway claim because the entire contract is voidable due to misrepresentations Defendant made when the parties formed the contract. Plaintiff's Memorandum in Opposition at 29-30; see Yakima County (West Valley) Fire Protection Dist. No. 12 v. City of Yakima, 122 Wash. 2d 371, 858 P.2d 245 (1993). (It appears to me on the basis of remarks Plaintiff's counsel made during argument Plaintiff may be relying on a misrepresentation rather than a mistake theory.) Defendant has not addressed this argument. In the event Plaintiff prevails on this theory, the remedies available to the court are broad, and as near as I can tell, may involve the

John S. Stewart
Thomas A. Larkin
David E. Sonn
Kristin Ferrera
February 19, 2010
Page 5 of 5

finder of fact evaluating the value of the services Defendant received from Plaintiff, including the value of the paint inspection. See Restatement (Second) of Contracts sec. 158, comment a (1981). I emphasize this is only a tentative conclusion.

Defense counsel should present an order reciting that I have considered all materials submitted by both parties and granting partial summary judgment. This ruling does not preclude Plaintiff from pursuing its theory that the contract between the parties is voidable under a mistake or under the misrepresentation theory. I so rule without prejudice to either party to revisit in further pretrial motions the question of whether the contract here is voidable.

Very truly yours,



John Knodell
Judge

JK:mmf

APPENDIX B

FILED

MAR 05 2010

KIMBERLY A. ALLIEN
Grant County Clerk



07-285263

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

COUNTY OF GRANT

**GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,**

Plaintiff,

vs.

**PUBLIC UTILITY DISTRICT NO. 2 OF
GRANT COUNTY, a Washington
municipal corporation,**

Defendant,

**PUBLIC UTILITY DISTRICT NO. 2 OF
GRANT COUNTY, a Washington
municipal corporation,**

Third-Party Plaintiff,

vs.

**GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,
TRAVELERS CASUALTY & SURETY
COMPANY; and TRAVELERS
CASUALTY & SURETY COMPANY,
BOND NUMBER 41S103871237BCM,**

Third-Party Defendants.

) **NO. 08-2-01339-8**

) **ORDER GRANTING PUD'S MOTION
TO DISMISS GCC'S SELWAY PAINT
CLAIM**

**ORDER GRANTING PUD'S MOTION
TO DISMISS GCC'S SELWAY PAINT
CLAIM Page 1**

798047

Jeffery, Davidson, Stone & Aylward, P.S.
Attorneys at Law
2000 Chester Kansas Road / P O Box 1888
Wenatchee, WA 98807-1088
(509) 662-3883 / (509) 662-3452 FAX

1 THIS MATTER came before the court on the motion of Public Utility
2 District No. 2 of Grant County ("PUD") to dismiss General Construction
3 Company's ("GCC") Selway Paint Claim. The PUD appeared through its
4 attorneys of record, Jeffers, Danielson, Sonn & Aylward, P.S., by David E. Sonn
5 and Kristin Ferrera. GCC appeared through its attorneys of record, Stewart,
6 Sokol & Gray, LLC, by John Spencer Stewart, Thomas Larkin and David D.
7 Beaudoin. The Court examined the file, including all items listed on Exhibit "A"
8 attached, and heard argument of counsel on July 23, 2009 and on November 9,
9 2009. The Court issued its February 19, 2010 letter ruling, a copy of which is
10 attached as Exhibit "B."

11 Based on the above, IT IS HEREBY ORDERED, ADJUDGED AND
12 DECREED that:

13 1. The PUD's motion for summary judgment dismissing GCC's
14 Selway Paint Claim with prejudice is granted.

15 2. This Order does not preclude GCC from pursuing its theory that the
16 contract between GCC and the PUD is voidable under GCC's mistake theory or
17 under GCC's misrepresentation theory.

18 3. ^{Subject to paragraph 10 § 2,} The PUD is the prevailing party on this motion. The PUD, as the
19 prevailing party, may apply for reasonable attorney fees in accordance with
20 paragraph 6 of the contract between GCC and the PUD.

at the appropriate time

ORDER GRANTING PUD'S MOTION
TO DISMISS GCC'S SELWAY PAINT
CLAIM Page 2
1000-07

Jeffers, Danielson, Sonn & Aylward, P.S.
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2500 Chester/Kinn Road / P.O. Box 1625
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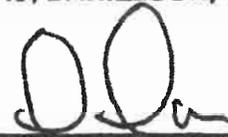
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DONE this 5 day of March 2010.


The Honorable John D. Knodell, III

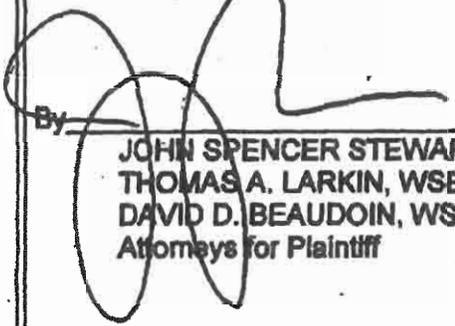
Presented by:

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

By 
DAVID E. SONN, WSBA #07216
Attorneys for Public Utility District No. 2 of Grant County

Approved as to form and notice of presentment waived:

STEWART, SOKOL & GRAY, LLC

By 
JOHN SPENCER STEWART, WSBA #15887
THOMAS A. LARKIN, WSBA # _____
DAVID D. BEAUDOIN, WSBA # _____
Attorneys for Plaintiff

ORDER GRANTING PUD'S MOTION
TO DISMISS GCC'S SELWAY PAINT
CLAIM Page 3
788847

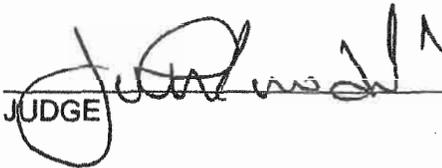
Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester-Kenn Road / P O Box 1688
Wenatchee, WA 98807-1688
(509) 662-3485 / (509) 662-3452 FAX

APPENDIX C

1 | advised in the premises; now, therefore,

2 | IT IS HEREBY ORDERED, ADJUDGED AND DECREED that GCC'S
3 | Motion for Reconsideration is denied.

4 | DONE this 24 day of June, 2010.

5 |
6 | 
7 | JUDGE

8 | Presented by:

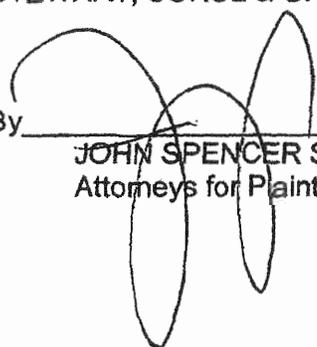
9 | JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

10 | 
11 | By _____

12 | DAVID E. SONN, WSBA #07216
Attorneys for Public Utility District No. 2 of Grant County

13 | Approved as to form and notice of
14 | presentment waived:

15 | STEWART, SOKOL & GRAY, LLC

16 | 
17 | By _____
18 | JOHN SPENCER STEWART, WSBA #15887
Attorneys for Plaintiff

19 |
20 |
21 |

ORDER DENYING GCC'S MOTION FOR
RECONSIDERATION

Page 2
791110.doc

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APPENDIX D

Grant County Superior Court
35 C Street N.W.
P.O. Box 37
Ephrata, WA 98823
(509) 754-2011



07-417989

EVAN E. SPERLINE, Judge, Dept. 1
JOHN D. KNODELL, Judge, Dept. 2
JOHN M. ANTOSZ, Presiding Judge, Dept. 3
MELISSA K. CHLARSON, Court Commissioner

MINDI FINKE, Court Administrator
CRYSTAL BURNS, Ass't Court Administrator

May 20, 2011

RENEE CAMPBELL

FILED

MAY 20 2011

KIMBERLY A. ALLEN
Grant County Clerk

John Stewart
Attorney at Law
2300 SW 1st Ave, Ste. 200
Portland, OR 97201

David Som
Attorney at Law
P.O. Box 1688
Wenatchee, WA 98807-1688

Pamela Andrews
Attorney at Law
200 W. Thomas St., Ste. 500
Seattle, WA 98119

Re: General Construction Company v. Public Utility District No. 2
Grant County Cause No: 08-2-01339-8

Dear Counsel:

This litigation involves the construction of a fish bypass on the Wanapum Dam, a structure damming the Columbia River and owned by the Defendant Grant County PUD (hereinafter PUD). The Wanapum Dam was described in the following manner in an April 5, 2005 report generated by a private consultant to the PUD which was made available to the Plaintiff, General Construction Company (hereinafter GCC):

Construction of Wanapum Dam occurred between 1959 and 1963. The dam has a modified Z-shape and consists of a concrete intake/powerhouse section, a concrete spillway section, and earth embankments on each end of the concrete structures. This arrangement was necessary to keep the concrete structures on the highest and best rock in the river valley area.

The intake/powerhouse section of the dam consists of 16 intakes, of which 10 include generation units and 6 have been prepared for future generation units¹ . . .

A system of post-tensioned tie down anchors was installed in the six future units to prevent overturning of these units by the horizontal thrust of the impounded water behind the dam. The anchors are located on the upstream edge of the future unit intakes, are inclined upstream at an angle of 6 degrees, and extend about 75 feet into bedrock (bottom of anchors is at an average elevation of 364 feet). There are 13 anchors in each of the six future units. The anchors were installed in approximately 17 1/2 -inch-diameter drilled holes and consisted of four cables, each cable with 90 wires of 1/4-inch diameter. The bonded length of the anchors (load zone) was approximately 34 feet. The grout mix consisted of cement, pozzolan, an intrusion aid, and water. The grout was pumped into the drilled holes under minimal pressure. Each anchor was loaded up to 70 percent of the ultimate steel strength, approximately 2,970 kips. . .² The nominal working stress of each anchor was 60 percent of the ultimate steel strength, approximately 2545 kips. This resulted in a working pullout capacity of approximately 75 kips per foot of bonded anchor length.

The Wanapum is a gravity dam, that is, it is designed to resist overturning or sliding tendencies (due to horizontal loads imposed by the upstream water) by its weight alone. The weight of the dam without the future generation units is generally regarded as insufficient to maintain the dam's stability without the help of the anchors.

After completion of the dam's construction, the PUD periodically commissioned engineering studies of the dam's stability. One group of these studies consists of standard engineering analyses. These studies calculate and quantify the forces operating on the structure and the structure's ability to withstand those forces based upon known data about the physical properties of the dam and its environment. Another group is comprised of "Part 12" reports. The Federal Energy Regulatory Commission (hereinafter FERC) required the PUD to produce these studies every two years. Each of these reports provided a "Potential Failure Modes Analysis" (hereinafter PFMA). While such analyses may incorporate standard engineering analysis, they go beyond traditional means of assessing project safety. While standard engineering analysis judges a dam's stability to pass standards based criteria for stability, a PFMA is designed to identify potential causes and consequences of failure. A PFMA does not address the likelihood of failure but may suggest means of recognizing impending failure. Because these reports contain "Critical Energy Infrastructure Information," they are not public documents.

The information in the standard analyses is illustrated by two of those reports.

¹ Future Unit 11, located directly adjacent to Powerhouse Unit 1, is one of six future generation units. It was built to house a large, heavy turbine designed to generate power and stabilize the dam with its weight. At all times germane to this action it was empty.

² A kip, sometimes referred to as a kilo-pound, is a unit of force that equals 1,000 pounds-force. It is used primarily by architects and engineers to measure engineering loads.

The first issued in 1985. At that time, PUD engaged George Potinos and George Thon, of the Ben C. Gerwick engineering firm, to investigate the corrosion potential of the anchor tendons in the Future Unit Intakes. Their final report included the following:

"The grout encasement of the tendons at Wanapum was not constructed so as to provide permanent corrosion protection. The possibility for some corrosion at the interface between the first and second stage grout cannot be discounted, because our review of records shows that a grout of high permeability was used, and that considerable foam and laitance³ was probably present at this interface and was not removed prior to the second stage grouting."

The second issued February 18, 2005. At that time, the Jacobs Engineering firm issued its "Future Unit Fish Bypass Stability Analysis" commissioned by the PUD. This report was designed to assess the effect of construction of the fish bypass on the Wanapum Dam's stability. This report employed both two and three dimensional analyses to assess the overall stability of the dam. It also made a gravity analysis. This analysis anticipated the planned construction of a fish bypass on Future Unit 11. Future Unit 11 contains three slots through which water behind the unit passes downriver. Construction of a bypass required the creation of a dry area on the upriver side of the dam behind each of these slots. Jacobs assumed this would be done by construction of three coffer cells⁴, one behind each slot. Jacobs' gravity analysis addressed the possibility that coffer dam construction could affect the dam's stability, but considered only the effect of consecutive construction, that is, construction of one coffer cell, completion of work at that point and removal of that coffer cell before construction of the next coffer cell. It specifically noted that additional analysis would be required after the contractor provided a specific dewatering proposal. The method Jacobs employed was "simplified" and based upon only four factors: hydrostatic force, gravity weight, post-tensioning force (the force supplied by the anchors), and uplift force.⁵ Jacobs obtained a value for the post-tensioning force by adjusting the known strength of the anchors at the time of their installation by an estimate of the effect of stress upon them.

The content of the "Part 12" reports is reflected in the last such report to be issued prior to formation of the contract at issue here. The engineering firm of Acres International prepared that report and issued it in November, 2004. This report expanded on the 1985 Gerwick report in the following language:

If progressive corrosion of upstream foundation anchor tendons were to occur, this would lead to loss of pre-stress force with vertical extension of anchors and opening at the foundation contact with some lateral rotational deflection of monolith.⁶ At some stage

³ Laitance is a residue of weak and non-durable material consisting of cement, aggregate, fines, or impurities brought to the surface of overwet concrete by water bleeding from that concrete.

⁴ The term coffer cell refers to a "cellular cofferdam." This is a temporary structure constructed in a river to exclude water from an enclosed area.

⁵ Uplift force is the result of water pressure under the dam pushing up on the dam. It is the result of insufficient drainage.

⁶ The term monolith refers to the intake unit. Each of the future unit intake monoliths is 90 feet wide and includes the intake openings and piers, gate and stop logs slots, and cable and drainage galleries.

under normal conditions or under a transient higher water level or earthquake loading the net anchor force may become insufficient to provide sliding or overturning stability.

The PFMA Team agreed on the need to establish the specific mechanism of the corrosion and load modification process. The expectation is that if failure due to progressive corrosion of anchors did lead to a loss of stability, this would most probably occur in one monolith initially and that one monolith could overturn. The possibility of a "domino" effect due to hydrodynamic loading on adjacent monoliths during flow through an overturned monolith opening should be considered since this could lead to more serious flows if the adjacent monolith were to also overturn.

The PFMA Team also discussed the effects of the uncontrolled release of water that would result from the loss of stability of a single Future Units Intakes monolith. The general conclusions reached included:

- The magnitude of the release resulting from the loss of stability of a single monolith would be in the range 300,000 cfs, which is well within the normal operating range of the Spillway system.
- The reservoir would be drawn down below the operating range of the Powerhouse.
- The concentration of flow through a single monolith could cause erosion at the downstream toe.
- The remedial repair would be lengthy and costly from both the standpoint of capital cost and lost power revenue.

Acres International recognized the possibility that the anchor tendons supporting the future intake units might have lost structural integrity but, like all the reports prepared for or by the PUD, did not attempt to quantify that possibility in any way. Rather it, like many of the reports made subsequent to 1985, recognized the "potential corrosion of tendons", and "progressive failure" possibility at the anchor tendons. Even without any quantification of this risk, Acres classified the possibility of "Future Unit Intakes Loss of Anchor Force due to Corrosion or other factors, leading to Instability of Monoliths during Normal, Flood or Earthquake conditions" as a Category I potential failure mode, the highest classification "considering need for awareness, potential for occurrence, magnitude of consequence and likelihood of adverse response."

In late May, 2005, GCC and the PUD, entered into a contract which obligated GCC to build a fish bypass on the Wanapum Dam for a fixed sum of \$29,449,100.00. Disputes between the PUD and GCC arose during the construction process. While the parties were able to resolve some of these, many remain unresolved even though the construction is complete. In October, 2008, GCC filed this action seeking compensation for construction costs beyond that provided for in its contract with the PUD.

PUD has brought nine summary judgment motions addressing GCC's theories of recovery. While these motions differ in many respects, they all ask the court to determine under what circumstances it should grant a party to a contract relief when that party makes a discovery,

or an event occurs during the performance of the contract, which impairs the value of the bargain to that party. Some of GCC's theories are grounded on rights it asserts under the contract and others on rights it claims arise outside the contract. Many of the facts relevant to contract formation are undisputed.

On April 14, 2005, PUD issued bid specifications for the fish bypass project. The bid specifications addressed the manner in which bids were to be submitted, the specifications for the completed bypass, the method for construction of the bypass, procedures for making any changes to these specifications and methods and procedures to be followed to resolve any disputes arising under the contract. Included in the specifications were drawings and "phase descriptions" which instructed potential bidders, in some detail, how the work was to be performed. These instructions not only described the required qualities of the completed bypass, but also addressed with specificity some of the methods of construction.

One construction method specially addressed in the bid specification involved the construction of coffer cells on the upstream side of the dam. These cells were to be temporary structures located directly behind each of three slots on future unit 11. They were to function as small dams providing the dry space necessary to permit construction on the upstream side of the dam. The specifications described the construction of each of the three coffer cells as phases 2A, 2B and 2C. Because of concerns about the dam's stability, the PUD engineers who drafted these specifications included the following language in the contract drawings describing required construction methods:

2. Some portions of the work on and within existing future unit 11 must be performed in a specified sequence as generally described in the following notes.
7. Phases 2A and 2B may not occur concurrently, but must be done sequentially.
8. Both phases 2A and 2B must be completed before phase 4 may begin.

This language required sequential construction of the coffer cells, that is that construction of one be completed and that the coffer cell be disassembled before construction of another could begin.

The bid specifications contain a number of provisions designed to guide the interpretation and construction of any ensuing agreement. The first, entitled "Instructions to Bidders," contains a list of those items which make up the contract documents. This list includes the bid specifications, the bid form and supplemental forms.

This list is essentially repeated in the second section of the bid specifications. This section is denominated "General Provisions". It contains a definition of "contract documents" consistent with the list in the first section and provides: "These documents are complementary; and any work called for by one is as binding upon the parties as if called for by all." A later section, entitled General Conditions, also contains a provision entitled "conflict and precedence/intent" which lists the precedence of the contract provisions. The second item is "addenda", the sixth, "general conditions", the eighth, "contract drawings," and the eleventh and

last, "bid proposal."

A third section, General Requirements, provides at G-12:

The contractor shall satisfy itself concerning the nature and the location of the work, the general and local conditions, particularly those affecting transportation, disposal, handling and storage of materials; availability of labor and applicable wage rates, water and electric power, roads, climate conditions, and seasons, and physical conditions at the actual work site and project area as a whole, the equipment, and facilities needed preliminary to and during work prosecution, and all other matters which can in any way affect the work or the cost thereof. Failure of the Contractor to acquaint itself with all available information regarding any applicable condition will not relieve him of the responsibility for properly estimating both the difficulties and costs of successfully performing the work.

The bid specifications also provide that by submitting a bid, a contractor acknowledges inspection of the construction site.

The bid specifications contained several provisions dealing with future claims for extra compensation for alterations or additional work made necessary by unforeseen difficulties. GC-14, entitled "Changes in Work," provides:

Without invalidating the Contract, the *District may make changes by altering, adding or deducting from the work, and/or make changes in the drawings and specifications requiring changes in the work and/or materials and equipment to be furnished under this Contract; provided such additions, deductions or changes are within the general scope of the Contract.* Except as provided herein, no official, employee, agent or representative of the District is authorized to approve any change in this Contract and it shall be the responsibility of the Contractor before proceeding with any change, to satisfy himself that the execution of the written Change Order has been properly authorized on behalf of the District. The District's Manager and Division Directors, under certain conditions as set forth in District Resolution No. 7687, have authority to approve Change Orders up to \$10,000.00 or less. Only the District's Board of Commissioners may approve Change Orders in excess of \$10,000.00. (Emphasis added).

GC-10, entitled, "Damages" provides:

Any claims arising under the Contract by the Contractor shall be made in writing to the Engineer no later than ten calendar days after the beginning of the event or occurrence giving rise to the claim. Failure to make written claim prior to the time specified in the Contract Documents shall constitute waiver of any such claim. (Emphasis added)

In the event such a claim is made and rejected, section GC-18 of the bid specifications requires written protest within 10 days of notification of rejection.

On the day following issuance of the bid specifications, April 15, 2005, the PUD issued addendum #1 to those specifications. That addendum provided in part:

One construction method and dewatering concept is conceptually presented in the contract documents. The Contractor may use this method or develop another method. In any case, the details of the method selected shall be designed by the Contractor and submitted for review and approval by the District Engineer. The submittal requirements are to address the requirements indicated on both the drawings and the specifications.

On May 5, 2005, the PUD issued a request for bids. On the same day, GCC submitted its bid. The bid contained the following language:

The critical path runs through the slot B construction; *therefore we have procured two dewatering bulkheads to work in the B and C slots concurrently.* By working in more than one slot at a time, the A slot and C slot work has been taken off the critical path. With the A slot and C slot off the critical path General Construction is able to complete construction months ahead of the specified March 15, 2007 completion date. Construction within slot B and slot C will start immediately following the temporary dewatering bulkhead installation. (Emphasis added).

On May 23, 2005, the PUD Commissioners met and elected to accept GCC's bid. On that same day, the PUD mailed a letter to GCC notifying it that its bid was accepted and enclosing a contract form. On May 31, 2005, the parties executed a contract requiring GCC to construct a fish bypass on the Wanapum Dam "in full compliance with the Contract Documents made part hereof, entitled: CONTRACT DOCUMENTS #330-2030 BID FOR Construction of Wanapum Future Unit Fish Bypass."

GCC began construction of the fish bypass in early July, 2005. It intended to employ the concurrent sequence outlined in its bid for the construction of the coffer cells. On January 3, 2006, GCC made the first of several concrete pours behind slot B of Future Intake Unit 11. On January 5, PUD engineers detected, apparently for the first time, movement of the dam through a sensor device, referred to as a "crack monitor," placed on the dam. This movement was less than the width of a pencil lead. Counsel for the PUD has represented that the dam subsequently moved back into its original position. The parties apparently agree there is no way of knowing whether the movement was the result of coffer cell construction or whether further movement and dam instability would have been the result of proceeding with the two-slot method outlined in the bid narrative. The PUD notified GCC of the movement the following day and notified their engineers that the PUD required GCC to return to the consecutive coffer cell construction outlined in the bid specifications. The PUD did not at that time tell GCC that the dam movement created any concerns about the dam's stability or that the two slot method was unsuitable for any reason. GCC followed the PUD's directive and proceeded with consecutive coffer cell construction.

In 2008, GCC instituted an investigation which included making a Freedom of Information request to the PUD. As a result, it obtained a number of reports in PUD's possession about the Wanapum Dam, including those described above.

Three of the PUD's summary judgment motions address claimed defects in the bargaining process. These claims therefore arise outside the contract itself and are premised upon the PUD's alleged failure to deal in good faith during the period of interaction between the parties before they entered into the contract. The parties have referred to the first of these claims as the "Superior Knowledge" claim. GCC asserts under this doctrine that the PUD breached its contract with GCC by failing to disclose information it had about the dam's stability.

The PUD can be held liable for a breach of contract for nondisclosure of superior knowledge only if: 1) GCC undertook to perform without vital knowledge of a fact that affected its performance costs or direction; 2) the PUD was aware GCC had no knowledge of and no reason to obtain such information; 3) the PUD supplied a contract specification to GCC which either misled GCC or did not put it on notice to inquire; and 4) the PUD failed to provide the relevant information. GAF Corp. v. United States, 932 F.2d 947, 949 (Fed. Cir.), reh'g denied, suggestion for reh'g en banc declined (1991), cert. denied; 502 U.S. 1071, 117 L.Ed.2d 131, 112 S.Ct. 965 (1992).

The PUD offers several theories supporting its motion for summary dismissal of this claim. Only two need be addressed. Under the superior knowledge doctrine, the governmental contracting body is not liable for nondisclosure of information which the contractor could or should have known. Information known in a particular industry is considered knowledge that a contractor could or should know. Id. at 932 F.2d at 949. So is information reasonably available from other sources. See McCormick Constr., Co. v. United States, 18 Cl.Ct. 259, 266 (1989) aff'd 907 F.2d 159 (Fed. Cir. 1990). Thus, under this doctrine, a contractor having experience in the field of concrete drilling into a concrete dam should have known that drilling into a concrete dam with no knowledge of the amount of aggregate rock within was risky and experimental. Granite Constr. Co. v. United States, 24 Cl.Ct. 735, 753 (1991).

In the instant case, the parties' pre-bid communications reveal that GCC engineers were aware that the PUD required sequential slot construction in the bid specifications because of its concerns about the dam's stability. Mr. Dave Bishop, a GCC engineer who participated in preparing GCC's bid, even performed his own tipping analysis on May 11, 2005:

While the PUD may not have disclosed all of the reports it commissioned from independent consultants, GCC has not identified with particularity what information contained in any undisclosed reports would have been relevant in its assessment of the viability of its proposed two-slot proposal or how it would have used such information in making that assessment.

The reports GCC obtained through Freedom of Information Act requests are either PFMA's or standard analyses. The PFMA's address only the potential causes and consequences of instability, not their likelihood.

The standard analyses do address recognized engineering criteria for assessing the dam's stability. By their own terms, however, they are simplified and based upon the dam's mass, the

forces exerted upon the dam by the water flowing behind it, the uplift force, and the force exerted upon the dam by the anchors. The first three of these factors are based upon readily available data. As noted above, the last factor is based upon the physical properties of the anchor tendons at the time of their installation and an adjustment by PUD engineers for "creep"⁷ loss estimated at 10%.

While at least one standard analysis addressed the effect of sequential coffer dam construction on the dam's stability, this analysis was tentative at best and recognized that only monitoring of the dam during construction could effectively evaluate the risk of tipping. GCC's two-slot proposal, unformed at the time of the last standard analysis, was unaddressed. Thus, even the information in the standard analyses shed little light on the viability of GCC's construction sequence.

By reference to the declaration of Mr. Dave Andersen, a GCC engineer, GCC identifies the information in the PUD's possession during the bidding process it alleges it needed to evaluate whether concurrent construction sequence was feasible. Mr. Andersen listed the following:

- The criteria that would be used to judge the acceptability of an alternate sequence;
- FERC's overall review and approval authority over any sequence change;
- The voluminous Gerwick, Hatch Acres and MWH studies and concerns, or even a summary thereof; which detailed the sensitivity of the tendon anchor functionality in terms of preserving overall global stability of FUI No. 11;
- Any measurement or instrumentation criteria by which PUD would monitor the stability of FUI No. 11 and/or provide a basis for PUD to suspend or re-direct construction activities. The fact that existing instrumentation was insufficient to reliably provide an "early warning system";
- FERC's new Part 12 safety requirements for the Dam.

GCC does not identify any data about the physical properties of the dam as information the PUD improperly failed to disclose. Nor does GCC explain how any failure to disclose prevented it from making its own assessment of the likelihood of destabilization. Both GCC and the PUD knew that any construction on the dam could entail some risk of destabilization. Neither was or is in a superior position to assess that risk.

GCC makes an alternative argument. It claims the PUD failed to disclose that FERC was concerned about the dam's stability and had evaluated the consequences of instability as extreme. GCC asserts that because of FERC's assessments, GCC was held to standards more stringent than generally accepted engineering standards.

⁷ Creep is the tendency of a solid material to slowly move or deform permanently under the influence of stresses.

The record doesn't support this contention. While FERC was monitoring the dam's stability during construction, it did not participate in the decision to require sequential construction of the coffer cells. There is no evidence FERC imposed any requirements beyond those of the contract. The contract neither adopts any FERC requirements nor requires FERC approval of construction methods. There is no evidence the PUD considered any FERC requirement when deciding to require sequential construction. GCC has not explained how the presence or absence of effective monitoring of the dam's stability in any way impacted the cost or direction of its performance under the contract. The same is true of the PUD's efforts to improve monitoring of the dam's stability.

GCC's claim that the PUD withheld vital information about the dam's stability fails because there is no evidence before the court that any instability would have affected GCC's ability to construct the coffer cells as it had planned, or that any instability was the basis for any change in construction.

Even if there were such evidence, like the contractor in Granite Constr. Co. v. United States, *supra*, GCC knew, or at least should have known, that its proposed construction method presented risks to the dam's stability which could not be accurately assessed because the anchor tendons which enhance that stability were installed over forty years ago, were designed for short-term use of five to six years and could not be inspected to determine their current integrity. Any failure by the PUD to disclose did not make GCC any less able to assess the risks inherent in its proposed two-slot construction sequence. Therefore, as a matter of law, its superior knowledge claim should be dismissed.

The PUD's next two motions deal with the doctrine of mistake. While GCC claims its contract with the PUD provides for concurrent construction of two slots, it alternatively claims that if the contract does not so provide, the court should reform the contract do so for one of two reasons. First, it argues the parties both intended the contract to provide for GCC's proposed concurrent slot construction even if it did not. Where parties to a contract share an identical intent when they form that contract, but do not express that intent in the written agreement, mutual mistake occurs and is the basis for reforming that agreement. See Seattle Professional Engineering Employees Association v. Boeing Co., 139 Wash. 2d 824; 991 P.2d 1126, 1 P.3d 578 (2000). The record contains sufficient evidence for a trier of fact to conclude the parties shared the intent GCC claims. At this point, the interpretation of the contract as it relates to concurrent or consecutive slot construction, as explained below, is a question for the trier of fact. For that reason, the PUD's motion for summary judgment on the mutual mistake claim, insofar it is based on this theory, is denied.

GCC also claims the court should reform the contract because the parties were mistaken, either mutually or unilaterally, about the dam's stability. There are two reasons why this claim is not viable. First, at the time the parties entered into their agreement, the dam was stable. GCC argues that the parties' mistake was not about the dam's stability, per se, but rather the possibility that construction could destabilize the dam. But to support a claim for reformation due to mistake, an erroneous or mistaken belief must relate to the facts and circumstances as they were at the time of formation of the contract. Restatement (Second) of Contracts sec. 151, comment a (1979) (stressing that erroneous beliefs regarding future events are not mistakes under this

doctrine). Any mistaken belief about the likelihood of future events does not fall within this definition.

Second, GCC, by proposing the construction sequence at issue, particularly where both parties were aware of the unquantifiable risks involved, assumed the risk that the method would not work. See McConnell v. Gordon Constr. Co., 105 Wash. 659, 662, 178 P. 823 (1919); Austin Co. v. United States, 314 F.2d 518 (Ct. Cl. 1963) cert. denied, 375 U.S. 830 (1963). Neither the doctrine of mutual mistake nor the doctrine of unilateral mistake apply if the claiming party bore the risk of mistake. Denaxas v. Sandstone Court of Bellevue, 148 Wash. 2d 654, 668, 63 P.3d 125 (2003); Pub. Util. Dist. No. 1 of Lewis County v. Wash. Pub. Power Supply Sys., 104 Wash. 2d 353, 362, 705 P.2d 1195, 713 P.2d 1109 (1985).

Finally, GCC claims the court should reform the contract under the doctrine of unilateral mistake. See Washington Mutual Savings Bank v. Hedeem, 125 Wash. 2d 521, 886 P.2d 1121 (1994). In this regard, GCC argues that if the contract requires sequential construction, the PUD either misled it about this fact or was aware of GCC's mistake, had a duty to correct GCC, and failed to do so. Given that the terms of the contract, as explained below, were fixed by the bid prepared by GCC's agents, this assertion fails as a matter of law. This claim also fails because GCC assumed the risk of mistake. (see above) Summary judgment on the balance of the mistake claims is granted in favor of the PUD.

The PUD moves for summary judgment dismissing GCC's "intentional misrepresentation" claim. Such a claim sounds in tort. It is composed of nine elements: 1) representation of an existing fact; 2) materiality; 3) falsity; 4) the speaker's knowledge of its falsity; 5) intent of the speaker that it should be acted upon by the plaintiff; 6) plaintiff's ignorance of its falsity; 7) plaintiff's reliance on the truth of the representation; 8) plaintiff's right to rely on the representation; and 9) damages suffered by the plaintiff. West Coast, Inc. v. Snohomish County, 112 Wash. App. 200, 206, 48 P.3d 997 (2002). GCC asserts to the court that the PUD has misconstrued GCC's pleadings, that it makes no tort claims and specifically that it does not claim damage from the PUD's commission of intentional misrepresentation. GCC does assert, however, that the PUD, through its agents, made misrepresentations relevant to GCC's contract claims. That question must abide another day. Based on GCC's representations, the PUD's motion is granted only to the extent the misrepresentation claim purports to be, or may be construed to be, a tort claim.

The next motion deals with GCC's contract claims. While the PUD denies that GCC is entitled to additional compensation for the cost of using the consecutive construction method both under the contract and under extra-contractual theories such as quantum meruit or cardinal change, at this time it moves for summary judgment only on those claims arising out of the contract itself. It contends the contract between the parties expressly required consecutive construction of the coffer cells. It further contends that even if the PUD's insistence on consecutive construction of the coffer cells constituted a change in GCC's obligations under the contract, GCC waived any right for further compensation by failing to give the PUD notice of its intent to do so and to obtain a change order before proceeding with the directive. See Mike M. Johnson, Inc. v. County of Spokane, 150 Wash. 2d 375, 78 P.3d 161 (2003).

Subject to narrow limitations, parties in Washington have extensive power to agree. See, e.g., Clements v. Olsen, 46 Wash. 2d 445, 448, 282 P.2d 266 (1955) ("Courts do not have the power, under the guise of interpretation, to rewrite contracts which the parties have deliberately made for themselves."). One commentator has gone so far as to say, "Just as there must be 'freedom for the thought we hate,' so there must also be, in a measure, freedom for the contract that we hate." Havighurst, The Nature of Private Contract 124-25 (1961).

In the absence of a traditional defense relating to abuse of the bargaining process, such as fraud, this court is under an obligation to enforce the bargain entered into by the parties according to its terms. Torgerson v. One Lincoln Tower, LLC, 166 Wash. 2d 510, 517, 210 P.3d 318 (2009) ("It is black letter law of contracts that the parties to a contract shall be bound by its terms."). The mere fact that one of the parties to a contract drove a hard bargain will not in itself render a contract unenforceable. Haugen v. Neiswonger 34 Wash. 2d 422, 426, 209 P.2d 267 (1949), even if the agreement subjects one party to exposure of substantial risk; Smith v. Price's Creameries, 98 N. M. 541, 545; 650 P.2d 825 (1982).

The PUD asserts that the bid specifications constituted an offer GCC accepted with its bid and that the terms of the bid specifications are the terms of the contract. But a public agency's invitation to bid on a public work contract is not an offer to contract but rather a solicitation for an offer. Peerless Food Products, Inc. v. State, 119 Wash. 2d 584, 592, 835 P.2d 1012 (1992); Hadaller v. Port of Chehalis, 97 Wash. App. 750, 986 P.2d 836 (1999) (contractor's bid on construction project did not create an enforceable oral contract). The bid made in response to the invitation is an offer. Mottner v. Mercer Island, 75 Wash. 2d 575, 579, 452 P.2d 750 (1969). The acceptance of the bid is always required to be identical with that bid, or there is no meeting of the minds and no contract. Blue Mountain Const. Co. v. Grant County School Dist. No. 150-204, 49 Wash. 2d 685, 688; 306 P.2d 209 (1957). Such an acceptance consummates a contract on the terms of the bid, but an expression of assent that changes the terms of the offer in any material respect is at best a counteroffer and creates no contract. Id.

GCC's bid in this case adopted the terms of the bid specifications in the main part. But, apparently in response to conversations with the PUD's staff and the addendum of April 15, GCC's bid departed from the bid specifications by providing for concurrent dewatering of slots B and C of Future Unit 11. The PUD accepted the bid without changing any of its terms. By doing so, the PUD bound itself to a contract with GCC in accordance with the terms of the bid.

The PUD argues that the bid could not supersede the terms of the bid specifications. It points out that the general provisions rank the specifications ahead of the bid itself and require the specifications to control in the event of conflict between the two. It also argues GCC's bid was non-compliant because GCC did not specifically set forth in its bid that the two slot method deviated from the specifications which was required in the general provisions.

The PUD seems to argue that the court can and must modify the terms of the offer in this case to comply with the specifications, but offers no authority that supports this proposition. Under the principles set forth above, GCC was free to make any offer it chose. PUD's response either created a contract identical to the terms of the bid or created no contract at all.

GCC's failure to specify any deviation from the specifications may not have rendered its bid non-compliant because in Instruction 14, the PUD reserved the right to waive minor errors or irregularities in GCC's bid.

Even if the general conditions somehow determined the construction to be given the bid, they rank addenda before the contract drawings which provided for sequential construction and therefore provide that in any conflict between addenda and those drawings, the addenda shall control. Here, the PUD issued addenda which invited alternative proposals for dewatering methods. The record contains many instances where both parties used the term "dewatering" in ways indicating it applies to the construction of coffer cells. For example, the PUD itself argues at one point that provisions of the bid specifications, T-11 and 1.05E, which by their terms deal with dewatering, apply to coffer cell construction. (Memorandum in Support of PUD's Motion for Partial Summary Judgment-GCC's Claim 10-Coffier Cell Flooding Claim at 3). Without ruling as a matter of law that the term as used in the addendum included coffer cell construction, there appears to be room on this record to argue that it does and that the bid was therefore in compliance with the specifications.

The PUD alternatively argues that parol evidence, that is statements and actions of the parties extrinsic to their written agreement, demonstrate their mutual intent to adopt the consecutive coffer cell construction method. The agreement between the parties is that objectively manifested in their written agreement. Wilson Court Ltd. Partnership v. Tony Maroni's, Inc. 134 Wash. 2d 692, 699, 952 P.2d 590 (1998). But parol evidence is admissible here because the contract is not integrated. See Lopez v. Reynoso, 129 Wash. App. 165, 188 p.3 398 (2005), rev. denied, 157 Wash. 2d 1003 (2006). This evidence is also admissible to show the situation of the parties and the circumstances under which their agreement was executed for the purpose the PUD advances: to ascertain the intention of the parties and to properly construe that agreement. Berg v. Hudesman, 115 Wash. 2d 657, 669, 801 P.2d 222 (1990).

The meaning of a contract is ordinarily a question of fact. See Burgeson v. Columbia Producers, Inc., 60 Wash. App. 363, 366-67, 803 P.2d 838, rev. denied, 116 Wash. 2d 1033 (1991). The language of the contract documents together with the extrinsic evidence before the court is not sufficient to allow the court to rule on the meaning of the parties' agreement as a matter of law. A reasonable trier of fact on the record before the court could find that GCC contracted for the two slot method of coffer cell construction. The PUD's argument that the court must find as a matter of law that GCC agreed to the sequential method is without merit.

This does not end the inquiry. The PUD points to those portions of the contract, GC-10 and GC-14, which deal with change orders for alterations and additions. Here, GCC claims it gave adequate notice and made the required claim under the contract by writing something on a blackboard at a meeting held with the PUD's engineers. This constitutes neither notice nor claim under the contract. See Mike M. Johnson, Inc. v. County of Spokane, *supra*, 150 Wash. 2d at 382-83.

But, the notice and claim provisions may not apply to the two-slot claim. The terms used GC-14, the "change" provision, apply to "additional" work, but not "extra" work. These terms have a special meaning in the context of public contracting. "Extra work," as opposed to

additional work, means work which is not required in the performance of the contract; something done or furnished in addition to or in excess of the requirements of the contract. "Additional work" is something necessarily required in the performance of the contract and without which it could not be carried out. The distinction between extra work and additional work is that the former is work arising outside and entirely independent of the contract and not something necessarily required in its performance. Dravo Corp. v. Municipality of Metropolitan Seattle, 79 Wash. 2d 214, 221, 179 P.2d 27 (1971).

GC-14 also provides that it applies only to work under the "general scope" of the contract. G-1 of the bid specifications defines the scope of work as that "necessary for the Construction of Wanapum Future Unit Fish Bypass." This also is a term with a widely recognized meaning in the context of construction contracts. Work is beyond the general scope of a contract when it fundamentally alters the contractual undertaking of the contractor. See Edward R. Marden Corp. v. United States, 442 F.2d 364, 369 (1971). Work beyond the general scope of a contract has also been defined as that which drastically modifies the contractor's obligations under that contract. Embassy Moving & Storage Co. v. United States, 424 F.2d 602 (Ct.Cl. 1970). In assessing whether work exceeds the scope of the contract, each case must be judged according to its own facts, considering the scope and quality of the changes ordered and the cumulative effect of such direction on the project as a whole. SIPCO Services & Marine, Inc. v. United States, 41 Fed. Cl. 196 (1998).

Under this principle, a reduction in the size of required concrete panels was held to be a change within the general scope of a construction contract. F. S. Jones Constr. Co. v. Duncan Crane & Rigging, Inc. 2 Wash. App. 509, 468 P.2d 699 (1970). On the other hand, the government's order to remove carbon steel nuts and bolts and replace them with stainless steel nuts and bolts constituted a change beyond the general scope of the contract where the contract permitted the use of either. Martin J. Simko Constr., Inc. v. United States, 11 Cl. Ct. 257 (1986). Changing the performance standards of a coffer dam by requiring the contractor to maintain integrity below subgrade has also been held to be a change beyond the general scope of a construction contract. Corbetta Constr. Co. v. United States, 461 F.2d 1330 (Ct.Cl. 1972).

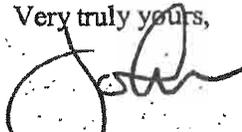
The same problem arises with application of the notice requirements of GC-10. By the terms of the bid specifications, this provision applies only to claims arising "under the contract." One reading of this provision is that it applies only to work within the contract's scope. This reading is consistent with common law. Generally, the scope of an express contract is limited to the quantity and nature of the work contemplated by the parties at the time the contract was executed, that is, upon which there was a meeting of the minds. All work performed in excess of this limitation is "new and different" work not governed by the express contract. See Note, Recovery for Unforeseen Difficulties and Expense Under Municipal Construction Contracts, 51 Yale L. J. 162, 167 (1941). Under this principle, where an owner directs a contractor to perform extra work, he cannot avoid liability for the cost of that extra work by invoking the contractor's failure to comply with notice and change order provisions. Bignold v. King County, *supra*, at 65 Wash. 2d 822. This is the rule in other jurisdictions as well. See Devenow v. St. Peter, 134 Vt. 245, 356 A.2d 502 (1976); Mahoney v. Hartford Invest. Corp. 82 Conn. 280, 73 A. 766 (1909); Chicago Lumber & Coal Co. v. Garmer, 132 Iowa 282, 109 N.W. 780 (1906).

GCC has failed to this point to identify those claims it believes are beyond the general scope of the contract. Neither party has briefed or argued which work at issue is within the general scope of the contract or which work is extra, as opposed to additional, work. The record before the court is insufficient to rule on these questions. To take the two slot claim as an example, the PUD has denied that the dam's movement during construction played any role in its decision-making. It has not identified any way GCC's construction method was unsuited to the purpose of safely constructing the fish bypass.

Whether or not the remaining claims GCC makes arise under the contract may turn upon whether those claims are within the general scope of the contract.

Whether the changes the PUD ordered and the directions it gave GCC after contract information were "necessary" could help determine if the changes and directions were extra work, unnecessary in the performance of the contract, and if the changes were fundamental and beyond the general scope of the contract. The court, therefore, directs GCC to identify which work covered by the PUD's remaining summary judgment motions it claims is beyond the general scope of the contract. The court requests further briefing on the issues regarding extra work and the scope of the contract.

Very truly yours,



John D. Knodell
Judge

JDK:cmb

cc: file

APPENDIX E

FILED

JAN 12 2012

KIMBERLY A. ALLEN
Grant County Clerk



07-484280

1 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**

2 **COUNTY OF GRANT**

3	GENERAL CONSTRUCTION	)	NO. 08-2-01339-8
4	COMPANY, a Delaware corporation,)	
	Plaintiff,	)	ORDER GRANTING PUD'S MOTION
5	vs.	)	FOR SUMMARY JUDGMENT: GCC
		)	SUPERIOR KNOWLEDGE CLAIM
6	PUBLIC UTILITY DISTRICT NO. 2 OF)	
7	GRANT COUNTY, a Washington)	
	municipal corporation,)	
8	Defendant.)	

9 **THIS MATTER** came before the court on the motion of Public Utility
10 **District No. 2 of Grant County ("PUD") to dismiss General Construction**
11 **Company's ("GCC") Superior Knowledge Claim. The PUD appeared through its**
12 **attorneys of record, Jeffers, Danielson, Sonn & Aylward, P.S., by David E. Sonn**
13 **and Kristin Ferrera. GCC appeared through its attorneys of record, Stewart,**
14 **Sokol & Gray, LLC, by John Spencer Stewart, Thomas Larkin and David D.**
15 **Beaudoin. The Court examined the file, including all items listed on Exhibit "A"**
16 **attached, and heard argument of counsel on June 24, 2010. The Court issued its**

**ORDER GRANTING PUD'S MOTION FOR
SUMMARY JUDGMENT: GCC SUPERIOR
KNOWLEDGE CLAIM Page: 1**
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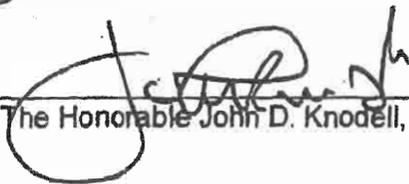
1 letter opinion on May 20, 2011.

2 Based on the above, IT IS HEREBY ORDERED, ADJUDGED AND
3 DECREED that:

4 1. The PUD's motion for summary judgment dismissing GCC's
5 Superior Knowledge Claim with prejudice is granted.

6 2. The PUD is the prevailing party on this matter. As the prevailing
7 party, as provided in paragraph 6 of the GCC-PUD Contract, the PUD is entitled
8 to an award of reasonable attorney fees in defending against this claim. The
9 amount of the fees shall be set at a later hearing before this Court.

10 DONE this 12 day of Jan, 2012.

11
12 
13 The Honorable John D. Knodell, III

14 Presented by:

15 JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

16 
17 By _____
18 DAVID E. SONN, WSBA #07216
19 Attorneys for Public Utility District No. 2 of Grant County
20
21

ORDER GRANTING PUD'S MOTION FOR
SUMMARY JUDGMENT: GCC SUPERIOR
KNOWLEDGE CLAIM Page 2

804788_2

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Approved as to form and notice of
presentment waived:

STEWART, SOKOL & GRAY, LLC.

By _____
JOHN SPENCER STEWART, WSBA #15887
THOMAS A. LARKIN, WSBA # _____
DAVID D. BEAUDOIN, WSBA # _____
Attorneys for Plaintiff

ORDER GRANTING PUD'S MOTION FOR
SUMMARY JUDGMENT: GCC SUPERIOR
KNOWLEDGE CLAIM Page 3
804768_2

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APPENDIX F

FILED

JAN 12 2012

KIMBERLY A. ALLEN
Grant County Clerk



1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 COUNTY OF GRANT

3	GENERAL CONSTRUCTION	)	NO. 08-2-01339-8
4	COMPANY, a Delaware corporation,)	
	Plaintiff,	)	ORDER GRANTING PUD'S MOTION
5	vs.	)	FOR SUMMARY JUDGMENT:
		)	WRITING ON BLACKBOARD AS
6	PUBLIC UTILITY DISTRICT NO. 2 OF	)	NOTICE
7	GRANT COUNTY, a Washington)	
	municipal corporation,)	
8	Defendant.)	

9 THIS MATTER came before the court on the motion of Public Utility
10 District No. 2 of Grant County ("PUD") to dismiss General Construction
11 Company's ("GCC") Slot Claim. The PUD appeared through its attorneys of
12 record, Jeffers, Danielson, Sonn & Aylward, P.S., by David E. Sonn and Kristin
13 Ferrera. GCC appeared through its attorneys of record, Stewart, Sokol & Gray,
14 LLC, by John Spencer Stewart, Thomas Larkin and David D. Beaudoin. The
15 Court examined the file, including all items listed on Exhibit "A" attached, and
16 heard argument of counsel on June 24, 2010. The Court issued its May 20, 2011

ORDER GRANTING PUD'S MOTION FOR
SUMMARY JUDGMENT: WRITING ON
BLACKBOARD AS NOTICE Page 1
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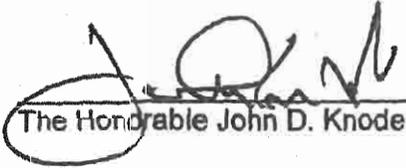
1 letter opinion.

2 Based on the above, IT IS HEREBY ORDERED, ADJUDGED AND
3 DECREED that:

4 1. GCC's ~~claim~~ ^{assertion} that "Writing on a blackboard, in the presence of the
5 PUD's Engineer" (Plaintiff's 6/14/10 Opposition, 18:6-9) constitutes notice or a
6 claim under the GCC-PUD Contract is ~~dismissed with prejudice.~~ ^{rejected as a matter of law.}

7 2. ~~The PUD is the prevailing party on this matter. As the prevailing
8 party, as provided in paragraph 6 of the GCC-PUD Contract, the PUD is entitled
9 to an award of reasonable attorney fees in defending this matter. The amount of
10 the fees shall be set at a later hearing before this Court.~~

11 DONE this 12 day of Jan, 2012.

12
13 
14 The Honorable John D. Knodell, III

15
16 Presented by:
17 JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

18 
19 By _____
20 DAVID E. SCINN, WSBA #07216
21 Attorneys for Public Utility District No. 2 of Grant County

ORDER GRANTING PUD'S MOTION FOR
SUMMARY JUDGMENT: WRITING ON
BLACKBOARD AS NOTICE Page 2
804778_2

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Approved as to form and notice of presentment waived:

STEWART, SOKOL & GRAY, LLC

By 

JOHN SPENCER STEWART, WSBA #15887
THOMAS A. LARKIN, WSBA # 24515
DAVID D. BEAUDOIN, WSBA # _____
Attorneys for Plaintiff

ORDER GRANTING PUD'S MOTION FOR
SUMMARY JUDGMENT: WRITING ON
BLACKBOARD AS NOTICE Page 3
804779_2

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APPENDIX G

**The Superior Court of the State of Washington
In and for the County of Grant**

35 C Street NW
P.O. Box 37
Ephrata, WA 98823
(509) 754-2011

EVAN E. SPERLINE, Judge, Dept. 1
JOHN D. KNODELL, Judge, Dept. 2
JOHN M. ANTOSZ, Presiding Judge, Dept. 3
MELISSA K. CHLARSON, Court Commissioner

MINDI FINKE, Court Administrator
CRYSTAL BURNS, Ass't Court Administrator

APRIL BASSEN

FILED

APR 12 2012

KIMBERLY A. ALLEN
Grant County Clerk

April 12, 2012

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Attorney at Law
2300 SW 1st Ave, Ste. 200
Portland, OR 97201-5047

David Sonn
Attorney at Law
2600 Chester Kimm Rd
Wenatchee, WA 98801-8116

Pamela Andrews
Attorney at Law
645 Elliott Ave W, Ste. 350
Seattle, WA 98119

RE: General Construction Company v. Public Utility District No. 2
Grant County Cause No. 08-2-01339-8

Dear Counsel:

Before the court is the Defendant's motion for summary judgment on the claim it has denominated the coffer cell claim. The parties differ about the gravamen of this claim. The PUD characterizes the claim as one for extra compensation for changed site conditions unforeseen by either party. GCC characterizes this claim as one for extra costs and delays that it incurred as a direct result of significant, unilateral changes by the PUD to what was called for in the Contract Documents.

According to GCC, the PUD directed GCC to perform a number of tasks not required by the contract before it could construct and install the coffer dam in question. Those tasks are outlined on page seven of GCC's brief and need not be reiterated here.



The PUD's primary argument is that by contracting to perform the work required by contract for a fixed sum, GCC assumed the risk that changed conditions would make the work more difficult and expensive.

But the PUD has not yet established the premise of this argument. GCC claims that the PUD required work unnecessary to satisfy contract requirements that delayed the coffer construction and that the delay required GCC to de-water the coffer cell an extra time and clean the coffer cell. See City of Seattle v. Dyad Construction, Inc., 17 Wash. App. 501, 565 P.2d 423 (1977).

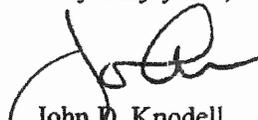
For the reasons outlined in the court's previous letter ruling, both the PUD's substantive argument and its arguments involving the alleged failure of GCC to satisfy conditions precedent to recovery contained in the parties' contract rise or fall on the validity of its premise. The record before the court does not demonstrate whether or not the PUD's premise is correct and so the court is unable to grant summary judgment at this time¹.

After reviewing the materials submitted on the claim of mutual mistake, the court has concluded that there is no further need to clarify or revise the letter ruling on this point. The court does have some questions about the form of the submitted orders and will address them at our next meeting.

Finally, as to the slot claim, the court is concerned that it does not fully understand the PUD's argument. Counsel should let the court know by whatever means counsel thinks is appropriate whether the PUD is relying on the doctrine of substituted contract in its analysis of contract formation here. See Higgins v. Stafford, 123 Wash. 2d 160, 866 P.2d 31 (1994).

Thanks to all counsel for their assistance in this matter. I look forward to our next meeting.

Very truly yours,


John D. Knodell
Judge

JDK:cmb

¹ The court has reviewed the affidavits GCC has submitted with its supplemental briefing. The court, however, has not relied on those affidavits in any way in reaching its conclusions. The balance of the summary judgment motions before the court must abide a ruling on the PUD's motion to strike those affidavits. That motion should be the first item we discuss at the next hearing.

APPENDIX H



07-570721

FILED *raj*

APR 18 2012

KIMBERLY A. ALLEN
Grant County Clerk

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

COUNTY OF GRANT

GENERAL CONSTRUCTION)	NO. 08-2-01339-8
COMPANY, a Delaware corporation,)	
Plaintiff,	)	ORDER GRANTING PUD'S MOTION
vs.	)	FOR SUMMARY JUDGMENT: GCC's
	)	MISTAKE CLAIM
PUBLIC UTILITY DISTRICT NO. 2 OF)	
GRANT COUNTY, a Washington)	
municipal corporation,)	
Defendant.)	

THIS MATTER came before the court on the motion of Public Utility District No. 2 of Grant County ("PUD") to dismiss General Construction Company's ("GCC") Mistake Claim. The PUD appeared through its attorneys of record, Jeffers, Danielson, Sonn & Aylward, P.S. GCC appeared through its attorneys of record, Stewart, Sokol & Gray, LLC. The Court examined the file, including all items listed on Exhibit "A" attached and the documents referenced in the documents listed in Exhibit "A", and heard argument of counsel on February

1 18, 2011. The Court issued its letter ruling on May 20, 2011.

2

3 Based on the above, IT IS HEREBY ORDERED, ADJUDGED AND
4 DECREED that:

5 1. GCC claims the Court should reform the contract between GCC
6 and the PUD because the parties were mistaken, either mutually or unilaterally,
7 about Wanapum Dam's stability. The PUD's motion for summary judgment
8 dismissing this claim is granted.

9 2. GCC claims the Court should reform the Contract under the
10 doctrine of unilateral mistake. The PUD's motion for summary judgment
11 dismissing any claim of unilateral mistake is granted.

12 3. GCC claims the Court should reform the GCC-PUD Contract
13 because GCC and the PUD shared an identical intent, that the Slot A and Slot C
14 work proceed concurrently, when the GCC-PUD Contract was signed.

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18 4. The PUD is the prevailing party on the matters listed in the above
19 paragraphs. As the prevailing party, as provided in paragraph 6 of the GCC-PUD
20 Contract, the PUD is entitled to an award of reasonable attorney fees. The
21

*to the extent
required to meet
contractual claim*

ORDER GRANTING PUD'S MOTION FOR SUMMARY
JUDGMENT: GCC MISTAKE CLAIM Page 2

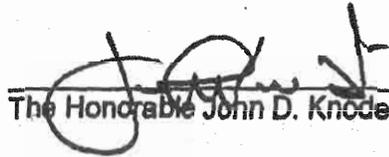
030890_3

1 amount of the fees shall be set at a later hearing before this Court.

2 DONE this 13 day of April, 2012.

3

4


The Honorable John D. Knodell, III

5

6

7

8 Presented by:

9 JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

10

11

By _____
DAVID E. SONN, WSBA #07216
Attorneys for Public Utility District No. 2 of Grant County

12

13

Approved as to form and notice of
presentation waived:

14

STEWART, SOKOL & GRAY, LLC

15

16

17

By _____
JOHN SPENCER STEWART, WSBA #15887
THOMAS A. LARKIN, WSBA # _____
DAVID D. BEAUDOIN, WSBA # _____
Attorneys for Plaintiff

18

19

20

21

ORDER GRANTING PUD'S MOTION FOR SUMMARY
JUDGMENT: GCC MISTAKE CLAIM Page 3
236888_3

APPENDIX I



07-567105

FILED

JUL 20 2012

**KIMBERLY A. ALLEN
GRANT COUNTY CLERK**

LAUREN A. RUANE

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT**

**GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,**

Plaintiff,

v.

**PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON,
a Washington municipal corporation,**

Defendant,

No. 08-2-01339-8

**[PROPOSED] ORDER RE: CLAIM
NO. 10 COFFER CELL FLOODING**

**PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, a Washington
municipal corporation,**

Third-Party Plaintiff,

v.

**GENERAL CONSTRUCTION
COMPANY, a Delaware corporation;
TRAVELERS CASUALTY & SURETY
COMPANY; and TRAVELERS
CASUALTY & SURETY COMPANY,
BOND NUMBER 41S103871237BCM,**

Third-Party Defendants.

**Appendix I
Page 1 of 3**

[PROPOSED] ORDER RE CLAIM NO. 10 COFFER CELL FLOODING - 1

STEWART SOKOL & GRAY LLC

**ATTORNEYS AT LAW
3300 6th FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97201-5047
(503) 221-0699
FAX (503) 223-5706**

1 GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,

2 Fourth-Party Plaintiff,

3 v.

4 GLOBAL DIVING & SALVAGE, INC.,
5 a Washington corporation,

6 Fourth-Party Defendant.

7
8 THIS MATTER came before the Court on the Public Utility District No. 2 of Grant
9 County's ("PUD") Motion for Partial Summary Judgment: GCC Claim No. 10 - Coffe
10 Cell Flooding;

11 The PUD appeared through its attorneys of record, Jeffers, Danielson, Sonn &
12 Aylward, PS, by David E. Sonn and Kristin M. Ferrara. GCC appeared through its
13 attorneys of record, Stewart Sokol & Gray, LLC, by John Spencer Stewart, Thomas A.
14 Larkin and David E. Beaudoin. The Court issued its May 20, 2011 letter ruling, a copy
15 of which is attached hereto and incorporated as Exhibit "A" (the "Court's Ruling"), which
16 requested additional briefing and such briefing has been submitted. The Court
17 examined the file, including all items listed on Exhibit "B" attached, and heard argument
18 of counsel on July 23, 2009, November 9, 2009, June 24, 2010, December 10, 2010,
19 February 18, 2011 and May 9-10, 2011, and April 13, 2012.

20 Based on the above,

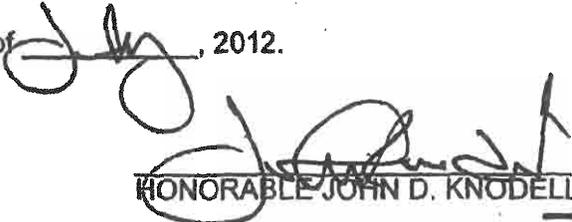
21 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

22 1. PUD's Motion for Partial Summary Judgment: GCC Claim No. 10 - Coffe
23 Cell Flooding is DENIED.

24 DATED this 20 day of July, 2012.

25

26


HONORABLE JOHN D. KNODELL

Appendix I
Page 2 of 3

~~PROPOSED~~ ORDER RE CLAIM NO. 10 COFFER CELL FLOODING - 2

STEWART SOKOL & GRAY LLC

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1 Presented by:

2 STEWART SOKOL & GRAY, LLC

3

4 John Spencer Stewart, WSB #15887
istewart@lawssg.com

5 Thomas A. Larkin, WSB #24515
tlarkin@lawssg.com

6 *Of Attorneys for General Construction*
7 *Company and Travelers Casualty &*
8 *Surety Company*

8

9 Approved as to form and notice
10 of presentment waived:

10

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

11

12

David E. Sonn, WSB #7616

13 davids@jdsalaw.com

Kristin M. Ferrera, WSB #40508

14 kristinf@jdsalaw.com

15 *Of Attorneys for Defendant and Third-Party Plaintiff*
Public Utility District No. 2 of Grant County

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Appendix I
Page 3 of 3

[[PROPOSED] ORDER RE CLAIM NO. 10 COFFER CELL FLOODING - 3 STEWART SOKOL & GRAY LLC

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(503) 231-6699
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09726

APPENDIX J

**The Superior Court of Washington
In and for Grant County**



07-567104

EVAN E. SPERLINE, Judge, Dept. 1
JOHN D. KNODELL, Judge, Dept. 2
JOHN M. ANTOSZ, Judge, Dept. 3
MELISSA K. CHARLSON, Court Commissioner

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P.O. Box 37
Ephrata, WA 98823
(509) 754-2011

MINDI FINKE, Court Administrator
CRYSTAL BURNS, Asst. Court Administrator
LYNETTE HENSON, Jury Administrator
TOM BARTUNEK, Official Reporter
MARY JANE CASTILLO, Court Interpreter

July 20, 2012

FILED

JUL 20 2012

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GRANT COUNTY CLERK
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Seattle, WA 98119

Kristin Ferrera
Attorney at Law
P.O. Box 1688
Wenatchee, WA 98807

RE: General Construction Company v. Public Utility District No. 2
Grant County Cause No. 08-2-01339-8

Dear Counsel:

Enclosed please find the order the court has entered on the PUD's motion for summary judgment on the coffer cell flooding claim. After hearing the arguments of counsel, and reviewing the court's written decision, it appears that the court was not entirely clear in that ruling. The court responds to the motion for clarification as follows.

The parties to the agreement here are both experienced and sophisticated. Given the magnitude and nature of the work to be performed, both must have foreseen a

dynamic work environment in which working conditions might change and the planned means for construction might turn out to be unsound. Under these conditions, the parties were free to agree to limit remedies otherwise available under the law resulting from contemplated change.

The parties did so in two ways relevant to the instant claim. First, the parties substantively limited claims for damages due to delay. The contract provides as follows:

G-15 DELAYS AND EXTENSIONS OF TIME

If the Contractor is delayed at any time in the progress of work by any unforeseeable cause beyond the control of the Contractor, the Contract time shall be extended for such reasonable time as the Engineer shall determine. The Contractor agrees to complete the work within the Contract time as thus extended. Such extensions shall postpone the beginning of period for payment of liquidated damages but they and the events producing them shall not be grounds for claim by the Contractor of damages or for additional costs, expenses, overhead or profit of other compensation. *Except for delays caused by the acts or omissions of the District or persons acting for it, extensions of time granted by the Engineer to the Contractor shall be the Contractor's sole and exclusive remedy for any delays due to causes beyond the control of the Contractor.* (emphasis added).

The contract also provides:

SR-11 UNFAVORABLE CONDITIONS

- A. The Contractor may encounter winter weather conditions *during the performance of the work*. Notwithstanding Section GC-10, no time extensions or extra compensation will be given by the District based on weather conditions. The Contractor shall be responsible for the cost of protecting/sheltering of all work vulnerable to such extreme weather conditions so that work can proceed on schedule. The Contractor shall replace all work damaged by such conditions.
- B. The Contractor may encounter high river flow rates (350 KCFS), high forebay levels (forebay elevation 572.0) and high tailrace levels (tailrace elevation 500.0) *during the course of the work*. Notwithstanding Section GC-10, no time extensions or extra compensation will be given by the District based on river conditions. The Contractor shall be responsible for the cost of protecting/sheltering of all work vulnerable to such extreme river conditions so that work can proceed on schedule. The Contractor shall replace all work damaged by such conditions.

- C. The Contractor shall be responsible for protecting the existing adjacent dam structure from damage during the modifications of Future Unit 11 and the construction of the Wanapum Future Unit Fish Bypass. (emphasis added).

Second, the parties limited damage caused by delay claims procedurally by providing that such claims be made within three days after GCC became aware of the claim. G-15. (The contract requires GCC to make other damage claims within ten days. GC-10.)

In its coffer cell claim, GCC seeks damages resulting from delay. In broad strokes, it claims 1) the PUD required GCC to perform extra work, that is work beyond the scope of the contract and work unnecessary for the construction of the fish bypass in accordance with contract specifications; 2) this extra work delayed GCC's performance of work which was within the scope of the contract; 3) during this period of delay, the river rose; and 4) the river's rising caused GCC to incur additional construction expense. GCC has identified the extra work in the following manner:

Shortly after the Schedule was approved in February, 2007, the PUD's directives with respect to the coffer cell work forced the Project work to fall behind schedule. During completion of the downstream walls and flow spreader, the PUD ordered GCC to undertake several work activities (and to use methods) not contemplated by the Contract Documents. Durnford Decl., 5; Stubbs Decl., 4. Among these PUD directed changes were the following: imposing a mandatory 28-day cure period from the date of placement before final determination of the extent of flow spreader crack repairs, which cure period was not contemplated in the Contract Documents of in the Schedule. *Id.* The PUD also directed extra work and changed methods not contemplated in the Contract Documents with respect to repairing cracks in the flow spreader surface and repairing cracks in the vertical walls of the flow spreader. *Id.* The PUD also changed mid-work the specified concrete forming and placing method for the ogee surface to include placement of the surface via a shotcreting method not called for in the Contract Documents. *Id.* GCC was also directed to sack finish the inside of the flow spreader walls, which also deviated from the requirements of the Contract Documents. *Id.* Each of these examples of changed work were the subject of multiple written notices, change order requests, and protests from GCC to the PUD, including: Serial Letter ("SL") 0319, SL 320 and SL 335, which were each sent between March 8 and March 23, 2007. Stubbs Decl., Exs. A, B and D; see also Durnford Decl., 5. The notices not only explained the immediate costs and delays of the changed work, they also notified the PUD that the compounding impacts and delays of these various changes were threatening the critical path scheduling items required before the coffer cell could be removed and additional delay and costs were likely if the coffer cell flooded. Stubbs Decl., 6, Exs. A, B, and D. (GCC's

Opposition to PUD's Motion for Partial Summary Judgment: GCC's
Coffer Cell Claim.at 13-14).

The PUD to this point has not addressed the contention that the work described is beyond the scope of the contract. The PUD does not assert the contract specifications required this work or that the work was necessary to construct the bypass. Nor has the PUD argued the parties contemplated the specific delays which form the basis of the coffer cell claim. Rather, the PUD simply asserts the contractual notice, claim, and remedy limitation provisions apply to the coffer cell claim. The PUD apparently believes this is so whether or not the delays GCC complains of resulted from the PUD's requirement of work beyond the contract's scope. Neither the common law nor the language of the contract supports this belief.

The parties' agreement, including the provisions enumerated above limiting or setting conditions on remedies, only applies to those matters the parties contemplated and intended the contract to cover. The Court of Appeals has expressed this principle in the context of delay claims as follows:

The first step in the analysis is for the trial court to decide whether the contract contains any ambiguity from which a trier of fact could reasonably find that the damages or changed conditions were not contingencies contemplated by the parties. If, by looking at the four corners of the document, the court can determine that the contract unambiguously contemplates the changes or disruptions experienced by the complaining party, no issue of fact exists and the quantum meruit claim must be dismissed. If, on the other hand, the provisions are ambiguous, issues of fact would exist, and resolution of the question would be for the trier of fact. Hensel Phelps Const. Co. v. King County, 57 Wash. App. 170, 176, 787 P.2d 423 (1977). (emphasis added).

As this court has previously explained in greater detail, the scope of an express contract is generally limited to the quantity and nature of the work contemplated by the parties at the time the contract was executed, that is, upon which there was a meeting of the minds. All work in excess of this limitation is "new and different" work not governed by the express contract. See Note, Recovery for Unforeseen Difficulties and Expense Under Municipal Construction Contracts, 51 Yale L. J. 162, 167 (1941).

The language of the contract itself, drafted by the PUD, is in accord with this principle. The notice and claim provisions of the contract all by their terms apply to work within the "general scope" of the contract or claims arising "under the contract."

The unfavorable conditions provision applies by its terms to conditions encountered during the performance or course of "the work." G-1 of the bid specifications defines the scope of work under the contract as that "necessary for the Construction of Wanapum Future Unit Fish Bypass." There is no reason to believe the parties contemplated GCC would be required to perform work unnecessary for the

construction of the bypass. The PUD's position that the unfavorable conditions provision of the contract applies to work beyond the contract's scope is at most a question of fact at this point.

Similarly, the contract itself exempts claims for owner-caused delay, such as the requirement of extra work, from any limitations the contract imposes on remedies for delay.

The PUD also implicitly asserts that the notice and claim provisions of the agreement apply not only to claims relating to work within the contract's scope, but also to disputes about what work is within and what work is without that scope. This assertion is certainly consistent with the general purpose of the notice and claim provisions to afford the PUD the option to avoid incurring undesired expense and to prevent litigation.

Consistency with this purpose, however, is not enough to justify this interpretation as a matter of law. A contract is generally construed against the drafter, in this case, the PUD. Universal/ Land Const. Co. v. City of Spokane, 49 Wash. App. 634, 745 P.2d 53 (1987). The parties are generally deemed to contract in reliance on existing law. Vine Street Commercial Partnership v. City of Marysville, 98 Wash. App. 541, 989 P.2d 1238 (1999). Because the provisions the PUD relies upon limit the non-drafting party's remedies, those provisions must be strictly construed. See Rottinghaus v. Howell, 35 Wash. App. 99, 666 P.2d 899 (1983). The notice and claim provisions expressly apply to disputes within the scope of the contract. They are silent about disputes beyond that scope.

The contract, in fact, prohibits the PUD from requiring GCC to perform work beyond the scope of the contract:

GC-14 CHANGES IN WORK

Without invalidating the Contract, the District may make changes by altering, adding or deducting from the work, and/or make changes in the drawings and specifications requiring changes in the work and/or materials and equipment to be furnished under this Contract; provided such additions, deductions or changes are within the general scope of the Contract¹. Except as provided herein, no official, employee, agent or representative of the District is authorized to approve any change in this Contract and it shall be the responsibility of the Contractor before proceeding with any change, to satisfy himself that the execution of the

¹ The contract defines the scope of work as follows:

G-1 SCOPE OF WORK

The Contractor shall perform all work necessary for the Construction of Wanapum Future Unit Fish Bypass. Work shall be performed as shown on the Contract Drawings and as set forth in these specifications.

written Change Order has been properly authorized on behalf of the District. The District's Manager and Division Directors, under certain conditions as set forth in District Resolution No. 7687, have authority to approve Change Orders up to \$10,000.00 or less. Only the District's Board of Commissioners may approve Change Orders in excess of \$10,000.00. (emphasis added).

This being the case, the court cannot conclude the parties contemplated changes of this nature.

The PUD may very well have intended the notice and claim provisions to apply to those disputes, but it did not express that intent in the language of the contract. This court is not free to rewrite the contract and must enforce the objective manifestation of the parties' intent. It cannot presume GCC intended to limit the remedies available to it by law and must resolve any ambiguities in GCC's favor².

The court must read the parties' agreement in its entirety, and in the context of controlling authority, to determine how that instrument allocates risk inherent in the enterprise between the parties. The agreement between the parties is an undertaking by both of a set of legally enforceable obligations. It is also in many ways a wager. Under the Spearin doctrine, GCC assumed the risk it could perform the work contracted for at an expense less than the compensation allowed it under the contract. See United States v. Spearin, 248 U.S. 132 (1918). But having assumed this risk, GCC has the freedom to perform the work contracted for in any manner consistent with its contractual obligations.

Simply put, GCC assumed the risk of changed conditions, including river and weather conditions, it might meet which increased the cost necessary to do the work specified in the contract. It did not contemplate or assume the risk the PUD would require it to perform work unnecessary to construct the fish bypass to the specifications required by the contract. GCC asserts that any increased cost of performing its obligations under the contract caused by PUD's demand that it perform work beyond the scope of the contract is recoverable under quantum meruit. The PUD has offered no authority to rebut this assertion.

There is insufficient evidence before the court to determine whether the work GCC alleges is extra was or was not necessary for the construction of the bypass. Nor is there sufficient evidence to determine whether the specific work GCC claims delayed its performance was contemplated by the parties when they entered into the contract. If GCC is correct, a finder of fact could find the compensation GCC seeks in the coffer cell

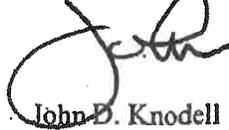
² GCC's failure to obtain a change order for the work it alleges delayed its coffer cell construction is not a bar to its recovery if that work was indeed beyond the scope of the contract. The provision requiring change orders, GC-14, quoted in relevant part above, applies by its terms to changes made to the work within the scope of the contract. The contract consistently reflects the anticipation by both parties that the PUD would not require GCC to perform any work unnecessary to build the bypass to the specifications contained in the contract.

claim is a legitimate consequence of extra work the PUD directed GCC to perform and therefore allowable under quantum meruit.

GCC assumed the risk under the Spearin doctrine that the cost of completing the required work, for any number of reasons, might be greater than it contemplated. It is not entitled to compensation for such greater cost. If, however, the PUD required GCC to perform work unnecessary or employ a means unnecessary to build the bypass, GCC is entitled to compensation for that work. Because such work is beyond the scope of the contract and the contemplation of the parties, GCC's entitlement to compensation must be evaluated on equitable principles and not by the terms of the contract.

The parties have failed to establish as a matter of law which claims are within the scope of the contract and which are not. The remaining summary judgment motions are denied.

Very truly yours,



John D. Knodell
Judge

JDK:cmb

APPENDIX K

The Superior Court of Washington
In and for Grant County



07-589627

EVAN E. SPERLINE, Judge, Dept. 1
JOHN D. KNOELL, Judge, Dept. 2
JOHN M. ANTOSZ, Judge, Dept. 3
MELISSA K. CHLARSON, Court Commissioner

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(509) 754-2011

MINDI FINKE, Court Administrator
CRYSTAL BURNS, Asst. Court Administrator
LYNETTE HENSON, Jury Administrator
TOM BARTUNEK, Official Reporter
MARY JANE CASTILLO, Court Interpreter

December 7, 2012.

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Pamela Andrews
Attorney at Law
645 Elliott Ave W, Ste. 350
Seattle, WA 98119

Kristin Ferrera
Attorney at Law
P.O. Box 1688
Wenatchee, WA 98807

RE: General Construction Company v. Public Utility District No. 2
Grant County Cause No. 08-2-01339-8

Dear Counsel:

Enclosed find the court's order directing the Defendant to note its motion to reconsider this court's denial of six of the Defendant's summary judgment motions. Those rulings are specified in the motion itself. While I am happy to consider all the arguments advanced in the motion, I am primarily concerned that I have not adequately considered whether claims 2 and 11 are barred by the release and settlement agreement the parties entered into February 8, 2007. I have also enclosed copies of the court's orders denying summary judgment. Although the language of the order does not reflect

FILED

DEC 07 2012

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

HOLLY HINTZ

Appendix K
Page 1 of 2

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this, I would welcome further guidance on the issues involved in these motion from the Court of Appeals. I am also in the process of reviewing the materials the Defendant has claimed are privileged and submitted for review. I hope to complete this process within the next few weeks.

Very truly yours,



John D. Knodell
Judge

JDK:cmb

APPENDIX L



07-589629

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FILED

DEC 07 2012

**KIMBERLY A. ALLEN
GRANT COUNTY CLERK**

HOLLY HINTZ

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT**

**GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,**

Plaintiff,

v.

**PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON,
a Washington municipal corporation,**

Defendant,

No. 08-2-01339-8

ORDER RE: CLAIM NO. 2

**PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, a Washington
municipal corporation,**

Third-Party Plaintiff,

v.

**GENERAL CONSTRUCTION
COMPANY, a Delaware corporation;
TRAVELERS CASUALTY & SURETY
COMPANY; and TRAVELERS
CASUALTY & SURETY COMPANY,
BOND NUMBER 41S103871237BCM,**

Third-Party Defendants.

ORDER RE CLAIM NO. 2 - 1

STEWART SOKOL & GRAY LLC

**ATTORNEYS AT LAW
1300 SW FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97201-5047
(503) 221-0099
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**Appendix L
Page 1 of 3**

1 GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,
2
3 Fourth-Party Plaintiff,
4
5 v.
6 GLOBAL DIVING & SALVAGE, INC.,
a Washington corporation,
7
8 Fourth-Party Defendant.

8 THIS MATTER came before the Court on the Public Utility District No. 2 of Grant
9 County's ("PUD") Motion for Partial Summary Judgment: GCC Claim No. 2 - Upstream
10 Stoplog Guiderall Conflict

11 The PUD appeared through its attorneys of record, Jeffers, Danielson, Sonn &
12 Ayiward, PS, by David E. Sonn and Kristin M. Ferrara. GCC appeared through its
13 attorneys of record, Stewart Sokol & Gray, LLC, by John Spencer Stewart, Thomas A.
14 Larkin and David E. Beaudoin. The Court issued its May 20, 2011 letter ruling, a copy
15 of which is attached hereto and incorporated as Exhibit "A" (the "Court's Ruling"), which
16 requested additional briefing and such briefing has been submitted. The Court
17 examined the file, including all items listed on Exhibit "B" attached, and heard argument
18 of counsel on July 23, 2009, November 9, 2009, June 24, 2010, December 10, 2010,
19 February 18, 2011 and May 9-10, 2011, April 13, 2012 and June 22, 2012.

20 The Court also issued letter rulings dated April 12, 2012 and July 20, 2012,
21 which are attached hereto and incorporated herein as Exhibits "C" and "D", respectively.

22

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26 ///

ORDER RE CLAIM NO. 2 - 2

STEWART SOKOL & GRAY LLC

ATTORNEYS AT LAW
2300 SW FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97201-3077
(503) 223-6699
FAX (503) 223-5706

Appendix L
Page 2 of 3

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1 Based on the above,

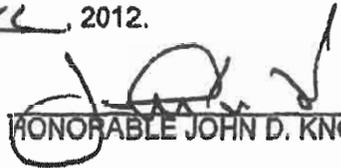
2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

3 1. PUD's Motion for Partial Summary Judgment: GCC Claim No. 2 -
4 Upstream Stoplog Gulderall Conflict is DENIED.

5 DATED this 7 day of Dec, 2012.

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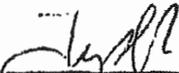
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HONORABLE JOHN D. KNODELL

8 Presented by:

9 STEWART SOKOL & GRAY, LLC

10


11 John Spencer Stewart, WSB #15887

stewart@lawssg.com

12 Thomas A. Larkin, WSB #24515

tlarkin@lawssg.com

13 *Of Attorneys for General Construction*
14 *Company and Travelers Casualty &*
Surety Company

15

16 Approved as to form and notice
of presentment waived:

17

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

18

19

David E. Sonn, WSB #7616

20 davids@dsalaw.com

Kristin M. Ferrera, WSB #40508

21 kristinf@dsalaw.com

22 *Of Attorneys for Defendant and Third-Party Plaintiff*
Public Utility District No. 2 of Grant County

23 M:\wdocslawmain\3458\3458.023\PLEAD\00001358.WPD

24

25

26

ORDER RE CLAIM NO. 2 - 3

STEWART SOKOL & GRAY LLC

ATTORNEYS AT LAW

2100 NW FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97201-2017
(503) 231-0699
FAX (503) 231-5106

Appendix L
Page 3 of 3

09938

APPENDIX M



07-589630

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FILED

DEC 07 2012

**KIMBERLY A. ALLEN
GRANT COUNTY CLERK**

HOLLY HINTZ

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT**

**GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,**

Plaintiff,

v.

**PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON,
a Washington municipal corporation,**

Defendant,

No. 08-2-01339-8

ORDER RE: CLAIM NOS. 7 AND 16

**PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, a Washington
municipal corporation,**

Third-Party Plaintiff;

v.

**GENERAL CONSTRUCTION
COMPANY, a Delaware corporation;
TRAVELERS CASUALTY & SURETY
COMPANY; and TRAVELERS
CASUALTY & SURETY COMPANY,
BOND NUMBER 41S103871237BCM,**

Third-Party Defendants.

ORDER RE CLAIM NOS. 7 AND 16 - 1

**Appendix M
Page 1 of 3**

STEWART SOKOL & GRAY LLC

**ATTORNEYS AT LAW
2100 SW FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97201-3047
(503) 222-4899
FAX (503) 223-4706**

039813

1 GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,

2
3 Fourth-Party Plaintiff,

4 v.

5 GLOBAL DIVING & SALVAGE, INC.,
a Washington corporation,

6 Fourth-Party Defendant.

7

8 THIS MATTER came before the Court on the Public Utility District No. 2 of Grant
9 County's ("PUD") Motion for Partial Summary Judgment: GCC Claim Nos. 7 and 16.

10 The PUD appeared through its attorneys of record, Jeffers, Danielson, Sonn &
11 Aylward, PS, by David E. Sonn and Kristin M. Ferrara. GCC appeared through its
12 attorneys of record, Stewart Sokol & Gray, LLC, by John Spencer Stewart, Thomas A.
13 Larkin and David E. Beaudoin. The Court issued its May 20, 2011 letter ruling, a copy
14 of which is attached hereto and incorporated as Exhibit "A" (the "Court's Ruling"), which
15 requested additional briefing and such briefing has been submitted. The Court
16 examined the file, including all items listed on Exhibit "B" attached, and heard argument
17 of counsel on July 23, 2009, November 9, 2009, June 24, 2010, December 10, 2010,
18 February 18, 2011 and May 9-10, 2011, April 13, 2012, and June 22, 2012.

19 The Court also issued letter rulings dated April 12, 2012 and July 20, 2012,
20 which are attached hereto and incorporated herein as Exhibits "C" and "D", respectively.

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Based on the above,
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

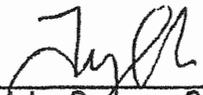
1. PUD's Motion for Partial Summary Judgment: GCC Claim Nos. 7 and 16
is DENIED.

DATED this 7 day of Dec, 2012.


HONORABLE JOHN D. KNODELL

Presented by:

STEWART SOKOL & GRAY, LLC


John Spencer Stewart, WSB #15887
jstewart@lawssg.com
Thomas A. Larkin, WSB #24515
tlarkin@lawssg.com

Of Attorneys for *General Construction
Company and Travelers Casualty &
Surety Company*

Approved as to form and notice
of presentment waived:

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

David E. Sonn, WSB #7616
davids@jdsalaw.com
Kristin M. Ferrera, WSB #40508
kristinf@jdsalaw.com
Of Attorneys for *Defendant and Third-Party Plaintiff
Public Utility District No. 2 of Grant County*

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APPENDIX N



07-589631

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FILED

DEC 07 2012

**KIMBERLY A. ALLEN
GRANT COUNTY CLERK
HOLLY HINTZ**

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT**

**GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,**

Plaintiff,

v.

**PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON,
a Washington municipal corporation,**

Defendant,

No. 08-2-01339-8

**ORDER RE: CLAIM NO. 11 FLOW
FAIRING CHANGES**

**PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, a Washington
municipal corporation,**

Third-Party Plaintiff,

v.

**GENERAL CONSTRUCTION
COMPANY, a Delaware corporation;
TRAVELERS CASUALTY & SURETY
COMPANY; and TRAVELERS
CASUALTY & SURETY COMPANY,
BOND NUMBER 41S103871237BCM,**

Third-Party Defendants.

ORDER RE CLAIM NO. 11 FLOW FAIRING CHANGES - 1

STEWART SOKOL & GRAY LLC
ATTORNEYS AT LAW
2100 FW FIRST AVENUE, SUITE 100
PORTLAND, OREGON 97201-0017
PHONE 503-255-4499
FAX 503-223-9706

**Appendix N
Page 1 of 3**

1 GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,

2

Fourth-Party Plaintiff,

3

v.

4

GLOBAL DIVING & SALVAGE, INC.,
5 a Washington corporation,

6

Fourth-Party Defendant.

7

8 THIS MATTER came before the Court on the Public Utility District No. 2 of Grant
9 County's ("PUD") Motion for Partial Summary Judgment: GCC Claim No. 11 - Flow
10 Fairing Changes.

11 The PUD appeared through its attorneys of record, Jeffers, Danielson, Sonn &
12 Aylward, PS, by David E. Sonn and Kristin M. Ferrara. GCC appeared through its
13 attorneys of record, Stewart Sokol & Gray, LLC, by John Spencer Stewart, Thomas A.
14 Larkin and David E. Beaudoin. The Court issued its May 20, 2011 letter ruling, a copy
15 of which is attached hereto and incorporated as Exhibit "A" (the "Court's Ruling"), which
16 requested additional briefing and such briefing has been submitted. The Court
17 examined the file, including all items listed on Exhibit "B" attached, and heard argument
18 of counsel on July 23, 2009, November 9, 2009, June 24, 2010, December 10, 2010,
19 February 18, 2011 and May 9-10, 2011, April 13, 2012 and June 22, 2012.

20 The Court also issued letter rulings dated April 12, 2012 and July 20, 2012,
21 which are attached hereto and incorporated herein as Exhibits "C" and "D", respectively.

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ORDER RE CLAIM NO. 11 FLOW FAIRING CHANGES - 2

STEWART SOKOL & GRAY LLC

ATTORNEYS AT LAW
1300 SW FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97201-2007
(503) 231-0456
FAX (503) 231-0706

Appendix N
Page 2 of 3

10031

1 Based on the above,

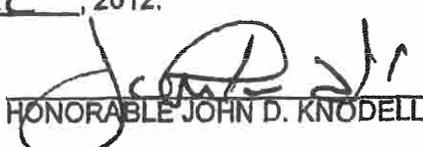
2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

3 1. PUD's Motion for Partial Summary Judgment: GCC Claim No. 11 - Flow
4 Fairing Changes is DENIED.

5 DATED this 7 day of Dec, 2012.

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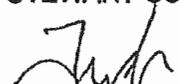
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HONORABLE JOHN D. KNODELL

8 Presented by:

9 STEWART SOKOL & GRAY, LLC

10

11 
John Spencer Stewart, WSB #15887
jstewart@lawssg.com

12 Thomas A. Larkin, WSB #24515
tlarkin@lawssg.com

13 Of Attorneys for *General Construction*
14 *Company and Travelers Casualty &*
Surety Company

15

16 Approved as to form and notice
of presentment waived:

17

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

18

19

David E. Sonn, WSB #7616

20 davids@jdsalaw.com

Kristin M. Ferrera, WSB #40508

21 kristinf@jdsalaw.com

22 Of Attorneys for *Defendant and Third-Party Plaintiff*
Public Utility District No. 2 of Grant County

23 M:\wdocs\ssgmain\3456\3456.023\PLEAD\100669360.WPD

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ORDER RE CLAIM NO. 11 FLOW FAIRING CHANGES - 3

STEWART SOKOL & GRAY LLC

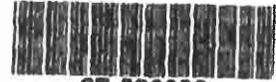
ATTORNEYS AT LAW

2200 SW FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97201-5017
(503) 224-6999
FAX (503) 211-0906

Appendix N
Page 3 of 3

10032

APPENDIX O



07-589632

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FILED

DEC 07 2012

**KIMBERLY A. ALLEN
GRANT COUNTY CLERK**

HOLLY HINTZ

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT**

**GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,**

Plaintiff,

v.

**PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON,
a Washington municipal corporation,**

Defendant,

No. 08-2-01339-8

**ORDER DENYING DEFENDANT
PUD'S MOTION FOR PARTIAL
SUMMARY JUDGMENT: GCC
CLAIM No. 1 - SLOT
CLAIM**

**PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, a Washington
municipal corporation,**

Third-Party Plaintiff,

v.

**GENERAL CONSTRUCTION
COMPANY, a Delaware corporation;
TRAVELERS CASUALTY & SURETY
COMPANY; and TRAVELERS
CASUALTY & SURETY COMPANY,
BOND NUMBER 41S103871237BCM,**

Third-Party Defendants.

**ORDER DENYING DEFENDANT PUD'S PARTIAL MOTION FOR PARTIAL
SUMMARY JUDGMENT: GCC CLAIM No. 1 - SLOT CLAIM**

STEWART SOKOL & GRAY LLC

**ATTORNEYS AT LAW
2300 SW FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97201-3047
(503) 221-0892
FAX (503) 221-9006**

**Appendix O
Page 1 of 3**

1
2 **GENERAL CONSTRUCTION**
3 **COMPANY, a Delaware corporation,**
4
5 **Fourth-Party Plaintiff,**
6
7 **v.**
8
9 **GLOBAL DIVING & SALVAGE, INC.,**
10 **a Washington corporation,**
11
12 **Fourth-Party Defendant.**
13

14 **THIS MATTER** came before the Court on Defendant Public Utility District No: 2
15 of Grant County's ("PUD") Motion for Partial Summary Judgment: General Construction
16 Company's ("GCC") Claim No. 1 – Slot Claim. The PUD appeared through its attorneys
17 of record, Jeffers, Danielson, Sonn & Aylward, PS, by David E. Sonn and Kristin M.
18 Ferrara. GCC appeared through its attorneys of record, Stewart Sokol & Gray, LLC, by
19 John Spencer Stewart, Thomas A. Larkin and David E. Beaudoin. The Court issued its
20 May 20, 2011 letter ruling, a copy of which is attached hereto and incorporated as
21 Exhibit "A" (the "Court's Ruling"). The Court examined the file, including all items listed
22 on Exhibit "B" attached, and heard argument of counsel on July 23, 2009, November 9,
23 2009, June 24, 2010, December 10, 2010, February 18, 2011, May 9 - 10, 2011, April
24 13, 2012 and June 22, 2012.

25 The Court also issued letter rulings dated April 12, 2012 and July 20, 2012,
26 which are attached hereto and incorporated herein as Exhibits "C" and "D", respectively.

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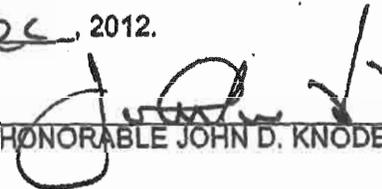
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Based on the above,

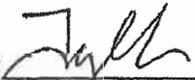
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. PUD's Motion for Partial Summary Judgment: GCC Claim No. 1 – Slot
Claim is DENIED.

DATED this 7 day of Dec, 2012.


HONORABLE JOHN D. KNODELL, III

Presented By:
STEWART SOKOL & GRAY LLC

By: 
John Spencer Stewart, WSBA #15887
Thomas A. Larkin, WSBA #24515
Of Attorneys for General Construction
Company and Travelers Casualty &
Surety Company

Approved as to form and notice of
presentment waived:
JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

By: _____
David E. Sonn WSBA #07216
Of Attorneys for Public Utility District
No. 2 of Grant County

ORDER DENYING DEFENDANT PUD'S PARTIAL MOTION FOR PARTIAL
SUMMARY JUDGMENT: GCC CLAIM No. 1 – SLOT CLAIM

STEWART SOKOL & GRAY LLC
ATTORNEYS AT LAW
300 1ST AVENUE, SUITE 2200
PORTLAND, OREGON 97208-3097
(503) 224-0899
FAX (503) 224-0706

Appendix O
Page 3 of 3

APPENDIX P



07-700301

The Superior Court of the State of Washington

In and for the County of Grant

35 C Street NW
P.O. Box 37
Ephrata, WA 98823
(509) 754-2011

EVAN E. SPERLINE, Judge, Dept. 1
JOHN D. KNODELL, Judge, Dept. 2
JOHN M. ANTOSZ, Presiding Judge, Dept. 3
MELISSA K. CHLARSON, Court Commissioner

MINDI FINKE, Court Administrator
CRYSTAL BURNS, Ass't. Court Administrator

September 26, 2013

John Stewart
Attorney at Law
2300 SW 1st Ave, Ste. 200
Portland, OR 97201

FILED

SEP 26 2013



KIMBERLY A. ALLEN
GRANT COUNTY CLERK

David Sonn
Attorney at Law
2600 Chester Kimm Rd
Wenatchee, WA 98801

Pamela Andrews
Attorney at Law
645 Elliott Ave W, Ste. 350
Seattle, WA 98119

Kristin Ferrera
Attorney at Law
P.O. Box 1688
Wenatchee, WA 98807

RE: General Construction Company v. Public Utility District No. 2
Grant County Cause No.: 08-2-01339-8

Dear Counsel:

The Defendant's motion for reconsideration is before the court. This motion raises a number of issues, but foremost among them is the Defendant's assertion that the Plaintiff is barred from claiming any overage because of its failure to comply with the notice and claim provisions of the parties' agreement. The law favors such provisions and has set a high bar to establish a party's waiver of them. Mike M. Johnson v. County of Spokane, 150 Wash. 2d 375, 78 P.3d 161 (2003).

John Stewart
David Sonn
Pamela Andrews
Kristin Ferrera
September 26, 2013
Page 2

The Plaintiff, citing Bignold v. King County, 65 Wash. 2d 817, 399 P.2d 611 (1965), asserts that it has proved waiver here. This argument is premised on the Plaintiff's characterization of the overage claims as "extra" work, that is, work beyond the scope of the contract. Washington courts recognize a distinction between additional work, which is perhaps unforeseen by the parties but necessary to complete a construction contract to the contract's specifications and extra work which a contractor is directed to perform but which is not necessary to complete the contract to agreed specifications. See 33 Matthew King, Washington Practice: Construction Law Manual, sec. 11.1 at 229-31 (2008).

There is an insufficient record before the court to determine whether the claimed overages are, as a matter of law, for extra as opposed to additional work. For reasons explained more fully in an earlier opinion, this court has concluded that the language of the notice and claim provisions at the very least would allow a reasonable finder of fact to conclude they do not apply to extra work.

But even if they do, the Plaintiff argues under Bignold that contractual remedies, including notice and claim provisions do not apply to quantum meruit claims for work beyond the scope of the parties' agreement. This court finds some support for this proposition in Washington cases. See Nelse Mortensen & Co. v. Group Health Coop., 17 Wash. App. 703, 726, 566 P.2d 560 (1977)(contractual remedies control unless damages fall outside the scope of the contract), aff'd, 90 Wash. 2d 843, 586 P.2d 469 (1978). Further, this principle seems to be the most reasonable way to reconcile Mike M. Johnson and Bignold.

This court will not reiterate here its reasoning in full. The motion to reconsider is denied with one exception. The court failed to fully consider the effect of the parties' settlement agreement of February 8, 2007. There is no colorable issue about the interpretation and construction of the agreement. The work the Plaintiff performed on component 1 of claim 2 and components 3 and 4 of claim 11 fall within the scope of that agreement. Summary judgment for the Defendant is granted as to those portions of claims 2 and 11.

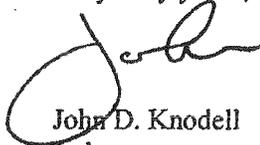
With the understanding the parties are contemplating an interlocutory appeal, the court urges the Court of Appeals to accept such a review. The meaning of Bignold after Mike M. Johnson is far from clear. Justice Chambers, in his dissent in Mike M. Johnson suggested that Bignold stands, among other things, for the proposition that conditions precedent, such as notice and claim provisions, are not enforceable unless the party asserting them can demonstrate prejudice. The court is unaware of any Washington authority deciding this question. See John P. Ahlers and Lindsay K. Taft, Construction Contract Draconian Notice Provisions: Is Prejudice

John Stewart
David Sonn
Pamela Andrews
Kristin Ferrera
September 26, 2013
Page 3

Still the Issue?, Washington State Bar News (May, June 2012). But this appears to be the rule in other jurisdictions. See Childres, Conditions in the Law of Contracts, 45 N.Y.U.C. Rev. 33 (1970). If this is the law, a reasonable trier of fact could conclude that if the Defendant ordered the Plaintiff to perform extra work, it was not prejudiced by any failure by the Plaintiff to follow notice and claim procedures.

Extending Mike M. Johnson to quantum meruit claims could, however, have some benefits, such as introducing greater certainty into the litigation process and making it less costly and time consuming. If Mike M. Johnson requires contractual notice and claim provisions to apply to extra contractual claims, we need to know now. An answer will not only simplify these proceedings, but also give much needed guidance to those involved in similar disputes around the state.

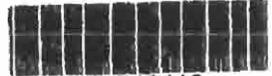
Very truly yours,



John D. Knodell
Judge

JDK:cmb

APPENDIX Q



07-718418

BRANDON ROOT

FILED

JAN 31 2014

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,

Plaintiff,

v.

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON,
a Washington municipal corporation,

Defendant,

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, a Washington
municipal corporation,

Third-Party Plaintiff,

v.

GENERAL CONSTRUCTION
COMPANY, a Delaware corporation;
TRAVELERS CASUALTY & SURETY
COMPANY; and TRAVELERS
CASUALTY & SURETY COMPANY,
BOND NUMBER 41S103871237BCM,

Third-Party Defendants.

No. 08-2-01339-8

**ORDER DENYING
DEFENDANT'S MOTION
FOR RECONSIDERATION
AND SUPPLEMENTAL MOTION
FOR RECONSIDERATION**

///

**ORDER DENYING MOTION FOR RECONSIDERATION AND
SUPPLEMENTAL MOTION FOR RECONSIDERATION - 1**

STEWART SOKOL & GRAY LLC

ATTORNEYS AT LAW

2300 SW FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97204-5047
(503) 221-0899
FAX (503) 221-5706

Appendix Q
Page 1 of 3

1 GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,

2 Fourth-Party Plaintiff,

3 v.

4 GLOBAL DIVING & SALVAGE, INC.,
5 a Washington corporation,

6 Fourth-Party Defendant.

7
8 THIS MATTER came before the Court on the Public Utility District No. 2 of Grant
9 County's ("PUD") "Motion for Reconsideration - 7/20/12 Letter; 7/20/12 Order - Coffey
10 Cell Flooding" ("Motion for Reconsideration") and "Supplemental Motion for
11 Reconsideration - 12/7/12 Orders - Claim No. 2; Claims Nos. 7 and 16; Claim No. 11;
12 Claim No. 1" ("Supplemental Motion for Reconsideration"). The PUD appeared through
13 its attorneys of record, Jeffers, Danielson, Sonn & Aylward, PS, by David E. Sonn.
14 Plaintiff General Construction Company ("GCC") appeared through its attorneys of
15 record, Stewart Sokol & Gray, LLC, by John Spencer Stewart, Thomas A. Larkin and
16 David E. Beaudoin. The Court has examined the file, including PUD's Motion for
17 Reconsideration and Supplemental Motion for Reconsideration, GCC's Opposition to
18 PUD's Motion for Reconsideration; PUD's Memoranda dated June 20, 2013, GCC's
19 Opposition to PUD's Supplemental Memoranda and Declaration in Support; and the
20 pleadings and file herein.

21 Following oral argument on June 28, 2013, the Court issued a letter opinion
22 dated September 26, 2013, a copy of which is attached hereto as **Exhibit A** and
23 incorporated herein by this reference. Based on the foregoing, and the Court being
24 otherwise fully advised,

25 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

26 1. PUD's Motion for Reconsideration and Supplemental Motion for

ORDER DENYING MOTION FOR RECONSIDERATION AND
SUPPLEMENTAL MOTION FOR RECONSIDERATION - 2

STEWART SOKOL & GRAY LLC

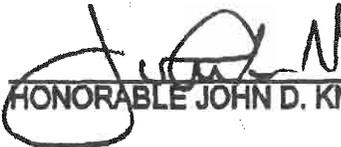
ATTORNEYS AT LAW

3100 SW FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97201-5047
(503) 221-0899
FAX (503) 221-5705

Appendix Q
Page 2 of 3

1 Reconsideration are **DENIED**, with the one exception that the Motion for
2 Reconsideration and Supplemental Motion for Reconsideration are **GRANTED** as to
3 component 1 of Claim 2 and components 3 and 4 of Claim 11 and, only to that extent
4 on those components PUD's underlying Motions for Summary Judgment are granted.

5 DATED this 31 day of June, 2018.

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HONORABLE JOHN D. KNODELL

9 Presented by:

10 STEWART SOKOL & GRAY, LLC

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15 *Of Attorneys for General Construction
16 Company and Travelers Casualty &
17 Surety Company*

18 Approved as to form and notice
19 of presentment waived:

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21 
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Of Attorneys for Defendant

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ORDER DENYING MOTION FOR RECONSIDERATION AND
SUPPLEMENTAL MOTION FOR RECONSIDERATION - 3

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Appendix Q
Page 3 of 3

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APPENDIX R

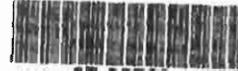
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REBECCA CHURCH

FILED

JUN 14 2010

KIMBERLY A. ALLEN
Grant County Clerk



07-327021

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,

Plaintiff,

v.

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON,
a Washington municipal corporation,

Defendant,

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, a Washington
municipal corporation,

Third-Party Plaintiff,

v.

GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,
and TRAVELERS CASUALTY &
SURETY COMPANY, BOND NUMBER
41S103871237BCM,

Third-Party Defendants.

No. 08-2-01339-8

**DECLARATION OF SCOTT HANSON
IN OPPOSITION TO DEFENDANT
PUBLIC UTILITY DISTRICT NO. 2 OF
GRANT COUNTY'S MOTIONS FOR
PARTIAL SUMMARY JUDGMENT
RE: GCC'S SUPERIOR KNOWLEDGE
CLAIM, SLOT CLAIM, AND COFFER
CELL FLOODING CLAIM**

DECLARATION OF SCOTT HANSON IN
OPPOSITION TO MOTIONS FOR
PARTIAL SUMMARY JUDGMENT

Page 1

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1 I, SCOTT HANSON, declare under penalty of perjury the following in support of
2 GCC's Superior Knowledge claim, Two Slot Method claim and Coffey Cell Flooding
3 claim, which are the subject of three separate Motions for Partial Summary Judgment
4 filed by Defendant Public Utility District No. 2 of Grant County, Washington ("PUD"):

5 1. At all times material, I was Project Sponsor for General Construction
6 Company ("GCC") with respect to the Wanapum Future Unit Fish Bypass, Contract
7 330-2023 ("Project" or "Contract"), and have personal knowledge of the matters set
8 forth herein.

9 2. I was personally involved with overseeing preparation of GCC's bid on
10 the Project and with the consideration and development of the Two Slot Method of
11 performing work concurrently in two slots of the Dam, along with the attendant bid
12 Narrative and Schedules. I also personally assisted in the preparation of GCC's
13 discovery answers in this action.

14 3. In connection with preparing GCC's Bid and the Narrative and Schedule,
15 which were submitted with GCC's Bid to comply with the Bid Documents, GCC
16 reasonably relied upon the PUD disclosing all pertinent information, which PUD failed
17 to do. In addition, GCC relied upon the PUD to disclose all knowledge the PUD had
18 relevant to GCC's proposed means, methods, schedule and costs in pre-bid
19 information provided by PUD and its engineer Jacobs, as well as in pre-bid discussions
20 between PUD and GCC regarding GCC's proposed means, methods, schedule and
21 costs. In the preparation of its bid, and in its pre-bid and even post-bid discussions
22 with representatives of PUD, GCC appropriately assumed that PUD's plans and
23 specifications were accurate, adequate and complete and that all information which
24 should have been furnished to bidders in order for bidders to be as well informed as
25 PUD, had, in fact, been furnished. Based on my experience, it is typical on public

26 DECLARATION OF SCOTT HANSON IN
OPPOSITION TO MOTIONS FOR
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1 projects in Washington, which I have been involved in bidding for over twenty years, for
2 public agency owners to make such a full and complete disclosure of relevant
3 knowledge. PUD failed to disclose material information and possessed superior
4 knowledge.

5 4. From the date of the Project solicitation by PUD until after completion of
6 the Project, PUD misrepresented the stability of the dam and failed to disclose the
7 grave concern that knowledgeable structural engineers had with respect to the stability
8 of the dam in situ, and during the course of construction. Based upon the superior
9 knowledge of PUD and failure to disclose material facts to GCC, PUD intentionally
10 misrepresented facts to GCC as summarized by the following.

11 5. In preparing its bid, GCC recognized that there would be significant
12 economies achieved by employment of an alternative construction sequence, as
13 suggested by the bid documents. The economies included, without limitation,
14 completion within, or even earlier than, the original required completion date and
15 reduced costs. The Invitation and the accompanying contract documents contained
16 two specific provisions relative to construction means and methods that were modified
17 by Addendum No. 1, dated April 15, 2005. Copies of pertinent excerpts of these
18 contract documents are attached hereto as Exhibit 1. Technical specification T-11
19 provided:

20 One construction and dewatering concept is conceptually
21 presented in the contract documents. The contractor may use this
22 method or develop another method. In any case, the details of the
23 method selected shall be designed by the contractor and submitted
for review and approval by the district engineer. The submittal
requirements are to address the requirements indicated on both the
drawings and specifications.

24 ///

25 ///

26 DECLARATION OF SCOTT HANSON IN
OPPOSITION TO MOTIONS FOR
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1 6. The importance of T-11 was emphasized in Addendum No. 1 (SR-14,
2 paragraph B.8 and T-11, paragraph 1.05.B) which, in part, provided:

3 8. Narrative of Construction Means and Methods:
4 Submit a written narrative that presents an overview of the
5 construction means and methods planned for dewatering,
6 construction wastewater capture (including wastewater
7 displaced during underwater concrete placements),
8 construction wastewater treatment, underwater rock
9 excavation, underwater soil excavation, demolition, in the wet
10 construction, in the dry construction and other unusual means
11 and methods planned for this project. Include in the narrative
12 the planned location of the concrete batch plant, planned
13 disposal sites for construction debris and a listing of major
14 construction equipment anticipated to be used. Detailed plans
15 required in other specification sections shall be consistent with
16 this narrative. Variations from the planned means and
17 methods, including the reasons(s) for the variation, shall be
18 submitted for review and approval by the District Engineer.

19 B. The dewatering system(s) for the construction of the new
20 discharge structure shall be of sufficient size and capacity as
21 required to control ground, surface, and river (tailrace) water
22 flow into the construction work areas and to allow the
23 construction area above the foundation and within Future Unit
24 11 to be accomplished in the "dry."

25 1. One construction method and dewatering concept is
26 conceptually presented in the contract documents. The
27 Contractor may use this method or submit develop
28 another method for approval. In any case, the details
29 of the method selected shall be designed by the
30 Contractor and submitted for review and approval by
31 the District Engineer. The submittal requirements are
32 to address the requirements indicated on both the
33 drawings and the specifications.

34 7. This protocol was specifically contemplated by the Federal Energy
35 Regulatory Commission ("FERC") in its Quality Control Inspection Program
36 ("QCIP") and in the related materials, which are referred to in the Limited Access
37 Appendix of GCC's claim. GCC only became aware of the existence of these
38 FERC documents (and a number of other studies on the dam's stability) in 2008,

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DECLARATION OF SCOTT HANSON IN
OPPOSITION TO MOTIONS FOR
PARTIAL SUMMARY JUDGMENT

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1 when GCC's counsel obtained copies through a FOIA request. To obtain these
2 documents, GCC's counsel and many GCC representatives and experts had to
3 prepare and have accepted applications to review Critical Energy Infrastructure
4 Information ("CEII"). I obtained CEII clearance in connection with GCC's
5 counsel's FOIA request for the FERC documents. I have reviewed the
6 Declaration of Dave Anderson (GCC's expert) filed in connection with GCC's
7 opposition to PUD's motions for partial summary judgment and all documents
8 referred to therein. I can confirm that GCC did not receive any of those
9 referenced documents in connection with the Project, with the possible exception
10 of the GeoEngineers geotechnical report. I do not remember for certain whether
11 GCC had access to that report in connection with the Project, but, in any event,
12 that report did not and does not contain the information in PUD's possession
13 regarding Dam stability GCC needed to prepare a fully informed bid. At no time
14 in connection with the Project did PUD (or its design team, including Jacobs)
15 inform GCC that any of the documents referenced in Dave Anderson's
16 Declaration existed or were available for review.

17 8. Based upon my review of GCC's business records and documents
18 produced in this action, I remember that GCC contacted Dana Jeske, District
19 Engineer for the Project (PUD) in March 2005 and specifically asked whether or
20 not a two slot concurrent construction sequence would be acceptable. After
21 checking with others, Jeske contacted GCC and stated GCC could plan on
22 performing the work in that fashion; that is, GCC could bid based on a concurrent
23 slot construction sequence. During those conversations, GCC and PUD
24 discussed by name the specific portions of Contract Drawing C01 that GCC's
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DECLARATION OF SCOTT HANSON IN
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1 proposal would vary and everyone involved understood which Contract
2 Documents were implicated.

3 9. Based on PUD and Mr. Jeske's specific instructions and on the
4 strength of the contract provisions quoted above, GCC prepared and submitted a
5 concurrent construction method and dewatering concept that called for working in
6 Slots B and C concurrently. This is what is referred to as GCC's "Two Slot
7 Method." The Two Slot Method took the slot work off of the critical path and
8 substantially shortened the schedule. GCC completed its responsive bid and
9 timely tendered it to PUD, together with a fully documented Narrative confirming
10 its bids assumptions, including the PUD-approved Two Slot Method. The
11 Narrative supplemented the Bid Schedule required to be submitted with GCC's
12 Bid, and the Bid Schedule fully documented GCC's intent to employ the PUD-
13 approved Two Slot Method. Moreover, GCC's Narrative stated that it was
14 purchasing two temporary bulkheads for performing the concurrent slot work.

15 10. GCC submitted its bid for the project on May 5, 2005, along with its
16 Bid Narrative and Bid Schedule. I personally reviewed the "final" bid and
17 Narrative before it was submitted. A copy of the Bid Narrative is attached hereto
18 as Exhibit 2.

19 11. The Narrative described, especially in paragraph 1.2, GCC's plan to
20 vary the construction phasing presented in the bid documents consistent with its
21 pre-bid discussions with PUD. GCC's plan included purchasing two complete
22 sets of temporary dewatering bulkheads to allow dewatering two of the three
23 slots of Future Unit 11 concurrently. Concrete removal within Slot B of the Future
24 Unit was to commence immediately after dewatering of the slot. Concrete fill of
25 Slot C was to begin at the same time. This Two Slot Method permitted critical

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1 path work in Slot B to proceed independently of concrete work in Slots A and C.
2 The Bid Schedule employing the Two Slot Method reflected project completion
3 months ahead of the required March 15, 2007 completion date.

4 12. On May 6, 2005, Dana Jeske and Reece Voskuilen (Jacobs) called
5 me and Robb Swenson, Chief Estimator of GCC to discuss GCC's Bid, Narrative
6 and Construction Schedule. During these post-bid discussions, it was discussed
7 (and PUD certainly understood) that the Two Slot Method implicated the
8 particular Contract provisions SR14, T11 and Contract Drawing C01. Mr. Jeske
9 expressed to us his satisfaction with the Narrative and Schedule and indicated
10 that he understood the concurrent slot construction plan. Mr. Jeske and Mr.
11 Voskuilen indicated that they would work closely with GCC on the detailed
12 construction sequence and indicated that they recognized that the Two Slot
13 Method would save money and time, and further indicated that they understood
14 that those economies were being passed along to the PUD by GCC. Jeske and
15 Voskuilen indicated to us that an award would be made to GCC recognizing the
16 economies provided by the Two Slot Method. Through these discussions with
17 the PUD (and Jacobs) it was clear that PUD certainly understood that paragraph
18 1.2 of the Narrative (setting forth the Two Slot Method) varied paragraphs 7 and
19 8 of Contract Drawing C01. Not only were the paragraphs discussed by name,
20 but the substance of our conversation would not have been intelligible to
21 someone who did not understand that paragraph 1.2 of the Narrative was directly
22 related to paragraphs 7 and 8 of Contract Drawing C01.

23 13. For a period from May 6, 2005 until the official contract award on
24 May 23, 2005, GCC and the PUD had numerous meetings in which the PUD
25 repeatedly assured GCC that GCC's Two Slot Method was feasible and

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1 appropriate, subject only to minor adjustment. The Contract was officially
2 awarded to GCC on May 23, 2005 by letter specifically stating that PUD "has
3 considered the bid submitted by you for the subject work and is pleased to notify
4 you that your Bid has been accepted for the work in accordance with the
5 referenced contract documents." The Bid, of course, consisted of the written
6 Narrative, the Bid Schedule and the other required bid documents that were
7 timely submitted and timely approved by PUD, and discussed repeatedly with the
8 PUD before award.

9 14. GCC supported the efforts by PUD and Jacobs to analyze the
10 structural implication of the Two Slot Method upon which GCC's Bid was
11 conditioned. In July 2005, PUD designed what it determined to be an acceptable
12 Two Slot Method. GCC supported the PUD/Jacobs efforts at analyzing the Two
13 Slot Method by providing constructability reviews and schedule analysis for
14 various proposed construction sequences. GCC's input in the revisions to the
15 Two Slot Method were limited to schedule impacts of the modifications authored
16 by the PUD. GCC incorporated the PUD-designed and approved Two Slot
17 Method in its July 31, 2005 Project Schedule. The July 31, 2005 Schedule was
18 updated by GCC's December 2005 Schedule, which was approved by PUD. The
19 Schedules, like the Narrative, Bid Schedule, and pre-award and post-award
20 discussions with the PUD, were based on a Two Slot Method. With the
21 construction sequence defined and incorporated into the Project Construction
22 Schedule, GCC focused its efforts and attention on planning and building the
23 Work.

24 15. From July 8 through to early January 2006, all of the slot work was
25 performed entirely consistent with the July 31, 2005 schedule update, which, in

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1 turn was based on a Two Slot Method. Every concrete pour was specifically
2 approved by a PUD representative. The sequence of each item of work in the
3 Future Unit was approved by PUD and each such activity was conducted strictly
4 in accordance with GCC's July 31, 2005 schedule.

5 16. After the express approval of PUD and in a fashion consistent with the July
6 31 schedule, GCC completed its first concrete placement in the lower part of Slot B in
7 early January 2006. On January 6, 2006, GCC was directed to discontinue performance
8 of the work in accordance with the July 31, 2005 schedule and was further directed to
9 resequence and reschedule its work in a fashion requiring slot work to be performed
10 essentially sequentially rather than according to the Two Slot Method GCC had proposed
11 and the PUD had designed and approved.

- 12 The revised sequence included:
- 13 • Placing concrete in B Slot to elevation 492
 - 14 • Flooding B Slot completely
 - 15 • Dewatering C Slot
 - 16 • Placing all of the concrete in Slot C
 - 17 • Placing concrete in Slot A concurrently with Slot B concrete removal.

18 17. The PUD did not, even in January 2006, disclose its superior knowledge
19 with respect to Dam stability. It merely noted that there had apparently been some
20 movement in the Dam picked up on its sensors. However, it did not share with GCC
21 any concerns or information it had about the cause of any such instability; it simply
22 ordered GCC to abandon the Two Slot Method and to work according to a revised
23 sequence employing a one slot at a time method. The revised sequence cardinally
24 changed GCC's previously approved PUD-designed as-bid Two Slot Method. This
25 change to GCC's plan forced acceleration of the Project in an effort to complete the

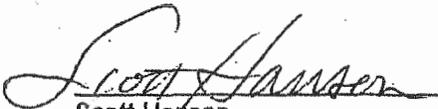
26 **DECLARATION OF SCOTT HANSON IN
OPPOSITION TO MOTIONS FOR
PARTIAL SUMMARY JUDGMENT**

STEWART SOKOL & GRAY LLC
ATTORNEYS AT LAW
2300 SW First Avenue, Suite 200
Portland, OR 97201-5047
(503) 221-0699
FAX (503) 223-5706

1 Project on time. Work was performed during winter conditions, resulting in increased
2 construction costs. Double shifts were worked six and seven days per week, resulting
3 in disruption, inefficiencies and significantly lower man-hour productivity. Changing the
4 work sequence materially delayed completion of the Project, and adversely affected the
5 Project through 2006 and 2007. The specific impacts, costs and delays attributable to
6 these changes and breaches are set forth in GCC's Request for Equitable Adjustment,
7 which has been previously produced to PUD, and which is incorporated herein by this
8 reference.

9 I declare under penalty of perjury under the laws of the State of Washington and
10 pursuant to RCW 9A.72.085 that the foregoing is true and correct.

11 EXECUTED on this 9th day of June, 2010 in Vancouver, British Columbia:

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14 Scott Hanson

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26 DECLARATION OF SCOTT HANSON IN
OPPOSITION TO MOTIONS FOR
PARTIAL SUMMARY JUDGMENT

Page 10

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01297

SR-14 CONSTRUCTION SCHEDULE AND REPORTS

A. Proposed Construction Schedule

In order to assure timely completion of the various phases of the work, as required by G-6 a progress schedule shall be prepared and submitted with the Bid.

The schedule shall include sufficient detail to indicate how the contractor intends to execute the work.

B. Project Construction Schedule

Contractor shall, within fourteen (14) calendar days from the date of the Contract Award submit to the Engineer for approval a detailed, manloaded Project Construction Schedule, based on the construction schedule included on the Contractor's proposal. Such schedule shall be sufficient to meet the requirements for the completion of the separable parts of any and all work as set forth in the Contract. The Contractor's execution of the work shall be in accordance with this Project Construction Schedule.

The Project Construction Schedule shall include the following:

1. Construction activities description with start and finish dates and anticipated durations.
2. Procurement activities required for all equipment and materials.
3. Contractual milestone dates.
4. Manpower required for each activity listed, including the number of personnel per shift, the number of shifts and the number of manhours attributed to each task.
5. Key material quantities for each activity.
6. Cash value of each activity summarized to provide a monthly Cash Flow Schedule.
7. Percentage of the work scheduled to be completed each month.
8. Narrative of Construction Means and Methods: Submit a written narrative that presents an overview of the construction means and methods planned for dewatering, construction wastewater capture (including wastewater displaced during underwater concrete placements), construction wastewater treatment, underwater rock excavation, underwater soil excavation, demolition, in the wet construction, in the dry construction and other unusual means and methods planned for this project. Include in the narrative the planned location of the concrete batch plant, planned disposal sites for construction debris and a listing of major construction equipment anticipated to be used. Detailed plans required in other specification sections shall be consistent with this narrative. Variations from the planned means and methods, including the reason(s) for the variation, shall be submitted for review and approval by the District Engineer.

C. Updating of Schedules

The Contractor shall promptly inform the Engineer of any proposed change in the Project Construction and Procurement Schedules and shall furnish him with revised schedules within seven (7) calendar days after approval by the Engineer of such change. The schedules shall be kept up to date, taking into account the actual progress of work, and shall be revised every month and before each progress payment is made. The updated schedule shall be submitted to the Engineer. The revised schedules shall, as determined by the Engineer, be sufficient to meet the requirements for the completion of the separable parts of any and all work as set forth in the Contract. The Contractor shall assign such forces and prosecute the work in such manner as to assure compliance with the approved schedule.

SR-15 QUALITY CONTROL INSPECTION PROGRAM

The work conducted under this Contract is subject to inspection by the District Engineer and the District as the Priest Rapid Project's licensee according to the provisions of the Quality Control Inspection Program (QCIP) document. This document, a copy of which is available from the District Engineer by written request, was developed in compliance with the Federal Energy Regulatory Commission's "Engineering Guidelines for the Evaluation of Hydro Power Projects," Chapter VII. The Contractor shall be aware of the QCIP's inspection requirements, particularly the portions about stopping work.

SR-16 RESPONSIBLE PERSON ONSITE

The Contractor shall have a responsible person onsite at Wanspum at all times the Contractor has any personnel working onsite. Responsible person shall have the authority to review, authorize and sign District Instructions, coordinate and plan daily, weekly and monthly work, purchase materials, provide and modify submittals and make recommendations on change orders. Responsible person shall attend weekly progress meetings with the District Engineer.

SR-17 DISTRICT SAFETY AND SECURITY POLICIES

The Contractor shall follow all District Safety and Security Policies. Copies of these policies are available from the District Engineer upon written request.

SR-18 SUBMITTALS TO BE FURNISHED BY THE CONTRACTOR

The District requires certain information to be provided by the Contractor, to ensure that the materials and equipment delivered are in conformance with these specifications and properly installed, and to maintain, repair, and operate the equipment over its expected life time. Drawings, Manuals, test data, written instructions and all other information shall be in the English language. All dimensions and proportions shall be in U.S. Standard units of measure i.e., feet, inches, pounds, gallons, etc. The information provided shall become property of the District to duplicate in any manner and use for the purposes described herein.

A. Information, Drawings and Data:

With 120 calendar days after the date of receipt of the Contract Award and before proceeding with factory fabrication the Contractor shall submit to the District, for approval, three (3) hard copy sets of all information, drawings and data as listed below that are

T-11 / DEWATERING

1.01 SECTION INCLUDES

- A. Definition for dewatering.
- B. Requirements for dewatering the site for the construction of the discharge structure in the tailrace.
- C. Requirements for dewatering to allow construction of the ogee crest spillway inside Future Unit Intake 11.
- D. Responsibilities and execution for dewatering.

1.02 RELATED SECTIONS

- A. General Conditions
- B. Section T-03 - Submittals
- C. Section T-04 - Quality Control
- D. Section T-10 - Demolition
- E. Section T-12 - Excavation, Compacting, Filling and Backfilling
- F. Section T-22 - Cast-In-Place Concrete
- G. Section T-23 - Precast Concrete
- H. Section T-31 - Structural Steel
- I. Section T-61 - Electrical Demolition

1.03 REFERENCES

- A. Washington State Department of Ecology
 - 1. WAC 173-201A Water Quality Standards for Surface Waters of the State of Washington
 - 2. WAC 173-204 Sediment Management Standards
- B. Revised Code of Washington
 - RCW 90.48 Water Pollution Control

C. Project Permits

1. Washington Department of Fish and Wildlife Hydraulic Project Approval (HPA) Log No. ST-G2860-01, Temporary Cofferdam Installation & Removal, New Reinforced Concrete Fish Bypass Chute/Flume Construction And Fish & Fish Habitat Protection - Columbia River - Grant County, Washington Water Resource Inventory Area (WRIA) 41.001

1.04 DEFINITIONS

- A. Dewatering shall consist of the design, fabrication, furnishing, installation, operation, maintenance, monitoring, and removal of a dewatering system(s) to achieve completion of all work performed under this Contract without damage to adjacent improvements and materials.
- B. A cellular cofferdam is a temporary structure constructed in a river, lake, etc. to exclude water from an enclosed area. It could be an internally braced sheet pile system or an earth-filled cofferdam system.
- C. Precast concrete foundation units are a series of open-top and open-bottom boxes with each box essentially forming its own coffer cell. The boxes or cells are placed on the (river) bottom to create the outline of a structure. The precast concrete units may be composed of interconnected precast concrete panels.
- D. Temporary bulkheads are temporary retaining structures whose purpose for this project is to prevent water (forebay and tailrace) from flowing through openings at the Future Unit Intake II structure and protecting the construction work area(s) from the water (forebay and tailrace).

1.05 GENERAL REQUIREMENTS

- A. The Contractor shall design the dewatering system(s) using professional methods of design and engineering consistent with the prevailing standards of engineering practice. Design shall be by a licensed professional engineer registered in the State of Washington.
- B. The dewatering system(s) for the construction of the new discharge structure shall be of sufficient size and capacity as required to control ground, surface, and river (tailrace) water flow into the excavation and to allow the construction area above the foundation and within Future Unit II to be accomplished in the "dry."
1. One construction method and dewatering concept is conceptually presented in the contract documents. The Contractor may use this method or develop another method. In any case, the details of the method selected shall be designed by the Contractor and submitted for review and approval by the District Engineer. The submittal requirements are to address the requirements indicated on both the drawings and the specifications.
2. The drawings depict the schematic use of precast concrete units or precast concrete panels for the foundation of the discharge structure. The foundation is excavated to bedrock and then the units are installed, isolation seals are established, and tremie concrete is placed inside and between the units. The dewater perimeter is established at the foundation, and the construction area is dewatered above the foundation as indicated on the plans and construction of the discharge structure is completed in the dry.

3. The Contractor shall be responsible for the design, fabrication, installation, maintenance, and removal of any forms and materials of the dewatering system not specifically approved by the District to remain.
- C. The dewatering system(s) for the construction of the new ogee spillway shall be of sufficient size and capacity as required to control the water flow from the forebay and tailrace into the Future Unit 11 structure and to allow the construction to be accomplished in the "dry." The drawings show the locations (upstream and downstream) for temporary dewatering bulkheads that can be placed on the existing Future Unit 11 structure. The Contractor shall be responsible for the design, fabrication, furnish, installation, maintenance, and removal (when no longer required) of the temporary dewatering bulkheads. Design of the temporary bulkheads shall be by a licensed professional engineer registered in the State of Washington.
- D. The Contractor shall control, by acceptable means, all water regardless of source, and shall be fully responsible for the treatment, when required, and disposal of the water.
- E. The Contractor shall be solely responsible for proper design, fabrication, installation, operation, maintenance, abandonment procedures, and any failure of any component of the dewatering system(s).

1.06 SUBMITTALS

- A. Furnish submittals in accordance with Section T-03.
- B. Dewatering Plan(s) – Within thirty (30) days of notice to proceed, Contractor shall submit for review and approval a dewatering plan(s) for the construction of the ogee spillway within Future Unit 11 and the construction of the discharge structure within the tailrace. The Contractor shall obtain approval of the dewatering plan(s) from the District Engineer before commencing work in the area. Approval shall not relieve the Contractor from the responsibility for adequate design, equipment, installation, maintenance, and performance of the dewatering system(s). The Contractor shall be responsible for the accuracy of drawings, design data, fabrication components, and operational records required. The dewatering plan(s) shall comply with all applicable environmental approvals, permits, rules and regulations. The Dewatering Plan(s) shall include:
 1. Design values, analyses and calculations, including design parameters and basis of such parameters, factors of safety, characteristics of pumping equipment, pipes, structures, etc.
 2. Drawings of the complete dewatering system(s) including, but not limited to, the method and plan, sections and details, structural components, etc. that the Contractor proposed to use to achieve completion of all work performed under this Contract without damage to adjacent improvements and materials.
 3. Provide a discussion of any differential heads of water, surface water and seepage control measures, pressure relief system(s), emergency flooding, emergency facilities, and the stability and competent structures that will be used, if applicable.
 4. A description of installation, maintenance, and operational procedures, proposed method for treating, when required, and disposing of water, and methods and procedures for removing the system(s) when no longer needed. District approval is required for all parts of the dewatering system that are proposed to remain in place.

5. A list of equipment to be used, including standby equipment for emergency use. Including capacities and sizes of pumps and pipes; power system(s), standby power and equipment, etc.
6. A description and layout of the flow measuring devices for monitoring performance of the system(s).
7. A plan and schedule for monitoring performance of the system(s).
8. The dewatering system(s) shall be designed and sealed by a professional engineer registered in the State of Washington.
9. Revisions to the dewatering plan shall be submitted for review and approval by the District.

1.07 QUALIFICATIONS

- A. Contractor shall obtain the services of qualified individuals or firms to provide a detailed plan for the dewatering system(s).
- B. The selected dewatering individual or firm shall have a minimum of five (5) years; and preferably 10 years, of proven experience in the management, design, installation, and operation of dewatering systems of equal complexity.
- C. The dewatering system(s) shall be designed by a registered professional engineer in the State of Washington with a minimum of 5 years of responsible experience in the design and installation of the dewatering system(s). The Contractor shall submit the engineering calculations and related drawings for the dewater system(s) with the engineer's stamp and signature.

1.08 GEOTECHNICAL INVESTIGATIONS

- A. A geologic, hydrogeologic, and geotechnical engineering review was performed by agents of the District. A report documenting this review is entitled:

"Geotechnical Constructability Consultation Services, Wanapum Juvenile Fish Bypass System, Priest Rapids Project, Grant County, Washington for Public Utility District No. 2 of Grant County," dated April 4, 2005 by GeoEngineers of Redmond, Washington.

A copy of this report is available for inspection at the office of the Public Utility District No. 2 of Grant County, 15655 Wanapum Village Lane SW, Beverly, Washington.
- B. Bidders may inspect the report, and the existing Bechtel (1980) subsurface boring logs (WA80-1 through WA80-6) included in the report. Such inspections are deemed solely for the bidders' convenience and the District assumes no responsibility whatsoever for the sufficiency or completeness of investigations made or interpretation thereof.
- C. No information derived from any inspection of the records of investigation or compilation thereof made by the District will in any way relieve the bidder or Contractor from any risks or from properly performing his obligations under the Contract.

3.01 INSTALLATION

- A. Install a dewatering system(s) to lower and control water (tailrace, surface, and ground) in order to permit construction of the discharge structure in the tailrace.
- B. Install a dewatering system to control water (forebay, tailrace, and seepage) in order to permit the construction of the ogee spillway within Future Unit Intake 11.

3.02 OPERATION

Follow procedures and methods outlined in the approved Dewatering Plan.

3.03 WATER DISPOSAL

Dispose water removed from the site(s) being dewatered in such a manner as will not endanger portions of work under construction or completed. Dispose water in such manner as will cause no inconvenience to District or to others working near site. Comply with the stipulations of required permits for disposal of water.

3.04 STANDBY EQUIPMENT

Provide complete standby equipment, installed and available, for immediate operation as may be required, to adequately maintain dewatering on a continuous basis in the event that all or part of the system may become inadequate or fail.

3.05 DAMAGES

The Contractor shall be responsible for and shall repair without cost to the District any damage to work in place, other Contractor's equipment, existing facilities, and the excavation, that may result from his negligence, inadequate or improper design and operation of the dewatering system(s), and any mechanical or electrical failure of the dewatering system(s).

3.06 MAINTENANCE

- A. Dewatering system(s) maintenance shall include but not limited to 24-hour supervision by personnel skilled in the operation, maintenance, and replacement of system components, and any other work required to maintain the sites in a dewatered condition. Dewatering shall be a continuous operation and interruptions due to outages, or any other reason, shall not be permitted.
- B. Follow procedures and methods outlined in the approved Dewatering Plan.

3.07 SYSTEM(S) REMOVAL

- A. Insure compliance with all conditions of regulating permits and provide such information to the District Engineer.
- B. Obtain written approval from the District Engineer before discontinuing operation of dewatering system(s).
- C. Follow removal methods and procedures as outlined in the approved Dewatering Plan.

ADDENDUM NO. 1

CONTRACT DOCUMENTS # 330-2023

The following changes are incorporated into requirements for Contract Documents No. 330-2023 by this Addendum:

This addendum # 1 includes the following PDF files :

- 1.) Specifications change list - 43 pages
- 2.) Exhibit H rev.2 and Drawing change list - 41 pages.
- 3.) Revised drawings - Group 1G
- 4.) Revised Drawings - Group 2C
- 5.) Revised Drawings - Group 3S
- 6.) Revised Drawings - Group 4S
- 7.) Revised Drawings - Group 5M
- 8.) Revised Drawings - Group 6E+R

Under Instructions to Bidders, section 21 Contract Documents add Environmental Permits exhibit J page 6.

Revised Bid opening date shall be May 5 th, 2005.

Revised Start date that work will begin on or before June 15, 2005 as referenced on bid form.

Receipt of this Addendum must be acknowledged by the Bidder on the Bid Form.

PUBLIC UTILITY DISTRICT NO. 2
of GRANT COUNTY

DATED THIS 15th DAY OF April, 2005.

BY: Chris Akers
Contract Officer

ADDENDUM-FRM
REV. 4/15/05

01307

GCC0911560

Appendix R
Page 19 of 41

Section	Item/Par.	Revision
SR-1	14.	Furnish materials, fabricate and install dewatering bulkheads stoplogs and lifting beam.
SR-14	B.8	New Paragraph 8. <u>Narrative of Construction Means and Methods: Submit a written narrative that presents an overview of the construction means and methods planned for dewatering, construction wastewater capture (including wastewater displaced during underwater concrete placements), construction wastewater treatment, underwater rock excavation, underwater soil excavation, demolition, in the wet construction, in the dry construction and other unusual means and methods planned for this project. Include in the narrative the planned location of the concrete batch plant, planned disposal sites for construction debris and a listing of major construction equipment anticipated to be used. Detailed plans required in other specification sections shall be consistent with this narrative. Variations from the planned means and methods, including the reason(s) for the variation, shall be submitted for review and approval by the District Engineer.</u>
T-03	1.04.F.4	4. Retain three copies of each submittal, except "Samples", where one copy <u>two copies</u> will be retained.
T-10	1.05.C.3	3. Washington Administrative Code (WAC). Chapter 173-460 addresses toxic air regulations, Chapter 173-303 addresses hazardous waste regulations, <u>and Chapters that address occupational health and safety regulations. Chapter 2982 addresses general occupational health standards.</u>
T-10	1.06.A	A. General Demolition Plan. Contractor shall submit a demolition plan for approval that includes procedures for careful removal and disposition of materials specified to be <u>disposed of or salvaged</u> , coordination with other work in progress, a disconnection schedule of utility services, <u>access to demolition work areas</u> , a detailed description of methods and equipment to be used for each operation, and the sequence of operations. <u>The sequence of operations shall be clearly tied to the master construction schedule.</u> Contractor shall not begin demolition work until written approval is received.
T-10	1.06.B	B. Reinforcing Steel Bar Location Survey Work Plan. Contractor shall submit a rebar location survey work plan for approval that outlines the plan for locating the existing reinforcing steel bars in

Section	Item/Par.	Revision
		<u>hardware that will remain exposed, such bolts and hardware shall be removed to a depth of 1-inch below the surface of the concrete and the area dry packed back. In areas where such bolts or hardware will be covered by an equivalent or greater depth of new concrete, they may be left in place, provided that they do not interfere with other new construction items.</u>
T-11	1.04.C	C. Precast concrete <u>foundation</u> units are a series of open-top and open-bottom boxes with each box essentially forming its own coffer cell. The boxes or cells are placed on the (river) bottom to create the outline of a structure. The precast concrete units may be composed of <u>interconnected</u> precast concrete panels.
T-11	1.04.D	D. Temporary bulkheads are temporary retaining structures whose purpose for this project is to prevent water (forebay and tailrace) from flowing through openings at the Future Unit Intake 11 structure and protecting the <u>site construction work area(s)</u> from the water (forebay and tailrace).
T-11	1.05.A	A. The Contractor shall design the dewatering system(s) using <u>acceptable and professional methods of design and engineering consistent with best modern the prevailing standards of engineering practice.</u> Design shall be by a <u>licensed professional engineer</u> registered in the State of Washington.
T-11	1.05.B	B. The dewatering system(s) for the construction of the new discharge structure shall be of sufficient size and capacity as required to control ground, surface, and river (tailrace) water flow into the construction work areas and to allow the construction area above the foundation <u>and within Future Unit 11</u> to be accomplished in the "dry." <ol style="list-style-type: none"> 1. <u>One construction method and dewatering concept is conceptually presented in the contract documents. The Contractor may use this method or submit develop another method for approval. In any case, the details of the method selected shall be designed by the Contractor and submitted for review and approval by the District Engineer. The submittal requirements are to address the requirements indicated on both the drawings and the specifications.</u> 2. The drawings depict the schematic use of precast concrete units or precast concrete panels for the foundation of the discharge structure. The foundation is excavated to bedrock and then the units are installed, isolation seals are established, and the foundation units filled with underwater (tremie) concrete is placed inside and between the units.

Section	Item/Par.	Revision
		<p>The dewatering perimeter is established at the foundation, and the The construction area is dewatered above the foundation as <u>indicated on the plans</u>. Construction and construction of the discharge structure is completed <u>in the dry</u>.</p> <p>3. The Contractor shall be responsible for the design, fabrication, installation, maintenance, and removal (of any forms and materials of the dewatering system not needed, specifically approved by the District to remain).</p>
T-11	1.05.C	<p>C. The dewatering system(s) for the construction of the new ogee spillway shall be of sufficient size and capacity as required to control the water flow from the forebay and tailrace into the Future Unit 11 structure and to allow the construction to be accomplished in the "dry." The drawings show the locations (upstream and downstream) for temporary dewatering bulkheads that can are to be placed on the existing Future Unit 11 structure. The Contractor shall be responsible for the design, fabrication, furnish, installation, maintenance, and removal (when no longer required) of the temporary dewatering bulkheads. Design of the temporary bulkheads shall be by a licensed structural <u>professional</u> engineer registered in the State of Washington.</p>
T-11	1.05.D	<p>D. The Contractor shall control, by <u>acceptable</u> means, all water regardless of source, surface, ground and river, and shall be fully responsible for <u>the treatment, when required, and disposal</u> of the water.</p>
T-11	1.06.B.4	<p>4. A description of installation, maintenance, and operational procedures, proposed method for <u>treating, when required, and disposing</u> of water, and <u>methods</u> and procedures for removing the system(s) when no longer needed. <u>District approval is required for all parts of the dewatering system that are proposed to remain in place.</u></p>
T-11	1.06.B:8 and 1.06.B.9	<p>8. The dewatering system(s) shall be designed and sealed by a <u>registered professional engineer registered in the State of Washington.</u></p> <p>9. <u>Revisions to the dewatering plan shall be submitted for review and approval by the District.</u></p>
T-11	1.08.A	<p>A. A geologic, hydrogeologic, and geotechnical engineering review was performed by agents of the District. A draft report</p>

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NAME OF BIDDER: General Construction Company**COPY**TO: Public Utility District No. 2
of Grant County Washington**Gentlemen:**

The undersigned has examined the site, plans and specifications, laws and ordinances governing the improvements contemplated. In accordance with the terms and provisions in the foregoing, the following price is tendered as an offer to perform the work, complete in place and ready for satisfactory operation.

As evidence of good faith, a certified check, Cashier's Check or a Bid Bond in an amount not less than five percent (5%) of total Bid is attached hereto. The undersigned understands and hereby agrees that should the following offer be accepted and the undersigned should fail or refuse to enter into a Contract and furnish the required Performance Bond and Liability Insurance, the undersigned's Certified Check, Cashier's Check or an amount equal to five percent (5%) of the total amount bid shall be forfeited to the District as liquidated damages.

The Total Cost of Bid Items 1 through 18 will be used in the Bid Evaluation. A price must be placed on each blank, regardless of whether any estimated quantity is specified, or the Bid will not be considered. In case of an error in addition, the correct total of the item prices shall prevail.

Bid Item No.	Description	Quantity	Unit	Total Price
1.	Mobilization (not to exceed 5% of bid)	1	L.S.	\$ 1,400,000.00
2.	Prepare and furnish submittals, including as-builts (not to exceed \$50,000).	1	L.S.	\$ 40,000.00
3.	Remove portions of existing Attraction Flow Prototype and other related items.	1	L.S.	\$ 140,000.00
4.	Underwater excavation and foundation preparation for the downstream portion of the bypass chute.	1	L.S.	\$ 1,500,000.00
5.	Furnish materials, design, fabricate, and place precast concrete foundation modules and precast concrete closure panels or other approved systems. (Below Elevation 472)	1	L.S.	\$ 4,850,000.00
6.	Construct discharge chute foundation (Below Elevation 472.)	1	L.S.	\$ 5,250,000.00
7.	Construct and place reinforced concrete chute exit structure surface and walls. (Above Elevation 472.)	1	L.S.	\$ 5,300,000.00
8.	Furnish materials, fabricate, and install temporary dewatering bulkheads.	1	L.S.	\$ 1,200,000.00

GT000010

Contract Documents #330-2023

Bid Item No.	Description	Quantity	Unit	Total Price
9.	Remove and dispose of portions of existing concrete.	1	L.S.	\$ 1,100,000.00
10.	Construct Intake Slot 11A and Slot 11C reinforced concrete closures. Construct other A and C slot concrete work.	1	L.S.	\$ 800,000.00
11.	Construct Intake Slot 11B and place concrete ogee and sidewalls within Future Unit 11.	1	L.S.	\$ 1,600,000.00
12.	Furnish materials, fabricate and install steel flow fairings.	1	L.S.	\$ 1,150,000.00
13.	Furnish materials, fabricate and install vertical gate, and inclined gates including hydraulic cylinder supports, guiderails and other required embedments.	1	L.S.	\$ 2,369,100.00
14.	Furnish materials, fabricate and install dewatering bulkheads.	1	L.S.	\$ 1,050,000.00
15.	Furnish materials, fabricate and install vertical gate hydraulic cylinders, inclined gate hydraulic cylinders, and other hydraulic equipment and controls.	1	L.S.	\$ 1,100,000.00
16.	Furnish materials, fabricate and install stairs, walkways, platforms, stair railings, ladders, and other miscellaneous.	1	L.S.	\$ 200,000.00
17.	Furnish materials and install electrical and control components, install interior and exterior lighting, modifications to the existing fire alarm system, modifications to existing electrical items, and other related electrical work.	1	L.S.	\$ 250,000.00
18	Demobilization	1	LS	\$ 150,000.00

Total Bid Price \$ 29,449,100.00

Bids submitted by those who fail to attend the Mandatory Site Inspection and Pre-Bid Meeting will be rejected.

Prices quoted include the cost of the Performance Bond required by Contract Documents but do not include Washington State and Local Taxes.

The above quantities are final quantities and shall be interpreted as the Contract Amount. Payment will be made by Bid Item for work completed satisfactorily.

Attached hereto is a Cashier's Check, Certified Check or Bid Bond in the amount of 5% of the Total Bid Price Dollars (\$ _____), payable to the order of Public Utility District No. 2 of Grant County, this amount being not less than five percent (5%) of the total Bid.

Contractor will begin work on/or before June 1, 2005, and complete all work on or before March 15, 2007.

Yes No

GT000011

Contract Documents #330-2023

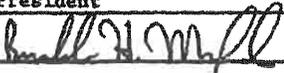
Liquidated damages shall be assessed for any failure to meet the required completion schedules specified in Sections G-2 and G-14

(CHECK ONE) We will _____ will not be using Subcontractors whose subcontract amount will be more than ten percent of the Contract price. (Listing of Subcontractors, if any, must be specified on Supplemental Bid Form). Failure to comply with R.C. W. 39.30.060 regarding Subcontractor listing may be grounds for bid rejection.

Attached hereto is a properly executed and notarized Signature Certification Form.

Attached hereto is the Bid Proposal Attachment and all Bidder's Data required in support of this Bid.

Addendum Nos. 1 & 2 have been received and have been considered in preparing this Bid.

BIDDER: General Construction Company ADDRESS 19472 Powder Hill Place
BY: Ronald H. Morford Poulsbo, WA 98370
Type or Print Name
TITLE: President
SIGNED:  Phone (360) 779-3200
DATE: 5/05/05

Washington Registration Certificate No. GENERCC9830Z U.B.I. No. 602-224-683

We hereby certify that we are not required to have a Washington State Sales Tax Identification Number for this work: Does not apply.

Signed by: 
Name (Typed): Ronald H. Morford
Authorized Representative
Title: President

GT000012

Contract Documents #330-2023

SUPPLEMENTAL BID FORM 1

Statement of Contractor's Qualification & Experience

The following statements of experience, personnel, equipment and general qualifications of the Bidder are submitted as part of the Bid and the Bidder represents and guarantees the truthfulness and accuracy thereof:

- a. Our organization has been in business continuously from the year 1910
- b. Our organization has had experience in construction comparable to that required under the proposed contract as a prime contractor for 95 years, or as a subcontractor for 95 years.
- c. Following is a practical list of the construction our organization has completed which is similar in character and in magnitude to that required in the proposed contract:

<u>Year</u>	<u>District</u>	<u>Location</u>	<u>Contract Amount</u>
-------------	-----------------	-----------------	------------------------

Please see attached list of related experience.

GT000013

GENERAL CONSTRUCTION COMPANY

Statement of Qualifications

for

Public Utility District No. 2 of Grant County Washington

Wanapum Future Unit Fish Bypass

General Construction Company is a heavy civil, industrial and marine construction contractor performing approximately \$200 Million in construction per year. Attached is a table listing General's recent Major Hydroelectric Dam Structure projects. General has a rich history of major hydroelectric projects that includes Grand Coulee, Ross and Hungry Horse dams to name a few. Today General Construction Company is a wholly owned subsidiary of Peter Kiewit Sons', Inc. which also has an extensive hydroelectric project history. Kiewit recently completed the latest Bonneville Fish Bypass and a few years earlier the new Bonneville Navigation Lock.

General Construction Company's 2004 Audited Financial Statement is available upon request. General Construction's net worth @ December 31, 2004 was \$56,302,635.

**GENERAL CONSTRUCTION COMPANY
WANAPUM FUTURE UNIT FISH BYPASS PROJECT
Recent Major Hydroelectric Dam Structure Projects**

May 5, 2005

NAME/ADDRESS OF OWNER	NAME OF PROJECT - TYPE OF WORK	CONTRACT AMOUNT	DATE OF COMPLETION	LOCATION OF WORK	% OF WORK SELF-PERFORMED	ARCHITECT OR ENGINEERING FIRM
<p>Army Corps of Engineers 201 N. 3rd Avenue Walla Walla, WA 99382-1876 John Treaswell (509) 527-7051</p>	<p>Ice Harbor Navigation Coffler Cells This project included construction of 4-40 ft. dia. in-line standing coffer cells in the Columbia River, the extension of a spillway training wall, and installation of two spillway deflectors to facilitate the passage of salmon smolt over the dam.</p>	\$4.6 Million	February 1989	Pasco, WA	70%	<p>Army Corps of Engineers 201 N. 3rd Avenue Walla Walla, WA 99382-1876 John Treaswell (509) 527-7051</p>
<p>Army Corps of Engineers 208 N.W. Graham Road Troutdale, OR 97060 Niamath Nornie (503) 661-2420, ext. 226</p>	<p>Bonneville Dam Juvenile Fish Bypass System Outfalls Contract No. DACW57-97-9-0227 Two juvenile fish bypass outfalls in the Columbia River downstream of Bonneville Dam were installed. The project consisted of driving 6 ea. 10 ft. diameter piles down to bedrock. Pile lengths were from 130 ft. to 200 ft. The piles were drilled out and socketed into bed rock up to 30 feet. Pier caps were installed full depth and the pile was filled with concrete. Pier caps were constructed on top of the pile. 12 ea. 7 ft. square precast box girder sections ranging in length from 84 ft. to 180 ft. were fabricated and set in pairs on top of the caps.</p>	\$13.7 Million	February, 1989	North Bonneville, WA	90%	<p>Army Corps of Engineers 208 N.W. Graham Road Troutdale, OR 97060 Niamath Nornie (503) 661-2420 INCA Engineers, Inc. Bellevue, WA</p>
<p>Dept. of the Army Portland District Corps of Engineers Portland Resident Office 208 N.W. Graham Road Troutdale, OR 97060-9512 Harry G. Weiske, P.E. (503) 661-2420</p>	<p>Bonneville Lock and Dam Protype entrance Collector Contract No. DACW57-97-0-0033 The project consisted of installation of 12 surface collector fish screen modules on the Bonneville Dam First Powerhouse forebay, across 4 turbine bays. The surface collector was to guide salmon smolt away from the turbines. The scope of work included drilling and setting anchor bolts, setting pier nose brackets, setting the modules, electrical lighting and instrumentation. Four of the modules weighed 85 tons and measured 70 ft. high x 23 ft. wide x 21 ft. deep. Work was completed in two similar phases, enabling the Corps of Engineers to perform turbine testing prior to the project completion. All underwater drilling, anchor bolt setting, and steel erection was done with the assistance of divers.</p>	\$5.1 Million	February 1989	Clatskanie Locks, OR	83%	<p>Hezron Northwest, Inc. 2363 130th Ave. N.E. Suite 200 Bellevue, WA 98005 Allen Damaska (425) 652-4000</p>

**GENERAL CONSTRUCTION COMPANY
WANAPUM FUTURE UNIT FISH BYPASS PROJECT
Recent Major Hydroelectric Dam Structure Projects**

May 5, 2005

NAME/ADDRESS OF OWNER	NAME OF PROJECT • TYPE OF WORK	CONTRACT AMOUNT	DATE OF COMPLETION	LOCATION OF WORK	% OF WORK SELF-PERFORMED	ARCHITECT OR ENGINEERING FIRM
<p>Army Corps of Engineers 333 S.W. First Street Portland, OR 97204 George Wright (503) 325-5816</p>	<p>John Day Dam Flow Deflectors Contract No. DACW57-95-C-0059 This project involved fabrication and transportation of two floating bulkheads for dewatering spillway bays at John Day Lock and Dam, and the construction of 18 concrete flow deflectors and 17 pier extensions in the abutment of the John Day spillway to facilitate the passage of salmon smolt over the dam. The installation of the concrete bulkheads allowed all concrete dams, drilling, rebar installation, and concrete placing to be performed in the dry. Divers assisted in the setting of the pier extension forms and the bulkheads.</p>	\$10.7 Million	January 1999	Klickitat County, WA	80%	<p>Army Corps of Engineers 333 S.W. First Street Portland, OR 97204 George Wright (503) 325-5816</p>
<p>Dept. of the Army Walla Walla District Corps of Engineers 201 North 3rd Ave. Walla Walla, WA 99362-1670 David Opbroek (509) 527-7059</p>	<p>Iron Harbor Dam Spillway Deflectors Contract No. DACW95-95-C-0025 This project consisted of the installation of 8 spillway flow deflectors and 7 pier nose extensions to facilitate the passage of salmon by over the dam. The work required a General Construction 80 ton floating crane to lift and place the two 27 ft. x 68 ft. steel bulkheads used to dewater the spillways and form the deflectors. Once the bulkheads were in place, the concrete dams, drilling, rebar installation, and concrete placing were all done in the dry. Divers assisted in the setting of the pier nose extension forms and deflector bulkheads. 230 cy of concrete were placed at each of the 8 heavily reinforced deflectors.</p>	\$3.8 Million	November 1997	Prasco, WA	88%	<p>Dept. of the Army Walla Walla District Corps of Engineers 201 North 3rd Ave. Walla Walla, WA 99362 David Opbroek (509) 527-7059</p>
<p>U.S. Department of Interior Bureau of Reclamation 1140 West Wood Street Williams, CA 95969 (916) 978-5141</p>	<p>Shasta Dam Temperature Control Device (TCD) Contract No. 1425-5-CC-89-4-02900 Construction of the TCD included large steel boxes erected around the penstock intake structures. A total of five boxes were constructed for each intake structure. The intakes had fish screens over them to prevent fish from being sucked into the turbines. Each box is approximately 50 ft. on a side and extends from the crest of the dam to about 300 ft. below that point. An adjacent structure called the Low Level Intake extends 57 ft. deeper. All core drilling, anchor bolt setting, concrete dams, and steel erection below the water surface was done with chutes.</p>	\$63 Million	December 1996	Shasta Lake, CA	80%	<p>U.S. Department of Interior Bureau of Reclamation 1140 West Wood Street Williams, CA 95969 (916) 978-5141</p>

GT000015

Page 2

01396

**GENERAL CONSTRUCTION COMPANY
WANAPUM FUTURE UNIT FISH BYPASS PROJECT
Recent Major Hydroelectric Dam Structure Projects**

May 5, 2005

NAME/ADDRESS OF OWNER	NAME OF PROJECT - TYPE OF WORK	CONTRACT AMOUNT	DATE OF COMPLETION	LOCATION OF WORK	% OF WORK SELF-PERFORMED	ARCHITECT OR ENGINEERING FIRM
Public Utility District No. 2 P. O. Box 878 Ephrata, WA 98823 Diana Jenko (509) 754-3541	Wanapum Dam Fish Structure This work included the construction of an addition to the prototype fish bypass system, fabrication and installation of a new spawny overflow gate, and the installation of a fish screen to prevent the passage of salmon smolt. The deflector was completely built underwater with divers. The work included saw cutting, concrete demo, drilling, rebar placement, underwater form setting, and concrete placing.	\$7.7 Million	May 1986	Vernice, WA	90%	Svestrup Corporation 3300 Carrillon Point Kirkland, WA 98033-9782 (206) 822-3300
U.S. Department of Interior Bureau of Reclamation P. O. Box 888 Willows, CA 95988 Jim McDonough (916) 979-2178	Red Bluff Demonstration Pump Project This project involved construction of an irrigation pumping plant designed to protect salmon fingerlings in the Sacramento River. This below-grade plant required extensive temporary cofferdams. The installation has two Archimedes screw pumps and one centrifugal pump. Fish screens were used to direct the salmon smolt away from the irrigation canal.	\$9.5 Million	May 1995	Red Bluff, CA	86%	U.S. Department of Interior Bureau of Reclamation P.O. Box 888 Willows, CA 95988
Public Utility District No. 2 P.O. Box 878 Ephrata, WA 98823 Diana Jenko (509) 754-3541	Wanapum Dam Fish Structure Construction consisted of fabricating and assembling 11 steel modules weighing up to 80 tons to provide a 60 ft. high x 330 ft. long x 8-12 ft. wide steel fish attraction channels. Inside the channels fish screens were used to guide salmon smolt. An 850 ft. x 7.5 ft. steel pipeline was also installed to carry the fish below the tailrace. In order for the pipeline to pass through the dam it was necessary to raise near three 10 ft. dia. holes through 11, 10, and 9 ft. walls. This project required extensive diving to core under water holes for anchor bolts and erection of the deflectors.	\$7.6 Million	April 1995	Vernice, WA	85%	Svestrup Corporation 3300 Carrillon Point Kirkland, WA 98033 (206) 822-3300

GT000016

Page 3

SIGNATURE CERTIFICATION

(FOR CORPORATION)

STATE OF WA)
) ss.
County of Kitsap)

On this 5th day of MAY, 20 05, before me, the undersigned, a Notary Public in and for the State of WA, duly commissioned and sworn, personally appeared ~~XXX~~ Ronald H. Morford, to me known to be the President, respectively, of General Construction Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument, and that the statements contained in said instrument and in the attachments thereto are true and correct to the best of his knowledge.

SUBSCRIBED AND SWORN to before me this 5th day of May, 20 05.

(Seal or Stamp)

Jean M. Hornick
Signature of Notary Public
Jean M. Hornick
Administrative Assistant
Title
My Appointment Expires 10/15/06

(FOR PARTNERSHIP OR PROPRIETORSHIP)

STATE OF)
) ss.
County of)

On this ___ day of ___, 20___, before me, the undersigned, a Notary Public in and for the State of ___, duly commissioned and sworn, personally appeared before me _____ and _____, to me known to be the individual(s) described in and who executed the within instrument, and acknowledged that _____ signed the same as _____ free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that _____ authorized to execute said instrument and that the statements contained in said instrument and in the attachments thereto are true and correct to the best of _____ knowledge.

SUBSCRIBED AND SWORN to before me this ___ day of _____, 20___

(Seal or Stamp)

Signature of Notary Public

Title
My Appointment Expires _____

EXHIBIT "A"

GT000024

General Construction Company

**Wanapum Future Unit Fish Bypass
#330-2023**

**NARRATIVE REPORT
FOR
BID SCHEDULE**



**PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY,
WASHINGTON**

Bid Date - May 5, 2005

01405

GT000025

Public Utility District No. 2 of Grant County, Washington
Wanapum Future Unit Fish Bypass
Narrative Report for Bid Schedule

TABLE OF CONTENTS

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1.2 - SUMMARY OF THE SCHEDULE	2
1.3 - CONCRETE DEMOLITION AND PLACEMENT	3
1.4 - DOWNSTREAM FOUNDATION - DREDGING ROCK EXC, PRECAST PANELS	3
1.5 - BULKHEADS, GATES AND FLOW FARING	4
1.6 - HYDRAULIC SYSTEM	4
2.0 - CONCLUSION	6

1.0 - CONSTRUCTION PLAN

1.1 - OVERVIEW

The construction of the Wanapum Future Unit Fish Bypass consists of removing a section of the existing attraction flow prototype, sealing the 11A & 11C slots with concrete, and installing a chute to provide a free surface bypass for outmigrating fish. The bid documents have provided an example construction method, and requested that the contractor take liberty to change/modify the design to reduce the cost of construction while providing an equally acceptable finished product. General Construction Company has provided this narrative to explain our means and methods, along with our assumptions for completing this fish bypass.

1.2 - SUMMARY OF THE SCHEDULE

The critical path runs through the slot B construction, therefore we have procured two dewatering bulkheads to work in the B and C slots concurrently. By working in more than one slot at a time, the A slot and C slot work has been taken off the critical path. With the A slot and C slot off the critical path General Construction is able to complete construction months ahead of the specified March 15, 2007 completion date. Construction within slot B and slot C will start immediately following the temporary dewatering bulkhead installation.

The first order of work will be procurement of the dewatering bulkheads to be installed on the upstream and downstream ends of slot B. Installation of bulkheads will begin in mid September 2005 which will permit the concrete removal within slot B to begin. Concrete removal within the dam will be accomplished using wire sawing methods and serviced by a 200 ton crane straddling slot 11C. When the large pieces of concrete have been removed new concrete will be poured. Concurrently with concrete placement in slot B, the downstream foundation will be constructed in the lower pool using a Manitowac 4100 crawler crane on a flexi-float barge. With the completion of the downstream foundation and dewatering skirt, concrete placement for the downstream portion of the chute will begin in the dry. Upon completion of the chute walls, the vertical and inclined guides and gates will be installed complete with hydraulics. During the in water work period in 2006 the upstream flow faring will be installed, completing the construction of the fish bypass.

1.3 - CONCRETE DEMOLITION AND PLACEMENT

General Construction will remove existing concrete by cutting the concrete into approximately 50 ton pieces using wire saws. All concrete wire-sawing is accomplished in the dry. Two wire saws are used concurrently to remove the concrete. The wire-sawn pieces of concrete will be systematically placed within the downstream chute foundation to offset the amount of new concrete required. This will lower the construction cost to Grant County PUD.

General Construction will remove a portion of top deck concrete above the middle and downstream walls of the B slot to provide access for hoisting the wire-sawn blocks of concrete. This vertical access will allow for safe and efficient removal of the 50 ton pieces of concrete. The removal of the upper deck from above the gate slots also provides access to facilitate concrete and form placement during the ogee construction. At the completion of the B slot concrete, the roadway will be restored.

Concrete placement within the A and C slots will be performed in the dry behind a second dewatering bulkhead. By pouring this concrete in the dry we are able to assure a quality concrete pour within contract requirements.

All wire-sawn concrete surfaces will be roughened to $\frac{1}{4}$ " amplitude prior to placement of new concrete.

1.4 - DOWNSTREAM FOUNDATION - DREDGING ROCK EXC, PRECAST PANELS

General Construction will prepare the foundation using a clam shell dredge to remove the sand and rock overburden, and an air lift to clean the rock surface of the gravel, sand, and silt that the clam shell dredge has left behind. The overburden will be disposed of below future units 12 and 13. All dredging and air lifting will be done during the in-water-work window. Turbidity will be kept within specification and permit limits by installing a silt curtain, and appropriate monitoring.

After the overburden has been removed and the underlying rock has been cleaned, an initial diver survey of the rock will locate any areas of incompetent rock requiring removal. We will use conventional techniques to break up the loose rock and a clam bucket and air lift to

remove the debris. Once the incompetent rock has been removed the area will receive a final video survey to assure the rock is clean, and the bottom is ready for foundation construction.

General Construction has employed Ben C. Gerwick, Inc., a structural and marine engineering firm, to review our foundation design, which is similar to the design provided in the drawings. The geologic report indicates that the use of a sheet pile cofferdam is not a viable method of construction due to the presence of irregular hard rock surfaces. Therefore our design utilizes concrete boxes set around the perimeter and interior sheet pile walls to separate the interior into manageable tremie pours. Pre-cast panels will be fabricated and stored, then assembled into boxes and stacked to form the perimeter of the foundation. An advantage of the pre-cast box design is that it is flexible enough to allow for existing sound rock ledges and outcroppings to remain in place. All underwater concrete will be tremie poured in full height lifts. Once all the foundation boxes have been filled with concrete, the temp dewatering bulkhead will be installed around the perimeter of the foundation. We will install sheetpile walls to separate the interior of the foundation into smaller concrete pours. After the interior of the foundation has been filled with tremie concrete, the foundation will be dewatered to elevation 472, allowing the remaining chute concrete work to be performed in the dry. Rebar dowels for the downstream ogee and training walls will be installed in the dry. We will drill holes for the rebar with percussion drilling, and secure the dowels with an appropriate grout.

1.5 - BULKHEADS, GATES AND FLOW FARING

General Construction will use a temporary dewatering bulkhead to dry out slot B. The temporary bulkhead will remain in place during concrete demolition and concrete installation. When concrete installation is complete, the permanent bulkhead will be installed. After installation and successful testing of the gates, the temporary dewatering bulkhead is removed allowing the installation of the flow farings.

1.6 - HYDRAULIC SYSTEM

Upon completion of installation, alignment and grouting of the vertical and inclined gate guides, the gates will be set. Functional testing of the hydraulic power unit and stroking of the hydraulic cylinders will occur concurrently with the installation of the gate guides.

GT000029

Public Utility District No. 2 of Grant County, Washington
Wanapum Future Unit Fish Bypass
Narrative Report for Bid Schedule

Commissioning of the hydraulic drive, electronic equipment and corresponding controls, including the PLC, will be accomplished with the assistance of the supplier's technical representatives.

GT000030

Public Utility District No. 2 of Grant County, Washington
Wanapum Future Unit Fish Bypass
Narrative Report for Bid Schedule

2.0 - CONCLUSION

General Construction has created a plan that will assure that this project is completed ahead of schedule, efficiently and safely. Any design assumptions or changes have been made to create a product that maintains the high quality standards of Grant County PUD No. 2.



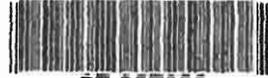
APPENDIX S

REBECCA CHURCH

FILED

JUN 14 2010

KIMBERLY A. ALLEN
Grant County Clerk



07-327022

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,

Plaintiff,

v.

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON,
a Washington municipal corporation,

Defendant,

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, a Washington
municipal corporation,

Third-Party Plaintiff,

v.

GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,
and TRAVELERS CASUALTY &
SURETY COMPANY, BOND NUMBER
41S103871237BCM,

Third-Party Defendants.

No. 08-2-01339-8

**DECLARATION OF ED KITTLE
IN OPPOSITION TO DEFENDANT
PUBLIC UTILITY DISTRICT NO. 2 OF
GRANT COUNTY'S MOTIONS FOR
PARTIAL SUMMARY JUDGMENT
RE: GCC'S SUPERIOR KNOWLEDGE
CLAIM, SLOT CLAIM, AND COFFER
CELL FLOODING CLAIM**

DECLARATION OF ED KITTLE IN
OPPOSITION TO MOTIONS FOR
PARTIAL SUMMARY JUDGMENT

Page 1

STEWART SOKOL & GRAY LLC
ATTORNEYS AT LAW

2300 SW First Avenue, Suite 200
Portland, OR 97201-5047
(503) 221-0699
FAX (503) 223-5706

Appendix S
Page 1 of 5

1 I, ED KITTLE, declare under penalty of perjury the following in support of GCC's
2 Superior Knowledge claim, Two Slot Method claim and Coffe Cell Flooding claim,
3 which I understand are the subject of three separate Motions for Partial Summary
4 Judgment filed by Defendant Public Utility District No. 2 of Grant County, Washington
5 ("PUD"):

6 1. At all times material, I was employed by the General Construction
7 Company ("GCC") with respect to the Wanapum Future Unit Fish Bypass, Contract
8 330-2023 ("Project" or "Contract"). I have personal knowledge of the matters set forth
9 herein.

10 2. After supervising completion of other work on the Project, in late 2005
11 and early 2006 I supervised pouring of concrete according to the schedule agreed to
12 between GCC and the PUD. When I took over responsibility for supervising the
13 concrete work, there was an agreed-to schedule that identified, among other things,
14 how much concrete would be poured, and where, on the wall of GCC's Job Trailer.
15 The agreed-to schedule allowed work in two slots at a time, and I will refer to the
16 agree-to schedule and concrete pouring plan as the "Two Slot Method" of construction.

17 3. On January 3, 2006, GCC made its first substantial concrete pour based
18 on the then-approved Two Slot Method schedule and plan. This first pour occurred in
19 Slot B, and was observed by and approved by the PUD's representatives. All aspects
20 of the pour went according to plan.

21 4. On or about January 5, 2006, I was told by the current Project Manager
22 that he had been told by the PUD that Future Unit 11 had moved as a result of the
23 January 3, 2006 pour in Slot B, and that the PUD had demanded that GCC
24 immediately cease pouring concrete and immediately meet with the PUD.

25
26 DECLARATION OF ED KITTLE IN
OPPOSITION TO MOTIONS FOR
PARTIAL SUMMARY JUDGMENT

Page 2

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FAX (503) 223-5706

Appendix S
Page 2 of 5

01445

1 5. The meeting demanded by the PUD occurred shortly thereafter. To the
2 best of my recollection, it occurred January 6, 2006. During the January 6, 2006
3 meeting, the PUD stated that "crack monitors" on Future Unit 11 (where the work of the
4 Project was being performed) showed that Future Unit 11 had moved after the January
5 3, 2006 pour. The PUD unequivocally directed GCC to abandon the then-approved
6 Two Slot Method and schedule for pouring concrete. The PUD also unequivocally
7 directed GCC to change the sequence of its then planed concrete pours in Slot B. The
8 PUD further directed GCC to propose a new sequence involving work in only one slot
9 at a time. During this process, the PUD's representatives were writing on a
10 blackboard, including to describe how they were directing Slot B pours to proceed. I
11 wrote on the blackboard that abandoning the Two Slot Method and complying with the
12 PUD's directive to work in one slot at a time would cost GCC both time and money. It
13 was clear from the context of our discussion that GCC believed the PUD would be
14 responsible for the costs and delays arising from the PUD's directive to pour concrete
15 in one slot at a time.

16 6. As directed by the PUD, GCC prepared and proposed a revised concrete
17 pour sequence that conformed to the PUD's directives during the January 6, 2006
18 meeting. The PUD accepted GCC's proposal and directed that GCC implement it,
19 which GCC did.

20 7. I have reviewed Dana Jeske's diary entry for January 6, 2006 with
21 respect to the meeting. It states, "Met with Ben, Chuck, Dave M and Ed on Future unit
22 stability, trends of work to-date and monolith 10-11 crackmeter movements. Discussed
23 their plans and how they can help to prevent the District from shutting the job down
24 until the a and c slots are filled." This entry, at best, is a very incomplete description of
25 the meeting. As stated above, the purpose of the meeting was to discuss the

26 DECLARATION OF ED KITTLE IN
OPPOSITION TO MOTIONS FOR
PARTIAL SUMMARY JUDGMENT

Page 3

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Portland, OR 97201-5047
(503) 221-0699
FAX (503) 223-5706

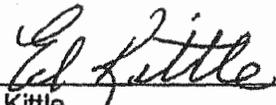
Appendix S
Page 3 of 5

1 movement that occurred (according to the PUD) after the January 3, 2006 pour, and to
2 develop a plan that would keep the project moving forward while minimizing the delay
3 caused to GCC, if possible. The PUD expressed that they were very concerned that
4 FERC would shut down the Project entirely because the Dam had moved, and
5 informed GCC that they wanted GCC to help them avoid that result..

6 I declare under penalty of perjury under the laws of the State of Washington and
7 pursuant to RCW 9A.72.085 that the foregoing is true and correct.

8 EXECUTED on this 9 day of June, 2010 in Seattle, Washington.

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Ed Kittle

DECLARATION OF ED KITTLE IN
OPPOSITION TO MOTIONS FOR
PARTIAL SUMMARY JUDGMENT

Page 4

STEWART SOKOL & GRAY LLC
ATTORNEYS AT LAW

2300 SW First Avenue, Suite 200
Portland, OR 97201-5047
(503) 221-0699
FAX (503) 223-5706

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DECLARATION OF ED KITTLE IN OPPOSITION TO DEFENDANT PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT RE: GCC'S SUPERIOR KNOWLEDGE CLAIM, SLOT CLAIM, AND COFFER CELL FLOODING CLAIM** on:

David E. Sonn
Jeffers, Danielson, Sonn & Aylward, P.S.
2600 Chester Kimm Road
PO Box 1688
Wenatchee, Washington 98807-1688

Attorneys for Defendant and Third-Party Plaintiff
Public Utility District No. 2 of Grant County

by the following indicated method or methods:

by mailing a full, true and correct copy thereof in a sealed, first-class postage-paid envelope, and addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Portland, Oregon on the date set forth below.

by causing a full, true and correct copy thereof to be hand-delivered to the attorney at the attorney's last-known office address listed above on the date set forth below.

by sending a full, true and correct copy thereof via overnight courier in a sealed, prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, on the date set forth below.

by faxing a full, true and correct copy thereof to the attorney at the fax number shown above, which is the last-known fax number for the attorney's office, on the date set forth below.

DATED this 14th day of June, 2010.

By: 

Thomas A. Larkin, WSBA #24515
Of Attorneys for General Construction
Company and Travelers Casualty & Surety
Company

CERTIFICATE OF SERVICE

APPENDIX T

REBECCA CHURCH
FILED

JUN 14 2010

KIMBERLY A. ALLEN
Grant County Clerk



07-327019

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF GRANT

GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,

Plaintiff,

v.

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON,
a Washington municipal corporation,

Defendant,

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, a Washington
municipal corporation,

Third-Party Plaintiff,

v.

GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,
and TRAVELERS CASUALTY &
SURETY COMPANY, BOND NUMBER
41S103871237BCM,

Third-Party Defendants.

No. 08-2-01339-8

**DECLARATION OF DAVE
ANDERSON IN OPPOSITION TO
DEFENDANT PUBLIC UTILITY
DISTRICT NO. 2 OF GRANT
COUNTY'S MOTIONS FOR PARTIAL
SUMMARY JUDGMENT RE: GCC'S
SUPERIOR KNOWLEDGE CLAIM AND
SLOT CLAIM**

CONFIDENTIAL

CLERK'S ACTION REQUIRED

CONFIDENTIAL

DECLARATION OF DAVE ANDERSON IN
OPPOSITION TO MOTIONS FOR
PARTIAL SUMMARY JUDGMENT

Page 1

STEWART SOKOL & GRAY LLC
ATTORNEYS AT LAW

2300 SW First Avenue, Suite 200
Portland, OR 97201-5047
(503) 221-0699
FAX (503) 223-5706

Appendix T
Page 1 of 14

18680

152

1 I, DAVE ANDERSON, declare under penalty of perjury the following in support
2 of GCC's Superior Knowledge claim and Slot claim, which are the subject of two
3 separate Motions for Partial Summary Judgment filed by Defendant Public Utility
4 District No. 2 of Grant County, Washington ("PUD"):

5 1. I am a licensed engineer. I make this declaration based on review of
6 documents received from FERC and/or produced during discovery in this action and on
7 personal knowledge. I am competent to testify to the contents of this declaration. A
8 copy of my resume is attached as **Exhibit A** hereto.

9 2. Along with a large number of Project documents, including the Contract
10 Documents, I have reviewed all of the documents produced by the Federal Energy
11 Regulatory Commission ("FERC") in this matter, including those documents classified
12 by FERC as Critical Energy Infrastructure Information ("CEII").

13 3. The essential features of the Wanapum Future Unit Fish Bypass Contract
14 ("Contract" or "Project") contemplated altering the three intake bays (Slots A, B and C)
15 of Future Unit 11 ("FUI No. 11") to provide an overflow spillway and construct closure
16 walls in the two adjacent slots. Primary construction elements included the construction
17 of a new concrete Ogee spillway and chute (discharge structure) within and
18 downstream of FUI No. 11, new operating gates, and demolition of the existing
19 crosswalls and modifications to the existing piers to accommodate the new spillway.

20 4. Unbeknownst to General Construction Company ("GCC"), for years PUD
21 and FERC had been studying the stability of the Wanapum Dam ("Dam"), originally
22 constructed in the 1960's, not just for regulatory reasons, but because of a long-term
23 concern that Future Unit Intakes ("FUI"s) were singularly dependent upon the continued
24 integrity of upstream tendon anchors. These tendon anchors were originally intended
25 as temporary but essential stability components pending completion of construction of

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1 future power units downstream of the FUIs. Not all of the anticipated power units were
2 constructed, leaving the anchors as the primary element providing stability for FUI Nos.
3 11 - 16.

4 5. Starting in the early 1980s, PUD and a variety of independent consultants
5 studied the FUIs in view of their continued reliance on the originally installed, yet
6 temporary, post-tensioned anchors grouted into the bedrock foundation and anchored
7 in the intake floor and piers for stability against overturning. Thirteen anchors were
8 provided to stabilize each intake block.

9 6. Independent studies suggested that the tendon anchors were susceptible
10 to corrosion and had been installed with questionable long-term protection. In addition,
11 no effective engineering testing could be conducted to determine that the anchor
12 tendons still maintained sufficient integrity to protect the FUIs from overturning.

13 7. In 1985, PUD engaged the firm of Ben C. Gerwick to investigate the
14 corrosion potential of the anchor tendons in all of the FUIs. PUD included an excerpt
15 from Gerwick's report in later PUD filings with FERC:

16 "The grout encasement of the tendons at Wanapum was not
17 constructed so as to provide permanent corrosion protection. The
18 possibility for some corrosion at the interface between the first and
19 second stage grout cannot be discounted, because our review of
20 the records shows that a grout of high permeability was used and
21 that the considerable foam and laitance was probably present at
22 this interface and was not removed prior to the second stage
23 grouting."

24 **Exhibit J, pp. 3-3 - 3-4.**

25 8. PUD, as operator of the Dam, is regulated by FERC. In that regulatory
26 capacity, FERC requires certain reporting by PUD, including a periodic Part 12 Dam
Safety Report.

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1 9. Prior to 2005, in connection with the re-licensing of Wanapum Dam and
2 the Part 12 Dam Safety Reports for the dam, PUD and at least two independent
3 engineering firms, MWH and Acres International ("Acres"), evaluated certain issues
4 concerning Wanapum Dam stability. Each of the reports generated by those firms
5 focused on the heightened concern that the temporary anchors might be insufficient to
6 provide stability for the Dam FUI sections where the power units had not been
7 constructed (FUI Nos. 11 – 16).

8 10. In early 2002, FERC essentially rejected the 1999 Consultant Safety
9 Inspection Report due to differences regarding key engineering parameters necessary
10 to determine global stability. On February 11, 2002, FERC requested a re-analysis of
11 the Dam stability utilizing these new parameters. **Exhibit C, p. i.** On December 16,
12 2002, PUD transmitted to FERC a supplemental "Stability Analysis of the Wanapum
13 Development Concrete Structures" authored by its consultant. **Exhibit C.** On January
14 13, 2003, PUD transmitted to FERC errata sheets for the supplemental report, with
15 sliding stability factor of safety highlighted, and crack lengths enumerated for various
16 locations. **Exhibit D.**

17 11. On July 17, 2003, FERC advised PUD of the need to incorporate the new
18 process entitled Dam Safety Performance Monitoring Program in PUD's Part 12 Dam
19 Safety reporting requirement, including the important addition of a process known as
20 Potential Failure Modes Analysis ("PFMA"). **Exhibit E.**

21 12. On January 8, 2004, PUD advised FERC of studies being conducted to
22 eventually establish a fish bypass at a Future Unit Intake ("FUI") of the Dam. **Exhibit**
23 **F.** In February, 2004, a PFMA workshop was conducted which identified the Dam's
24 FUIs, still anchored with tendons, as Category 1 Potential Failure Mode (Defined, in
25 part: "... Greatest significance ... fundamental flaw or weakness is identified ...

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1 conditions and events leading to failure seemed reasonable and credible.”). The
2 workshop concluded that the global stability of the FUIs was singularly and critically
3 dependent on continued functionality of the anchors. Jacobs is not listed as a
4 workshop participant. **Exhibit G, Section 3 and Appendix A.**

5 13. In the reports following the PFMA workshop, Acres and other
6 independent consultants employed by PUD identified with great specificity the stability
7 concern regarding the FUI anchors and, together with PUD and FERC, labeled it a
8 Category I Potential Failure Mode—the most serious of potential failure modes under
9 the current FERC guidelines. See 2004 Annual Surveillance Report (September 16,
10 2004) (**Exhibit H**); Potential Failure Modes Analysis (October 2004) (**Exhibit G**); and
11 2004 Part 12 Safety Report (November 10, 2004) (**Exhibit J**). The stability concern
12 arose from the potential failure of the post-tensioned anchors that tie the FUI monoliths
13 (structures) to the foundation rock. The anchors were designed to compensate for the
14 Future Unit monolith’s lack of mass, and were originally intended to be temporary, until
15 powerhouse units, which would provide the necessary mass for unaided stability, were
16 constructed on the downstream side of the monoliths. At the time of the Project, not all
17 powerhouse units, however, had been constructed, and thus the FUI monoliths had
18 relied upon the anchors for over 40 years. Furthermore, due to lack of documentation
19 of effective long-term corrosion protection at anchor installation and the highly
20 permeable grout used at installation, the anchors may be susceptible to corrosion.
21 However, due to the inaccessibility of the anchors, there is no practical method to
22 examine their condition. If an anchor or anchors were to fail, a monolith could overturn
23 leading to a massive and catastrophic discharge of the reservoir.

24 14. Also during 2004, the documents reveal that PUD was meeting with
25 Jacobs Engineering concerning the prospective Fish Bypass Project. Although the

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1 tendon anchors came up during meetings between PUD and Jacobs where it was
2 recommended that additional, temporary anchors be installed for additional stability
3 during construction, these construction anchors were eventually deleted from
4 consideration. (Exhibit K). I have not seen any evidence that the reports Acres was
5 developing were being shared with Jacobs, or vice versa. On February 18, 2005, the
6 PUD's consultant, Jacobs Engineering, published the PUD's "Future Unit Fish Bypass
7 Stability Analysis." ("Stability Analysis") (Exhibit L). The analysis does not expressly
8 mention the Future Unit Category I Potential Failure Mode identified in the above-
9 mentioned analyses submitted to FERC. Indeed, it references not the 2004 Part 12
10 Safety Report, but the 2002 Part 12 Safety Report. PUD filed the February 18, 2005
11 Stability Analysis, together with the contract documents for the Project, with FERC by
12 letter dated March 24, 2005 (Exhibit M).

13 15. No reference at all was made in any of the contract documents or in the
14 Instructions to Bidders or in the Invitation for Bid that any of the foregoing documents
15 existed or for that matter that PUD, FERC and several independent engineering
16 organizations were greatly concerned about the stability of the FUI sections. Any
17 construction modification of FUI No. 11 would adversely affect the stability of FUI No.
18 11.

19 16. Jacobs prepared its final Future Unit Fish Bypass Stability Analysis, dated
20 February 18, 2005 (Exhibit L), and PUD submitted the Stability Analysis to FERC on
21 March 24, 2005 (Exhibit M). At the request of PUD, the Stability Analysis (but not the
22 construction documents) was designated as a "CEII-Do Not Release" document
23 protected by FERC (Exhibit M). Jacobs was the design engineer in connection with
24 the Contract and prepared all design drawings, approved all submittals by GCC and
25 actively evaluated the construction sequence which is the subject of this claim both

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1 pre-bid and during the entire course of construction. In its stability analysis overview
2 Jacobs reflected that the modifications to Future Unit 11, which was the subject of the
3 Contract, would be constructed in stages, thus requiring multiple stability analyses to
4 be performed by Jacobs that the modified Future Unit was stable during all
5 intermediate construction stages.

6
7 17. Given the ongoing concern with the integrity of the FUJ No. 11 anchors,
8 Jacobs developed a sequence for performing the "in unit" work:

9 "Construction of the concrete closure walls for the North and South
10 slots (slots A and C in the original construction drawings) is
11 scheduled to occur before the work begins in the center slot (slot
12 B). This constraint enables an early start of the major electrical
13 work and significantly improves the stability of the Future Unit
14 during the remainder of construction."

15 (Exhibit L, p. 4-1)

16 18. With respect to the construction sequence analysis, which related
17 specifically to the work in slots A, B and C either on a concurrent or consecutive basis,
18 Jacobs recognized that:

19 "The gravity analysis method is used for the construction sequence
20 analysis. The primary reason for using a simplified analysis is that
21 the construction sequence anticipated for the contract will provide
22 only a **general framework**. Additional analyses will be required
23 when the contractor develops a detailed construction sequence.
24 The gravity method can be quickly updated and analyzed and thus
25 facilitate timely review of the contractor's proposed construction
26 sequence and any possible modifications made as construction
progresses." (emphasis added)

In its analysis description, Jacobs went on to state:

"The gravity analysis method was used for the construction
sequence stability analysis. The primary reason for using a
simplified analysis recognizes that the construction sequence
anticipated by the construction documents will provide only a
general framework to guide the contractor. Additional analyses will
be required when the contractor develops a detailed construction

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1 sequence. The gravity method is quickly updated and analyzed
2 and thus will facilitate timely review of the contractor's proposed
3 construction sequence, as well as possible modifications to the
4 sequence as construction progresses."

(Exhibit L, pp. 1-1 – 1-2; 4-1)

5 19. In addition, along with the submission of the Stability Analysis to PUD and
6 FERC, Jacobs provided a gravity analysis result chart which summarized the calculated
7 Tension Crack Length, the Maximum Bearing Pressure and the Sliding Factor of Safety
8 without Cohesion for its suggested sequence. As indicated in the Stability Analysis
9 excerpts above, Jacobs suggested that its sequence was only a general framework and
10 the analysis could be quickly updated and analyzed for timely review of the specific
11 contractor-proposed sequencing. I have not seen any evidence that these calculations
12 were either provided to bidders or set forth in the bid documents as additional criteria for
13 acceptance of contractor-proposed sequencing. In fact, disclosure of the Stability
14 Analysis, which had been designated "CEII-Do Not Release" at the request of PUD,
15 would not have been authorized without obtaining proper clearance. PUD did not
16 disclose to bidders documents or information that would require CEII clearance.

17 20. Following the preparation of the Stability Analysis, a Quality Control
18 Inspection Program ("QCIP") was developed either by PUD or Jacobs, with a
19 draft dated March 16, 2005, and filed with FERC without any attachments.
20 (Exhibit N). The QCIP, which was also not shared with GCC or other bidders,
21 suggested that "the contractor may elect to choose a slightly different order to
22 achieve the same end result."

23 21. On May 26, 2005, FERC provided the PUD a letter indicating that FERC's
24 review of the Fish Bypass Project contract documents and QCIP "did not find any
25 significant deficiencies or errors that would affect the safety of the project structures or

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1 adequacy of the project works." (Exhibit O). The letter further instructs the PUD as
2 follows:

3
4 The stability analyses included gravity method analyses to evaluate
5 stability for the nine steps in the anticipated construction sequence.
6 If the proposed construction sequence differs from the anticipated,
7 you are requested to submit to this office, at least 30 days prior to
8 start of construction of the respective step(s), three copies of a
9 revised method analysis for the proposed change(s). . . You are
10 reminded that no changes to operation of the project can be made
11 to the project until it is authorized by FERC.

12 The letter does not discuss a possible concurrent dewatering schedule. Again, PUD did
13 not disclose this letter to GCC, and I have not seen any evidence that PUD submitted
14 any of GCC's construction sequences to FERC for review.

15 22. PUD's March 24, 2005 filing with FERC, which enclosed the Stability
16 Analysis marked at the request of PUD "Contains Critical Energy Infrastructure
17 Information - Do Not Release", was less than a month prior to PUD publishing the
18 Project's Invitation for Bids. (Exhibit M) Notwithstanding PUD's superior knowledge
19 gained after years of analysis summarized above, and without disclosing any of the
20 engineering studies, reports and concerns which PUD possessed regarding the stability
21 of FUI No. 11, the Invitation for Bids accorded bidders the option to modify the
22 construction sequence, subject to PUD's approval. (Exhibit I) Without disclosure of the
23 studies, reports and concerns referenced above, GCC was not aware of those
24 concerns, nor any restrictions or objective criteria which would govern the approval of
25 such modifications.

26 23. On July 13, 2005, FERC sent PUD a letter memorializing a June 7, 2005
meeting between FERC, PUD and several of the PUD's consultants, in which the
participants discussed the stability of the FUI monoliths. (Exhibit P) On August 26,

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1 2005, the PUD submitted to FERC a letter responding to FERC's July 13, 2005 letter,
2 and indicating that

3 The District has decided to undertake filling the upstream portion of
4 the future units' intake slots with concrete in the near future to
5 provide additional stabilization. This decision was influenced
6 heavily by the meeting with FERC staff in Portland and Salt Lake
7 City, conference telephone calls, discussions with the Independent
8 Consultants, and internal District discussions. . . . With other
9 construction currently active in future unit 11, the District believes
10 that proceeding with the concrete infill at this time is prudent.

11 (Exhibit Q).

12 24. While construction was proceeding on the Project, the Hatch Acres
13 studies suggested that it was likely that the continued stability of the Dam would
14 require concrete infills of all of the Future Units, namely Units 12-16. For a
15 period of time, PUD attempted to convince FERC that, rather than engaging in
16 that very costly construction process, existing monitoring devices installed on the
17 Dam could be used to monitor Future Unit uplift and deflection measurements
18 thus providing an "early warning system" should there be an anchor failure.
19 However, when Hatch Acres determined that, with the existing instrumentation,
20 they would not be able to predict tendon anchor failures, the plan to infill the
21 remaining FUIs with concrete, thus providing a true gravity dam, was determined
22 to provide the only full assurance of dam stability.

23 25. At approximately the same time, there is documentation that
24 indicates PUD observed movement of the dam during the GCC construction
25 process. I have not seen evidence that this movement was brought to the
26 attention of FERC by PUD.

27 26. Production of the known, but undisclosed stability concerns of
28 FERC, PUD and its consultants to the bidders would have caused GCC and,
29 presumably the other bidders, to consider the accompanying unknown, increased

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1 risk of re-sequencing work in FUI No. 11. Instead, PUD encouraged the bidders
2 via contract document provision T-11 (added by addendum), to submit an
3 alternative sequence plan with their bid. This was misleading, and unlikely to be
4 considered without a subsequent review and acceptance by FERC. PUD
5 possessed superior knowledge and failed to disclose such material information to
6 the detriment of GCC.

7 27. GCC first recognized that there was non-disclosed information in
8 2008, after receipt of FERC documents by counsel of record.

9 28. The vital and necessary information possessed by PUD which was not
10 referenced, included or summarized – and which was not even disclosed in the Stability
11 Analysis (which itself was not disclosed to GCC), and which was absolutely needed by
12 GCC to evaluate whether its concurrent construction sequence was feasible includes,
13 but is not limited to the following:

- 14 • The criteria that would be used to judge the acceptability of an alternate
15 sequence;
 - 16 • FERC's overall review and approval authority over any sequence change;
 - 17 • The voluminous Gerwick, Hatch Acres and MWH studies and concerns, or
18 even a summary thereof, which detailed the sensitivity of the tendon anchor
19 functionality in terms of preserving overall global stability of FUI No. 11;
 - 20 • Any measurement or instrumentation criteria by which PUD would monitor the
21 stability of FUI No. 11 and/or provide a basis for PUD to suspend or re-direct
22 construction activities. The fact that existing instrumentation was insufficient
23 to reliably provide an "early warning system";
 - 24 • FERC's new Part 12 safety requirements for the Dam;
- 25

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1 29. I reviewed the Geotechnical report ("GeoTech Report") dated April 4, 2005
2 attached as Exhibit C to the Declaration of Reece Voskuilen. The GeoTech Report
3 does not contain an accurate or complete description of the knowledge PUD possessed
4 regarding the condition and concerns regarding the Wanapum dam, including the post-
5 tensioned anchors. Also, the GeoTech Report, although drafted nearly two months
6 after the date of the Stability Analysis Report, does not reference in any fashion the
7 Stability Analysis Report (see, e.g., Voskuilen Ex. C "References", pp. 21 - 22). The
8 GeoTech Report also does not reference, in any fashion, the Hatch Acres reports and
9 concerns set forth above. All of this constitutes critical superior knowledge possessed
10 by PUD that it failed to disclose to bidders, including GCC, during and after the
11 solicitation of bids for the Project.
12

13 I declare under penalty of perjury under the laws of the State of Washington and
14 pursuant to RCW 9A.72.085 that the foregoing is true and correct.

15 EXECUTED on this 8th day of June, 2010 in Omaha, Nebraska.
16

17 

18 Dave Anderson
19
20
21
22
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25

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DECLARATION OF DAVE ANDERSON IN OPPOSITION TO DEFENDANT PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT RE: GCC'S SUPERIOR KNOWLEDGE CLAIM AND SLOT CLAIM** on:

David E. Sonn
Jeffers, Danielson, Sonn & Aylward, P.S.
2600 Chester Kimm Road
PO Box 1688
Wenatchee, Washington 98807-1688

Attorneys for Defendant and Third-Party Plaintiff
Public Utility District No. 2 of Grant County

by the following indicated method or methods:

by mailing a full, true and correct copy thereof in a sealed, first-class postage-paid envelope, and addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Portland, Oregon on the date set forth below.

by causing a full, true and correct copy thereof to be hand-delivered to the attorney at the attorney's last-known office address listed above on the date set forth below.

by sending a full, true and correct copy thereof via overnight courier in a sealed, prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, on the date set forth below.

by faxing a full, true and correct copy thereof to the attorney at the fax number shown above, which is the last-known fax number for the attorney's office, on the date set forth below.

DATED this 14th day of June, 2010.

By: 
Thomas A. Larkin, WSBA #24515
Of Attorneys for General Construction
Company and Travelers Casualty &
Surety Company

CERTIFICATE OF SERVICE

Exhibits Submitted As Confidential

APPENDIX U

MEMORANDUM

May 5, 2005

To: Tim Culbertson, Manager

From: Leon Hoepner, Hydro Director
Stephen Brown, Director of Natural Resources

Subject: HYDRO ENGINEERING DIVISION
Award of Contract 333-2023
Construction of Wanapum Future Unit Bypass
Project ID No. 100057
Program/Project No. 5130/14
Cost Center 9180

Purpose: Recommend the Commission award Contract 330-2023.

Discussion: The Wanapum Future Unit Fish Bypass will increase the survival rate of downstream smolt passage in an efficient and cost-effective manner. The bypass will also assist the District in achieving its goals for reduction of total dissolved gas in the Wanapum tailrace.

The bid opening for the Construction of the Wanapum Future Unit Bypass, Contract 330-2023, was held on May 5, 2005. Bid results are as follows:

Engineers Estimate	\$29,090,000.00
General Construction	\$29,449,100.00
Barnard Construction Co., Inc.	\$37,310,000.00
Traylor Pacific	\$38,100,000.00

General Construction's bid is both commercially and technically compliant. The Program Manager for this Contract is Stuart Hammond; the Project Manager for this Contract is Dana Jeske. This project is in the 2005 through 2007 budgets under Program/Project 5130/14.

Recommendation: Recommend the Commission award Contract 330-2023 to General Construction for the sum of \$29,449,100.00.

c: Stuart Hammond Tom Dresser Curt Dotson Ray Folanini
Chris Akers Lonnie O'Neal Dana Jeske George Thompson
Contract File

I certify that the 2005 budget contains funds for this project: _____
Date: _____

APPENDIX V

Mail Message



From: Chris Akers
To : Kim Justice ;
CC : Stuart Hammond
Date Thursday, May 12, 2005 9:39 AM
Received:
Subject: Re: 330-2023
330-2023.DOC
Addendum #1 for Contract 330-2023.doc
330-2023-5:Addendum%20%20for%20330-2023.doc.pdf

Kim, Here is the Contract document 330-2023 and addendum # 1. Addendum # 2 contained only technical spec and drawing revisions.

>>> Kim Justice 05/12/05 8:52 AM >>>

The document the bidders were given that contains all of the terms and conditions. I usually hear it referred to as the bid document.

Kim K. Justice, CPA
 Auditor
 Grant County Public Utility District
 (509) 766-2516
 Fax (509) 754-6604

>>> Chris Akers 05/12/2005 8:49:23 AM >>>

Kim, Do you mean the bid forms the bidders submitted, which is what is being scanned and prepared, or do you want the entire contract document?

>>> Kim Justice 05/12/05 8:43 AM >>>

I have these in the Commission package. I need the bid documents. I have not seen them.

Kim K. Justice, CPA
 Auditor
 Grant County Public Utility District
 (509) 766-2516
 Fax (509) 754-6604

>>> Chris Akers 05/12/2005 8:33:34 AM >>>

Kim, please find attached our commercial evaluation, a bid comparison from Dana Jeske, and a copy of the award memo prepared for review. We received three bids on this project. Two bids far exceeded the fifteen percent limitation and cannot be considered. The remaining bid has been determined to be both commercially and technically compliant.

The actual bid forms and related submittals will be forwarded in a separate e-mail once they are scanned and processed.

Please let me know if you require any further information. Thanks, Chris

>>> Kim Justice 05/11/05 5:53 PM >>>

CA001513

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I see we have a bid award up for review. I haven't seen this contract at all. Please send me the final bid documents and any amendments electronically as soon as possible.

Kim K Justice, CPA
Auditor
Grant County Public Utility District
(509) 766-2516
Fax (509) 754-6604

CA001514

APPENDIX W

REGULAR MEETING
OF PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY

Audio CD recording is available at the Main Headquarters lobby for \$1.00 plus tax per CD

May 23, 2005

The Commission of Public Utility District No. 2 of Grant County, Washington, convened at 9:00 a.m. at the District's Main Headquarters Building, 30 C Street SW, Ephrata, Washington with the following Commissioners present: Bill Bjork, President; Tom Flint, Assistant Secretary; and Greg Hansen, Commissioner. Commissioner Allred was absent due to personal business and Commissioner Claussen was absent to attend the NWPPA Annual Conference.

The Commission held an executive session from approximately 10:00 a.m. to 10:30 a.m. for the purposes of potential litigation relating to a personnel issue.

Larry Jones reported to the Commission that the Union contract passed.

Nick Gerde discussed the Department of Revenue telecom tax status with the Commission.

Laurel Heacock presented a relicensing update to the Commission.

Eric Briggs, Ephrata, distributed a personal telephone bill showing the cost savings available to Grant County ratepayers subscribing to the Zipp fiber network for voice over IP telephone service. Mr. Briggs requested the Commission pursue options to fund the fiber buildout.

Gary Baker, Wilson Creek, reported to the Commission that his Zipp fiber network voice over IP telephone service and his television service work flawlessly. Mr. Baker also addressed the Commission regarding subsidizing of rate classes.

Craig Jungers, Internet Service Provider, expressed his support of fiber buildout and commented on the draft Telecommunications Customer Service Policies.

Don Long, Ephrata, commented on the Commission financial workshop held last week and requested the Commission pursue options to fund the fiber buildout.

Allen Troup, Ephrata, discussed the petition in support of fiber buildout and read a comment supporting fiber buildout from a ratepayer.

Motion was made by Mr. Flint and seconded by Mr. Hansen to approve the meeting minutes of May 16, 2005. After consideration, the motion passed by unanimous vote of the Commission.

Resolution No. 7819 relative to amending Resolution No. 7811 modifying the list of authorized depositories of the District was presented to the Commission. Motion was made by Mr. Flint and seconded by Mr. Hansen to approve Resolution 7819. After consideration the motion passed by unanimous vote of the Commission.

RESOLUTION NO. 7819

A RESOLUTION AMENDING RESOLUTION NO. 7811, MODIFYING
THE LIST OF AUTHORIZED DEPOSITORIES OF THE DISTRICT

Recitals:

1. Due to changes involving financial institutions and/or changes in District personnel, the District's Treasurer/Controller recommends Resolution No. 7811 be amended as set forth below; and
2. The District's Manager has reviewed the Treasurer/Controller's recommendation and concurs with the provisions set forth below.

NOW, THEREFORE BE IT RESOLVED by the Commissioners of Public Utility District No. 2 of Grant County, Washington as follows:

Section 1: The following are banking institutions, including their respective branches in Grant County or successor agents, authorized to be depositories of the District:

US Bank of Washington
Bank of America
Washington Trust Bank
Bank Of Whittan

Resolution No. 7822 relative to amending the District's Telecommunications Customer Service Policies was presented to the Commission. Motion was made by Mr. Flint and seconded by Mr. Hansen to approve Resolution 7822. After consideration the motion passed by unanimous vote of the Commission.

RESOLUTION NO. 7822

A RESOLUTION AMENDING THE DISTRICT'S TELECOMMUNICATIONS CUSTOMER SERVICE POLICIES

Recitals:

1. The District is authorized by RCW 54.16.330 to operate and maintain telecommunications for the District's own internal telecommunications needs and for the provision of wholesale telecommunications services within the District; and
2. The District's Manager and staff are of the opinion that the Revised Telecommunications Customer Service Policies are in the best interest of the District; and

NOW THEREFORE BE IT RESOLVED by the Commission of Public Utility District No. 2 of Grant County, Washington that the Telecommunications Customer Service Policies attached hereto are hereby approved and adopted effective June 1, 2005.

PASSED AND APPROVED by the Commission of Public Utility District No. 2 of Grant County Washington, this 23rd day of May 2005.

Resolution No. 7823 relative to accepting a bid and awarding a contract was presented to the Commission. Motion was made by Mr. Flint and seconded by Mr. Hansen to approve Resolution 7823. After consideration the motion passed by unanimous vote of the Commission.

RESOLUTION NO. 7823

A RESOLUTION ACCEPTING A BID AND AWARDING A CONTRACT, 430-2031, FOR LAWN CARE AND MAINTENANCE AT THE DISTRICT'S HYDRO ADMINISTRATION FACILITY AND TWO VILLAGES FOR 2005 AND 2006

Recitals:

1. Bids were publicly opened on April 27, 2005 for Contract 430-2031, Lawn Care and Maintenance at the District's Hydro Administration Facility and Two Villages for 2005 and 2006; and
2. One bid proposal was received and evaluated by the District's staff; and
3. Earthly Delights of Mattawa, Washington submitted the only bid and the bid is within fifteen percent of the engineer's estimate of \$84,773.34; and
4. The District's Director of Support Services and Manager concur with staff and recommend award to Earthly Delights as the lowest responsible and best bid based on the bidder's plan and specifications.

NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 2 of Grant County, Washington, that the Manager is authorized to enter into a contract, Contract 430-2031, for Lawn Care and Maintenance at the District's Hydro Administration Facility and Two Villages for 2005 and 2006 with Earthly Delights of Mattawa, Washington in the amount not to exceed \$91,084.62 plus applicable sales tax upon receipt of the required performance bond in a manner satisfactory to the District's counsel.

PASSED AND APPROVED by the Commission of Public Utility District No. 2 of Grant County, Washington, this 23rd day of May, 2005.

Resolution No. 7824 relative to accepting a bid and awarding a contract was presented to the Commission. Motion was made by Mr. Flint and seconded by Mr. Hansen to approve Resolution 7824. After consideration the motion passed by unanimous vote of the Commission.

RESOLUTION NO. 7824

A RESOLUTION ACCEPTING A BID AND AWARDING A CONTRACT, 330-302A, FOR CONSTRUCTION OF WANAPUM FUTURE UNIT BYPASS

Recitals:

5. Bids were publicly opened on May 5, 2005 for Contract 330-2023, Construction of Wanapum Future Unit Bypass; and
6. Three bid proposals were received and evaluated by the District's staff; and
7. General Construction of Poulsbo, Washington was the lowest responsible bidder and has submitted the best bid based on the District's plans and specifications and the bid is within fifteen percent of the engineer's estimate of \$29,090,000.00; and
8. The District's Hydro Director and Manager concur with staff and recommend award to General Construction as the lowest responsible and best bid based on the bidder's plan and specifications.

NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 2 of Grant County, Washington, that the Manager is authorized to enter into a contract, Contract 330-2023, for Construction of Wanapum Future Unit Bypass with General Construction of Poulsbo, Washington in the amount of \$29,449,100.00 plus applicable sales tax upon receipt of the required performance bond in a manner satisfactory to the District's counsel.

PASSED AND APPROVED by the Commission of Public Utility District No. 2 of Grant County, Washington, this 23rd day of May, 2005.

Motion was made by Mr. Hansen and seconded by Mr. Flint authorizing approval to send two employees to travel to Hyundai Heavy Industries in Ulsan, Korea to inspect and observe testing of transformers during the week of June 12, 2005. After consideration the motion passed by unanimous vote of the Commission.

Motion was made by Mr. Flint and seconded by Mr. Hansen authorizing approval to send two employees to the American Records Management Association annual conference in Chicago, Illinois on September 17 - 21, 2005. After consideration the motion passed by unanimous vote of the Commission.

Motion was made by Mr. Flint and seconded by Mr. Hansen authorizing the Manager, on behalf of the District, to execute the lease agreement with Kilroy Realty, L.P. for rental of the Seattle office. After consideration the motion passed by unanimous vote of the Commission.

Motion was made by Mr. Flint and seconded by Mr. Hansen approving the offer of an Employment Separation Agreement and authorizing the Manager to execute the agreement contingent upon acceptance by the employee. After consideration the motion passed by unanimous vote of the Commission.

Linda Jones discussed a request from KBSN to host a radio talk show with the Manager and Commissioners.

Stephen Brown informed the Commission of a request from the City of Ephrata for an easement to support a rail plan in the Ephrata area. The Commission gave approval to continue negotiations of the easement with legal review.

Dawn Woodward requested feedback from the Commission on preferences for fiber reporting.

The following warrants are approved for payment:

Warrant Numbers: 51249 through 51372 \$4,152,360.08

The May 23, 2005 meeting was officially adjourned at 2:25 p.m.

ATTEST:

/s/

William E. Bjork, Jr., President

/s/

Vera B. Claussen, Secretary

/s/

Randy Alfred, Vice President

/s/

Tom Flint, Assistant Secretary

/s/

Greg Hansen, Commissioner

APPENDIX X



Grant County
PUBLIC UTILITY DISTRICT
Innovation & Excellence...Yesterday, Today and Tomorrow

May 23, 2005

Mr. Ronald Morford
General Construction Company
19472 Powder Hill Road
Poulsbo, Washington 98370

RE: Notice of Award
CONTRACT TITLE: Construction of
Wanapum Future Unit Fish Bypass
Contract Documents 330-2023

Dear Mr. Morford,

Public Utility District No. 2 of Grant County has considered the Bid submitted by you for the subject work and is pleased to notify you that your Bid has been accepted for that work in accordance with the referenced Contract Documents.

SPECIAL NOTE: Pursuant to RCW 54.04.080, you are required to execute and return both copies of the enclosed Contract Form to the District within ten (10) calendar days together with the following:

1. A performance bond prepared and executed in accordance with Section 13 of the Instruction to Bidders;
2. A certificate of insurance attesting to the amounts and areas of coverage specified in the Contract with a provision naming the District as an additional insured; and
3. A properly executed and notarized Signature Authorization form confirming the authority of the person signing the Contract.

Failure to comply may result in the canceling of the contract and the forfeiture of bid security

Before any payment can be made of this Contract, a properly executed and notarized "Statement of Intent to Pay Prevailing Wages" Form(s) pursuant to RCW 39.12.040 must be on file with the District; all Subcontractors, being utilized are also required to provide a copy of the "Statement of Intent Form.

After receipt and execution of the Contracts by the District, a fully conformed copy will be returned to you for your records. If there are any questions regarding the above, please contact the undersigned by telephone at (509) 754-5088 Ext 3132 at your earliest convenience.

Sincerely,

Chris Akers
Contract Officer

Enclosures

Public Utility District No. 2 of Grant County, Washington

P. O. Box 878 • Ephrata, Washington 98823 • 509.754.0500 • www.gcpud.org

Appendix X
Page 1 of 3

20060

GCC 0723344

CONTRACT FORM

THIS AGREEMENT, made and entered into on the 23rd day of May 2005 by and between

PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON
hereinafter called "the District,"

and

General Construction Company
hereinafter called "the Contractor",

WITNESSETH:

The parties hereto for the consideration set forth in the Contract Documents agree as follows:

1. SCOPE OF WORK

The Contractor agrees to furnish all required work, including labor and materials, in full compliance with the Contract Documents made part hereof, entitled:

BID FOR: CONTRACT DOCUMENTS: #330-2023
Construction of Wanapum Future Unit Fish Bypass

2. WORK COMPLETION

The Contractor shall furnish all labor, tools, equipment and materials required by Contract Documents for Construction of the Wanapum Future Unit Fish Bypass within the times required by the Contract Documents. Failure to do so may result in damage to the District. Since the exact amount of such damage would be difficult to ascertain, it is agreed that the Contractor shall pay to the District, as liquidated damages and not as a penalty, five thousand dollars (\$5,000.00) per calendar day for each day completion is delayed beyond any of the required completion dates. The liquidated damages shall be assessed on an accumulative basis, provided, however, the total amount of liquidated damages shall not exceed the amount of the Contractor's Bid. Such amount may be deducted from any money due the Contractor. No excuse for failure to timely perform will be recognized except as provided in G-2.

3. PAYMENT

The District agrees to pay the Contractor for the work herein to be performed in the sum of Twenty-nine million four hundred forty nine thousand one hundred dollars (\$ 29,449,100.00), plus applicable Washington State Sales Tax.

Payment will be made by the District upon proper completion of each work schedule denoted on the Bid Form and following receipt and approval of proper invoices, subject to the provisions of GC-15, 16 and 17.

No payment shall be evidence of completion and/or satisfactory performance of the Contract, either wholly or in part, and no payments shall be construed to be an acceptance of defective or non-conforming materials or work.

4. WARRANTY

Refer to GC-13.

5. PERFORMANCE BOND

The Contractor shall furnish in favor of the District, a Performance Bond as required by the Contract Documents, and this Contract shall not obligate the District until such Performance Bond has been tendered.

6. APPLICABLE LAW

Contractor shall comply with all applicable federal, state and local laws and regulations including amendments and changes as they occur. All written instruments, agreements, specifications and other writing of whatsoever nature which relate to or are a part of this Agreement shall be construed, for all purposes, solely and exclusively in accordance and pursuant to the laws of the State of Washington. The rights and obligations of the District and Contractor shall be governed by the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of this Agreement shall be exclusively in the Superior Court, County of Grant, State of Washington or the Federal District Court for the Eastern District of Washington at the District's sole option. In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief allowed.

IN WITNESS WHEREOF, the parties hereto have executed this Contract under their several seals the day and year first above written; the name and corporate seal of each corporate party hereto being hereto affixed and these presents being duly executed in two counterparts by the proper officers of each thereunto duly authorized, each of which counterparts shall without proof or accounting for the other counterparts, be deemed an original Contract.

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY

BY: Leon Hoepner
Leon Hoepner, Hydro Director

CONTRACTOR

BY: Ronald H. Morford
Ronald H. Morford
TITLE: President

ATTEST:
BY: Greg S. Casper
Greg S. Casper
TITLE: Assistant Secretary

APPENDIX Y

Phyllis.Evert

From: Dave.Bishop
it: Thursday, May 26, 2005 2:44 PM
cc: Jim.Durnford; Kent.Large
Subject: FW: Construction Sequence and Concrete placement within B slot
Attachments: Review Summary of GC Const Sequence.pdf

-----Original Message-----

(From: Dana Jeske [mailto:DJESKE@gcpud.org])
Sent: Thursday, May 26, 2005 12:58 PM
To: Dave.Bishop
Cc: George Thompson
Subject: Construction Sequence and Concrete placement within B slot

Dave,

Attached is Jacobs review of the proposed construction sequence, as well as a modification that would keep the crack length to a more reasonable value. In response to a contractor question:

For concrete placement within the B slot, the specifications would currently allow the following:

Maximum lift height - 8 feet. (T-22, Paragraph 1.05.F.1)

For a lift width of 20 feet, the maximum length would be 40 feet. (Based on the 2:1 length/width limitation of T-22, Paragraph 1.05.F.3)

The use of two segments, instead of the three shown, is permissible within the B slot based on the above. Our preference is that the lengths of the segments be relatively balanced.

Thanks,

Dana

><(((o> ><(((o> ><(((o> ><(((o> ><(((o>

Dana Michael Jeske, PE
Grant County PUD #2
15655 Wanapum Village Lane SW
Beverly, WA 99321
509-766-2528 ext. 3105 (phone)
509-760-8626 (cell)
509-754-6762 (fax)

Djeske@gcpud.org (e-mail)

Jesked@asmc.org (e-mail)

><(((o> ><(((o> ><(((o> ><(((o> ><(((o>

Wanapum Dam Future Unit Fish Bypass
Jacobs Civil Inc.
May 25, 2005

Review of General Construction's Preliminary Construction Sequence
Laid Out in the General Construction fax of 5/19/05

General:

A fax was received with a proposed construction schedule for early work to be performed within the existing future unit. The proposed sequence, if accepted, is a variance from the contract requirement that the upstream concrete placement in slots A and C be complete before work in slot B can begin. The proposed sequence was reviewed and a preliminary stability analysis was performed as described below. The results will likely vary when a more detailed description of the construction sequence is received.

Assumptions:

1. The analysis method and assumptions for this review are the same as those used for the FERC stability report prepared for this project.
2. The construction sequence was developed using the information received in the fax. For a more detailed description of the sequence used, see the assumed construction sequence below.
3. The weights of new concrete are based upon the volumes given in the fax.
4. The horizontal widths of the concrete lifts were scaled using the sketches received in the fax.
5. Weights of concrete elements being removed were estimated by modifying the calculations developed for the FERC stability analysis.

Assumed Construction Sequence:

The following is the construction sequence analyzed based upon our review and interpretation of the fax. Figures of each step are attached.

1. Future unit without any modifications (pre-construction condition)
2. Dewater slot B
3. Place lower slot B concrete lifts 1 to 8, 14 to 21 and 25 to 32
4. Dewater slot C. Note that this slot is not dewatered until after step 3 is complete, even though the schedule has the bulkhead installed nearly 4 months earlier.
5. Demolish the downstream concrete wall in slot B and place slot C concrete lifts 1 to 12. Note that six upstream lifts and six downstream lifts are assumed to be placed during this step.
6. Demolish the upstream and middle concrete walls in slot B and place slot C concrete lifts 13 to 18.
7. Dewater slot A
8. Place slot A concrete lifts 1 to 12.
9. Place slot A concrete lifts 13 to 18.

Results:

The results of our analysis are summarized in the table below.

Step Number	Foundation Crack Length - ft	Sliding Factor of Safety without Cohesion	Maximum Bearing Pressure - psi
1	3.34	3.41	216
2	8.64	3.19	220
3	4.81	3.48	226
4	9.69	3.27	229
5	7.27	3.30	223
6	7.51	3.24	219
7	12.23	3.04	223
8	10.04	3.13	221
9	7.65	3.19	216

The bearing pressures and sliding factors of safety are within allowable values and are acceptable. However, the foundation crack lengths raise concerns. The stability analysis prepared for FERC as part of project planning limited the foundation crack length to 8.64 feet. As can be seen this value was exceeded for steps 4, 7 and 8; with step 7 exceeding this value by over 40 percent. This excess is judged to be unacceptable.

Potential Alternative

We have also reviewed a potential modification to the construction sequence described above. In this alternative step 6 is modified to omit the removal of the middle and upstream walls in slot B. These walls would not be removed until after step 9. The results are summarized in the table below:

Step Number	Foundation Crack Length - ft	Sliding Factor of Safety without Cohesion	Maximum Bearing Pressure - psi
1	3.34	3.41	216
2	8.64	3.19	220
3	4.81	3.48	226
4	9.69	3.27	229
5	7.27	3.30	223
6	4.35	3.38	218
7	9.49	3.16	221
8	5.03	3.28	213
9	4.46	3.34	215

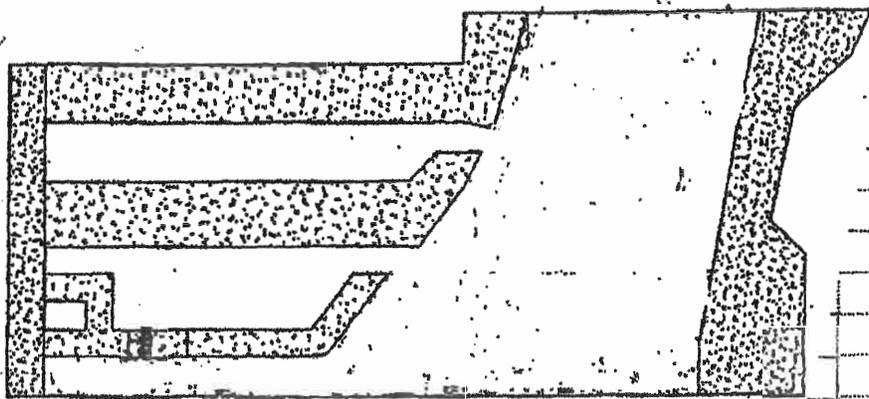
As with the other sequence, the sliding factors of safety and bearing pressures are acceptable. The biggest change is in the development of the foundation crack length. For this construction sequence, the crack lengths for steps 4 and 7 exceed 8.64 feet.

Wanapum Dam Future Unit Fish Bypass
Jacobs Civil Inc.
May 25, 2005

However, for the worst case (step 4) the crack length exceeds the maximum in the FERC report by 12 percent. This is judged acceptable for the temporary construction condition.

Date 5/05	By 8WT	Checked	Subject GC Croot Sequence (5-19-05 FAX)	Sheet 4
Job No. / Project Title W3036200 Wanaquan FUEB		Of		

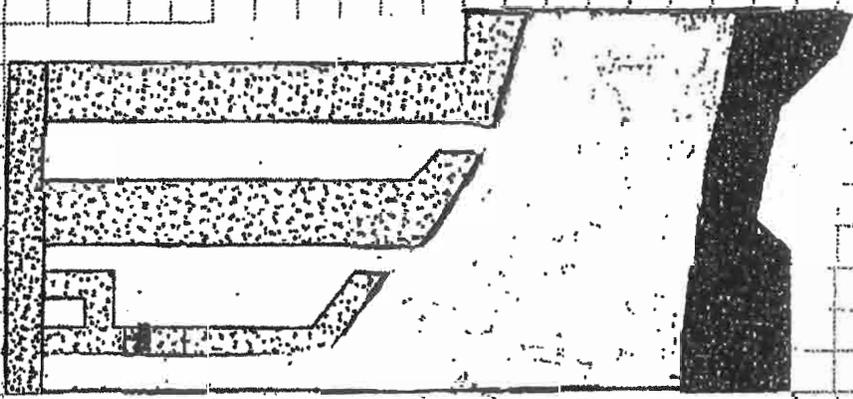
STEP # 1



NO CONSTRUCTION

SLOT A & C

PRE CONSTRUCTION
CONDITION

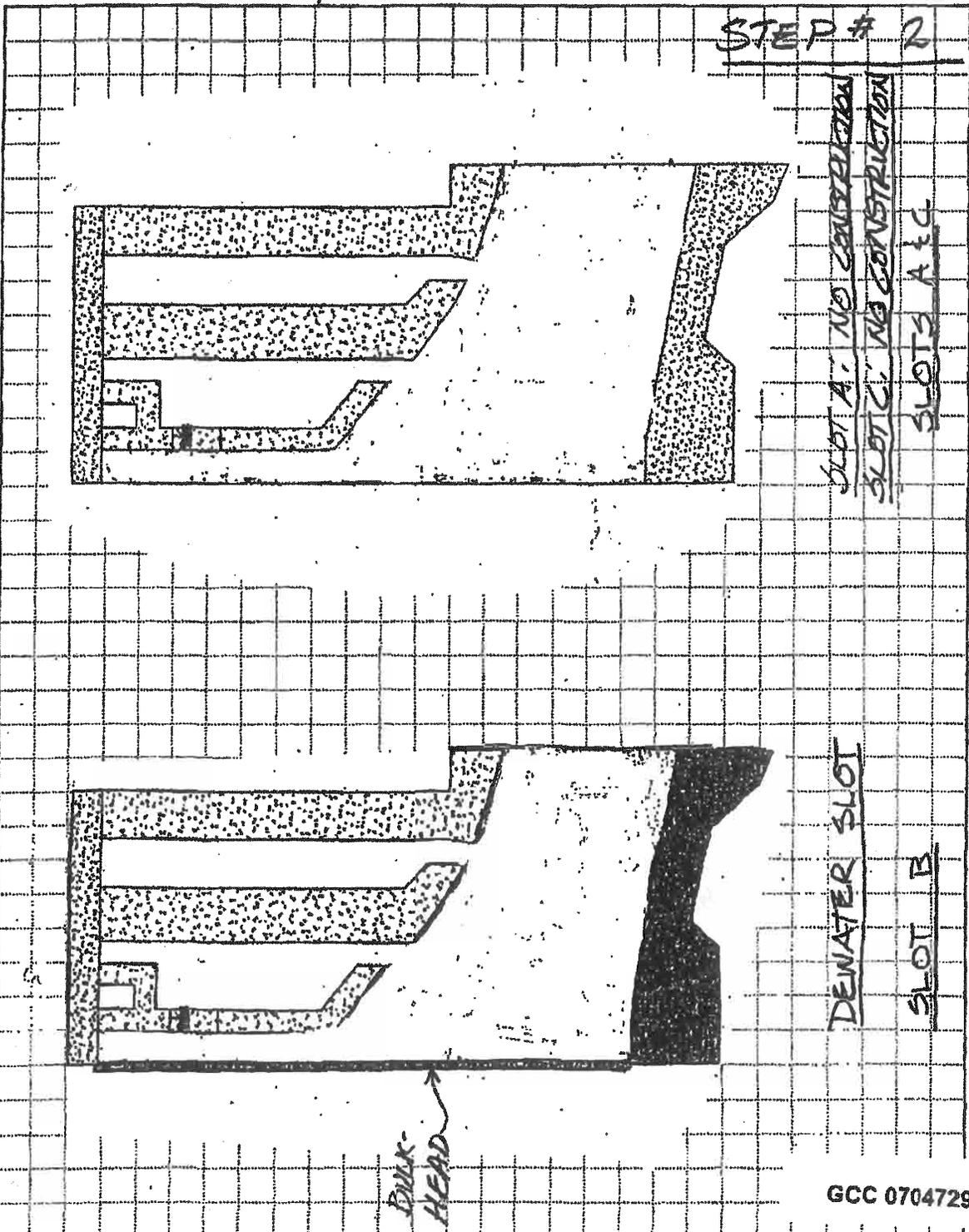


NO CONSTRUCTION

SLOT B

GCC 0704728

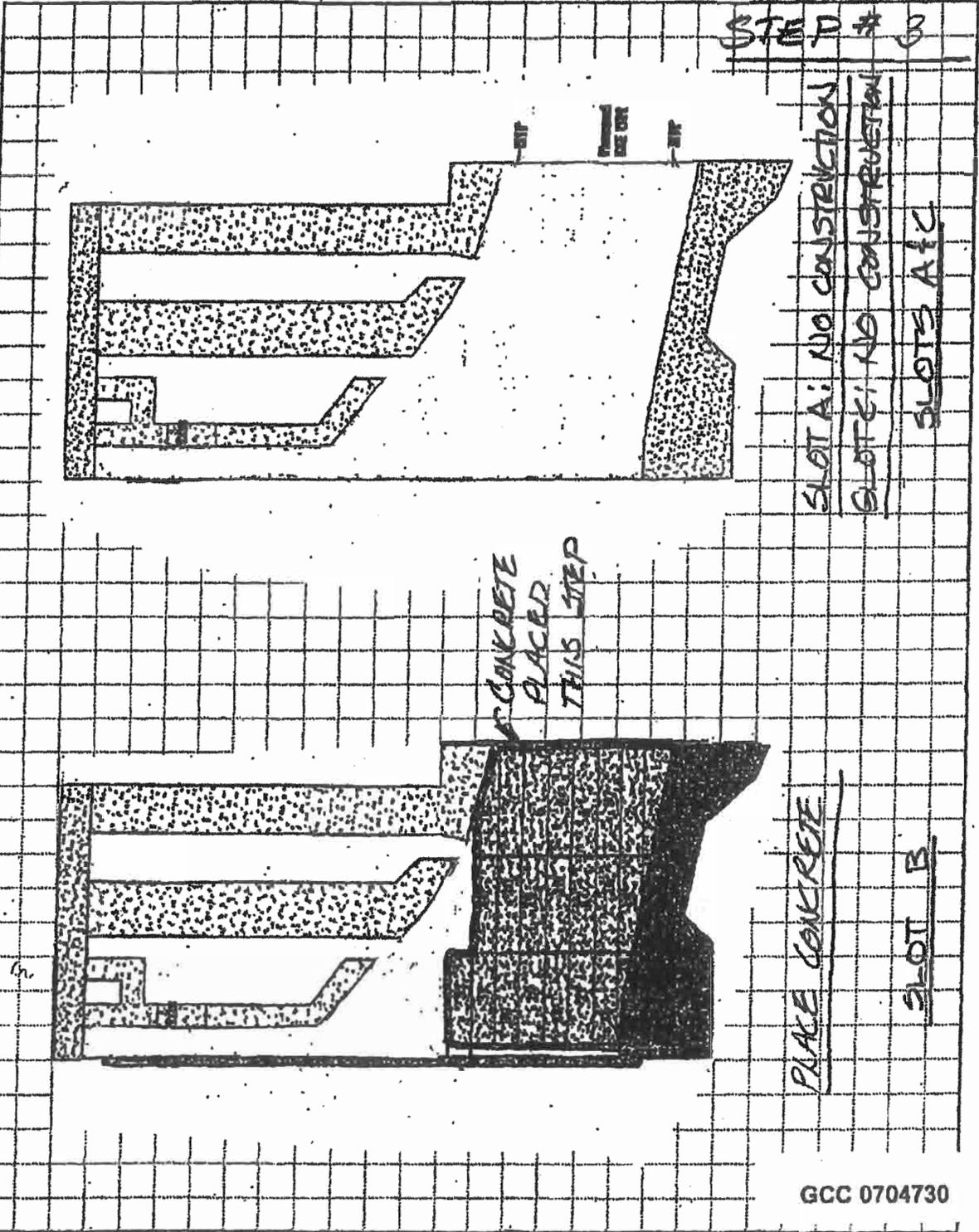
Date: 5/05	By: SUT	Checked:	Subject: GC Coord Sequence (5-19-05 FAX)	Sheet: 5
Job No. / Project Title: 43036200		Wanapum FUEB		Of: _____



GCC 0704729

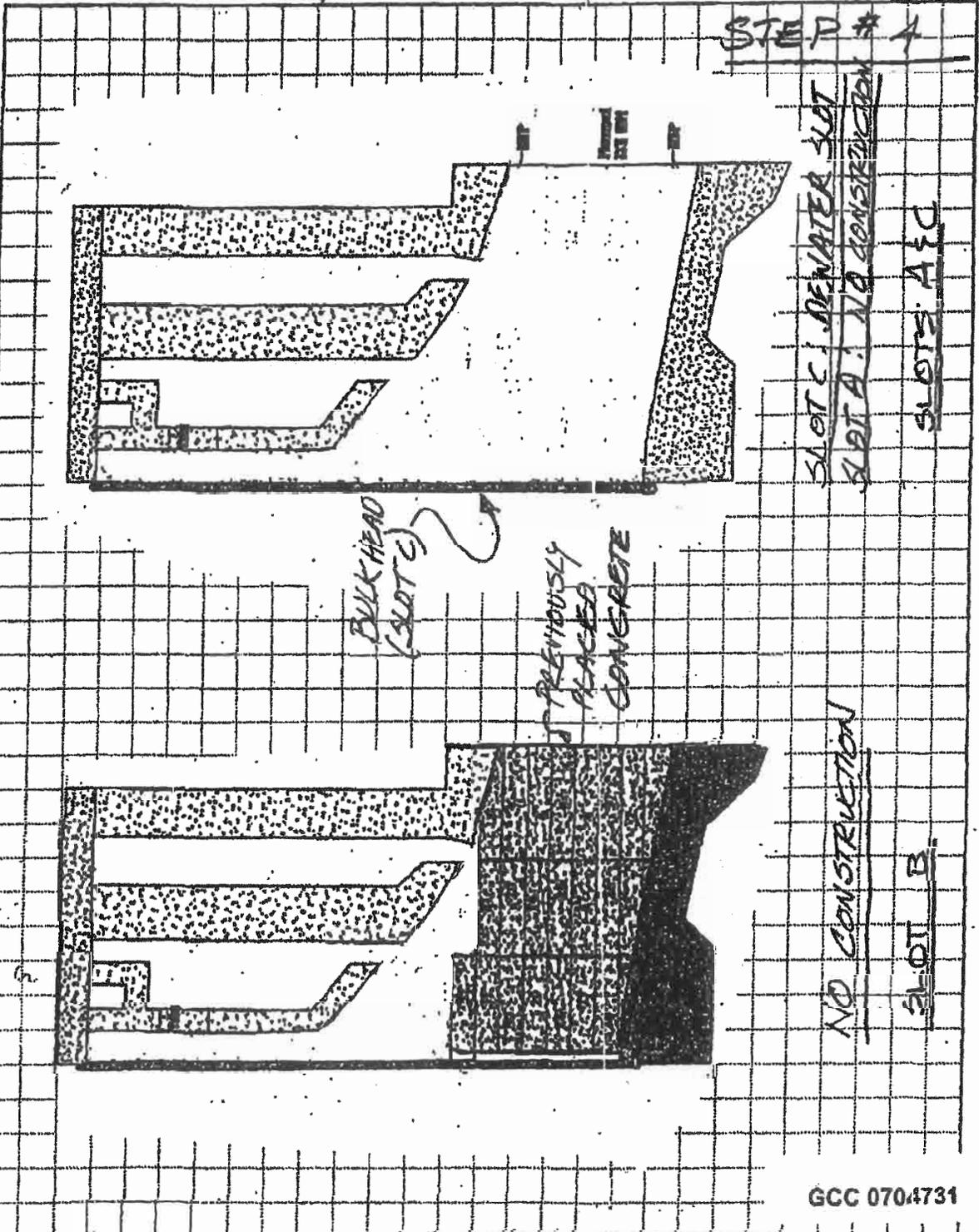
JE JACOBS

Date: 5/05	By: SUT	Checked:	Subject: GC. Crib Sequence (5-19-05 FAX)	Sheet: 6
Job No. / Project Title: N3036200		Wanamum FUEB		Of:



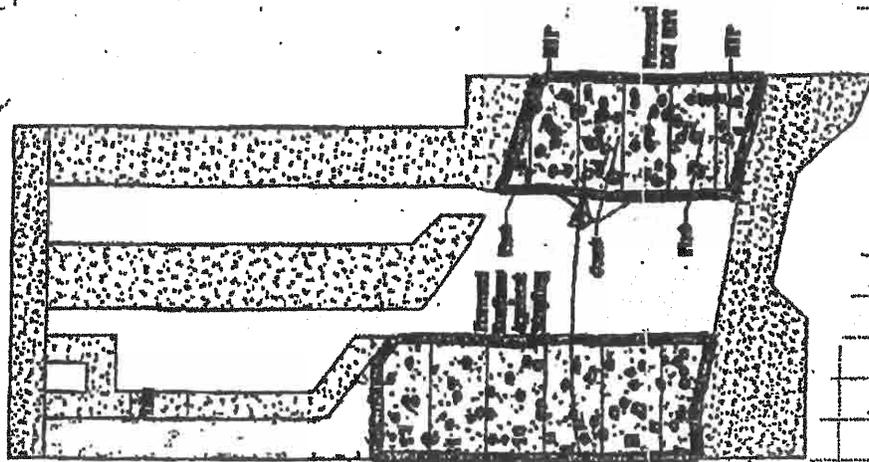
GCC 0704730

Date: 5/05	By: 8WT	Checked:	Subject: GC Coord Sequence	Sheet: 7
Job No. / Project Title: N3036200 Wanaquam FURB		Date: (5-19-05 FAX)		Of: _____

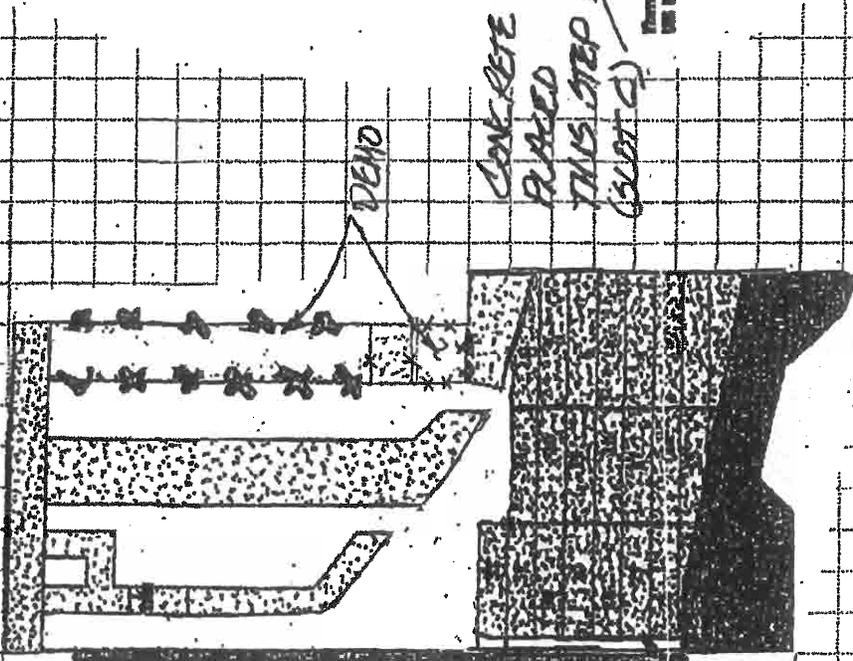


Date 5/05	By SWT	Checked	Subject GL. Croot Sequence	Sheet 8
Job No. / Project Title N3D36200		Wanapum FURB		Of

STEP # 5



SLOT A: NO CONSTRUCTION
SLOT C: PLACE CONC.
SLOTS A & C



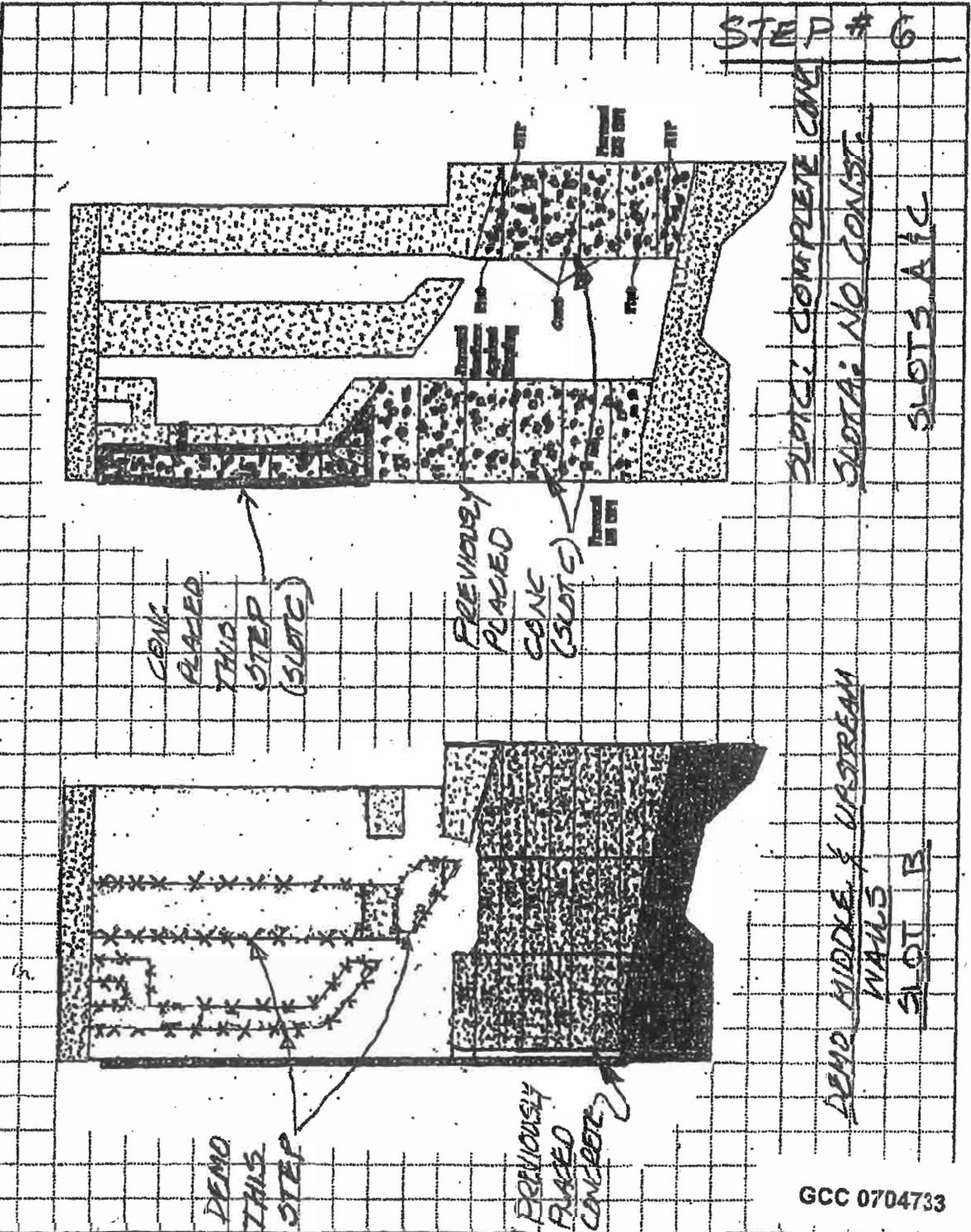
DEMO
CONCRETE PLACED THIS STEP (SLOT C)

DEMO DOWNSTREAM WALL
SLOT B

PREVIOUSLY PLACED CONC

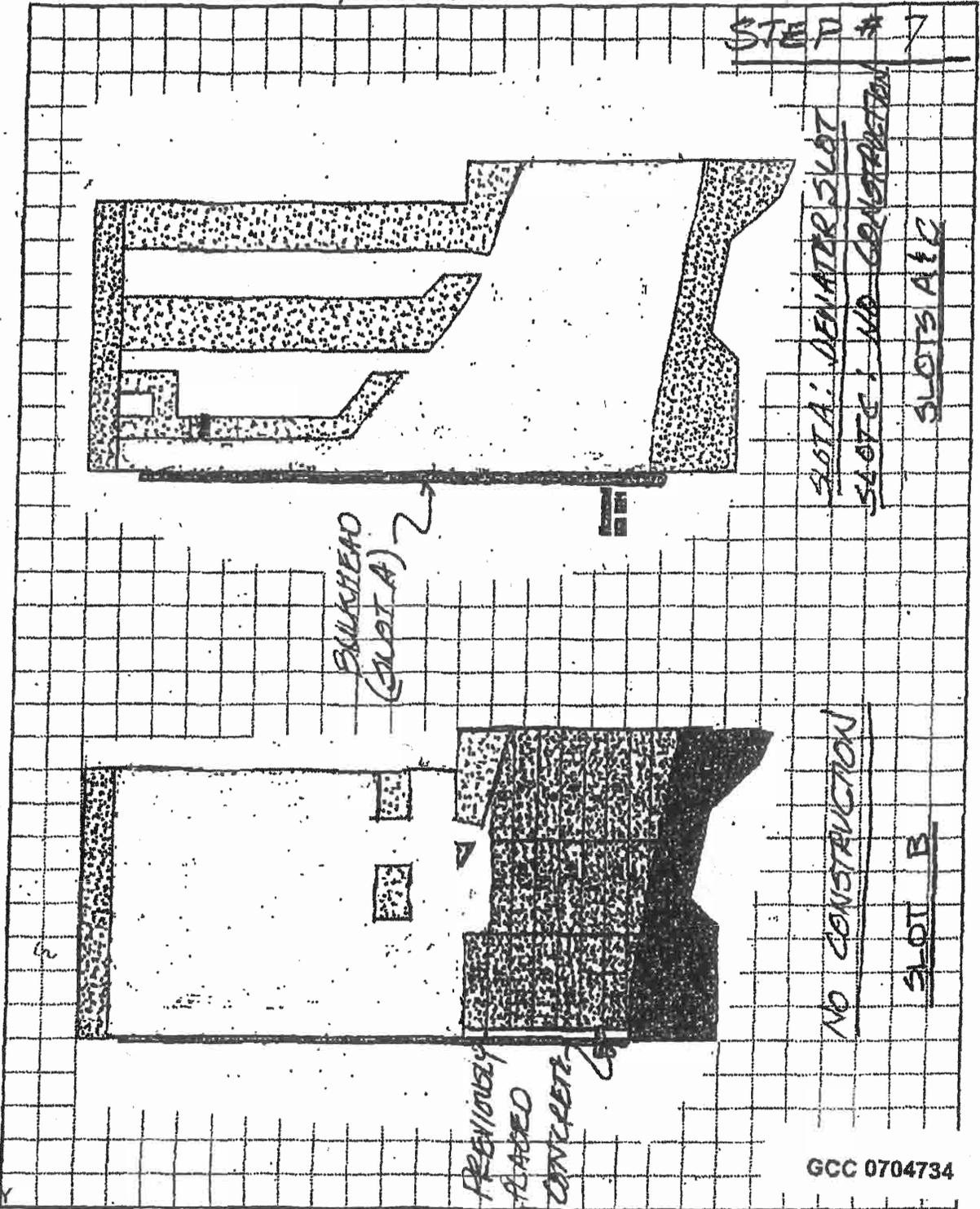
GCC 0704732

Date 5/05	By SUT	Checked	Subject GL. Coort Sequence	Sheet 9
Job No. / Project Title N3036 200		Wanapum FURB		Of



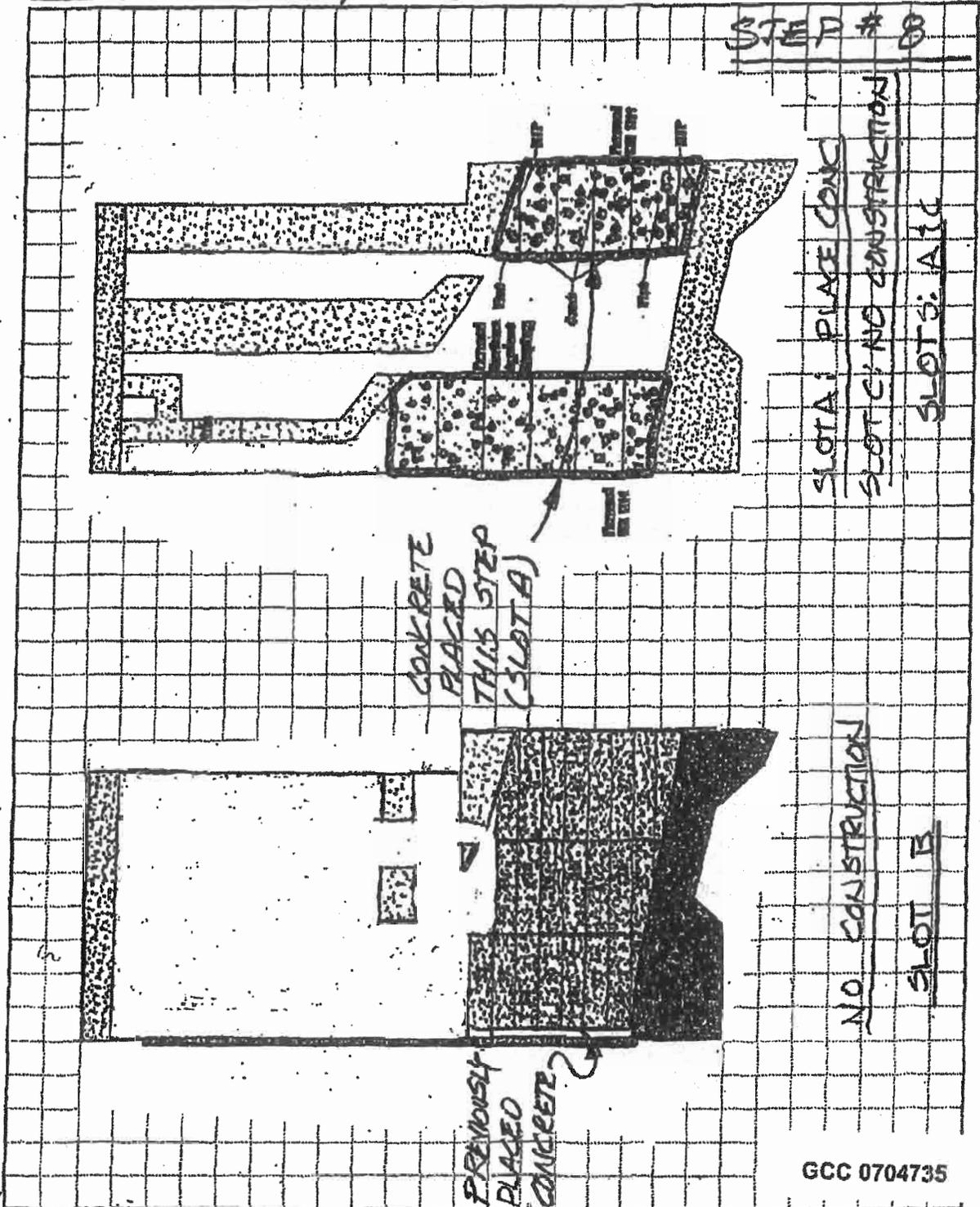
GCC 0704733

Date 5/05	By SUT	Checked	Subject GL Croot Sequence (5-19-05 FAX)	Sheet 10
Job No. / Project Title N3036200		Wanapum FURF		Of



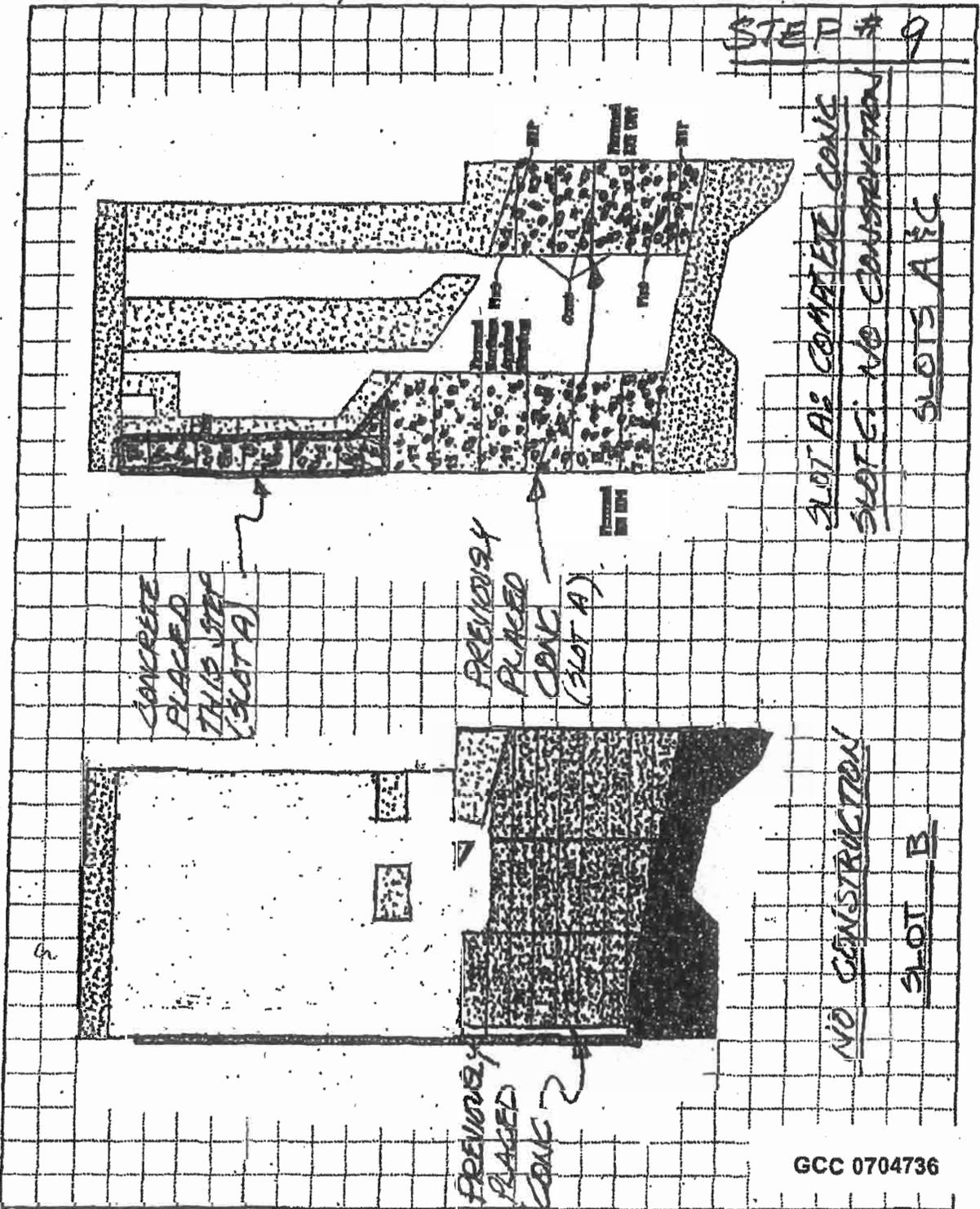
GCC 0704734

Date 5/05	By SUT	Checked	Subject GC Cover Sequence (5-19-05 FAX)	Sheet 11
Job No. / Project Title N9036200 Wanaquam FURF		Of		



GCC 0704735

Date: 5/05	By: SUT	Checked:	Subject: GL. Cover Sequence	Sheet: 12
Job No. / Project Title: W3036200		Wanapum FURF		(5-19-05 FAX)



APPENDIX Z



Telephone Conversation Report

Job No.: W3-0362-00
Job Name: Priest Rapids Project / Fish Bypass System
Wanapum FUFB - Contract 330-2023
Date/Time: June 16, 2005 / 1:00 PM
From: Dana Jeske, GCPUD
To: Steve Wittmann-Todd, Jacobs Civil Inc.
Subject: Pre-Cast Module Interim Submittal 6-19-2005

Dana initiated a conference call with Dave Bishop and other General Construction personnel to go over several items as follows:

1. We discussed Jacobs' comment on the interim submittal about a gasket being required for the horizontal joints between boxes (Sheet 7 of 7 of foundation box details). General Construction, as part of their sequence (which is still being developed), anticipates needing to shim the horizontal joint between box sections to maintain alignment and grade, and consequently don't see a gasket as practical. Steve replied that the intent of the gasket is to seal the joints to keep concrete and concrete contaminated water from migrating into the river as required by the permit conditions. Alternate methods that achieve this intent are also acceptable.
2. We discussed the use of geotechnical fabric. General Construction's understanding of the plans/specifications is that geotechnical fabric is to be placed over the rock and then concrete cast. Steve made clear that the intention is that concrete is to be placed directly on rock without any intervening geotechnical fabric. He briefly reviewed the plans and found no requirement for using geotechnical fabric. Steve will research this question further. (Steve's research found that geotechnical fabric is specified in T-12 but without a specific requirement for where it is used. The intent of specifying geotechnical fabric is to set a minimum material standard and installation requirements, anticipating that the contractor might propose to use geotechnical material as part of their construction means and methods.)
3. We next considered the reinforcing bar configuration for reinforcing vertical joints (See drawing number C25). Steve clarified that, within the limits of the space available, General Construction could use straight bars, bars with a hook on one end and the other end straight or bars with a hook on each end. The embedment length for the straight bar is as scheduled in the reinforcing schedule and shown on the details on C25. The required hook lengths are also shown on the details on C25.
4. The length of the concrete placements in the future unit section was reviewed. A previous question asked for a single placement that would be 60 feet long by 20 feet wide. Jacobs' response was to allow two placements because the specifications limit the length to width ratio to 2 to 1 (T-22, paragraph 1.05F.3). Steve explained that the intent of this requirement is to maintain a length to width ratio that is less likely to crack. Dave noted that the mass concrete mix will

Telephone Conversation Report

have less cementitious material than the one earlier proposed and will not be placed by pumping. However, since dam stability considerations require that the closures in slots A and C be placed sequentially, the scheduled length of construction is longer than initially planned by General Construction. The longer lifts will help to reduce the schedule length. Steve will revisit this issue again to see what options are available.

5. Steve noted that he called the submittal reviewed an "Interim submittal" because it is not the final formal submittal required by the contract, but rather a tool to facilitate communication between the contractor, designer and owner during development of the submittal. This should facilitate the timely review and approval of the final submittal and allow the consideration of alternative methods. Dave noted that the final submittal should be submitted sometime late next week.

By: Steve Wittmann-Todd, P.E.

These minutes are an interpretation of discussions held. Please furnish any additions or corrections to the Originator as soon as possible. If no comments are received within 10 days of receipt of these minutes, they will be assumed to be correct as written.

Original: Telephone Conversation File

Distribution:

Grant PUD:	Dana Jeske	PDF email
General Constr.:	Dave Bishop	PDF e-mail
Jacobs:	Steve Wittmann-Todd	PDF e-mail
	Cory Caywood	PDF e-mail

APPENDIX AA
NOT USED

APPENDIX BB

Voskuilen, Marinus

From: Voskuilen, Marinus
Sent: Friday, July 08, 2005 4:01 PM
To: George Thompson (E-mail); Dana Jeske (E-mail)
Cc: Wittmann-Todd, Steve; David Bishop (E-mail)
Subject: Review of Revised Sequence

George / Dana:

Attached is a memo describing our preliminary review of the revised sequence for construction. The changes show promise and appear to move us in the right direction.

Thanks,
Reece

Jacobs Civil Inc. | 600 108th Avenue NE | Suite 700 | Bellevue, WA 98004
T 425.452.8000 Ext. 3775 | F 425.452.1212 | Marinus.Voskuilen@Jacobs.com



Review of Const
Seq 6-24 Versi...

Tracking:

Recipient

George Thompson (E-mail)
Dana Jeske (E-mail)
Wittmann-Todd, Steve
David Bishop (E-mail)

Delivery

Delivered: 7/8/2005 4:01 PM

Wanapum Dam
Future Unit Fish Bypass
Jacobs Civil Inc
July 8, 2005

Review of General Construction's Preliminary Construction Sequence
Received on June 24, 2005
And Modified to Include the Revisions Received on July 7, 2005

1.0 General:

Modifications to the proposed construction sequence dated 6/24/2005 were suggested by General Construction and relayed to us by the District on 7/7/05. This sequence is for work to be performed within the existing future unit.

This modification schedules the upstream part of slot C to be dewatered after the slot B spillway concrete is placed to elevation 492 and the slot B is flooded to elevation 540. This occurs in step 3 of the modified sequence. Slot B remains flooded until enough upstream concrete is placed in slot C to maintain an acceptable level of stability when slot B is dewatered. The modified proposed sequence is at variance with the contract requirement that the upstream concrete placement in slots A and C be complete before work in slot B can begin (Drawing C01, Construction Phasing Notes).

The modified proposed sequence was reviewed and a preliminary stability analysis was performed as described below. The results of this review are discussed in detail below. The results will likely vary when a more detailed submittal of the construction sequence is received.

2.0 Assumptions:

- The analysis method and assumptions for the review are the same as those used for the FERC stability report prepared as part of the project design.
- The construction sequence is based upon the schedule, concrete lift drawings and concrete demolition drawings received from General Construction. The steps checked for this sequence are described in detail below.
- The amount of concrete to be placed before slot B can be dewatered the second time was determined by an iterative analysis. It was found that upstream lifts 7 and 8 must be placed in slot C before dewatering.

3.0 Review of General Construction's Proposed Sequence

3.1 Assumed Construction Sequence:

The following table was developed from the information provided and is tied to the dates in the construction schedule. For the concrete in slots A and C and all concrete in slot B, a percentage complete was used to estimate the weights of construction complete at each step. This is sufficiently accurate for a preliminary analysis, however the final submittal will need to provide more detail. For the demolition in slot B and the upstream concrete in slots A and C, greater accuracy is needed, so the lift/demolition drawings were coordinated with the schedule to estimate the weights of construction for each step. Note that the table indicates which lift/blocks were assumed completed at each step. Changes from the 6-24 sequence are highlighted.

Step No.	Schedule Date	Description (Bold text is work in progress, completed work is regular weight, Changes are highlighted)
1	8/22/05 (Week 1)	Dewater Slot B

Wanapum Dam
 Future Unit Fish Bypass
 Jacobs Civil Inc
 July 8, 2005

Step No.	Schedule Date	Description (Bold text is work in progress, completed work is regular weight, Changes are highlighted)
2	10/3/05 (Week 7)	Dewater Slot B complete Dewater Downstream Slot C (after all other work is complete) Partial lower concrete slot B (62.7% complete)
3	10/10/05 (Week 8)	Dewater Slot B complete Dewater Downstream Slot C complete Dewater Upstream Slot C complete (after all other work is complete) Complete lower concrete slot B (100% complete) Flood Slot B
4	11/1/05 (Week 12)	Dewater Slot B complete Dewater Downstream Slot C complete Dewater Upstream Slot C complete Complete lower concrete slot B Flood Slot B Dewater downstream Slot A (After all concrete work is complete) Partial conc demo slot B (Blocks 1 to 3) Partial conc dnstrm slot C (15.8% complete) Partial conc upstrm slot C (Lift 7 and 8) Dewater Slot B (after all concrete work is complete)
5	12/12/05 (Week 17)	Dewater Slot B complete Dewater Downstream Slot C complete Dewater Upstream Slot C complete Complete lower concrete slot B Dewater downstream Slot A Flood Slot B Dewater Slot B Complete add conc dnstrm slot C, (100% complete) Partial add conc dnstrm slot A (36.8% complete) Partial demo conc slot B (Blocks 4 to 14) Partial add conc upstrm slot C (Lifts 9 to 13)
6	12/19/05 (Week 18)	Dewater Slot B complete Dewater Downstream Slot C complete Dewater Upstream Slot C complete Complete lower concrete slot B Dewater downstream Slot A Flood Slot B Dewater Slot B Complete dnstrm concrete slot C Partial add conc dnstrm slot A (52.6% complete) Partial demo conc slot B (Blocks 15 to 18) Remove dnstrm BH slot C (flood dnstrm slot C) Partial add conc upstrm slot C (Lift 14)

Wanapum Dam
 Future Unit Fish Bypass
 Jacobs Civil Inc
 July 8, 2005

Step No.	Schedule Date	Description (Bold text is work in progress, completed work is regular weight, Changes are highlighted)
7	1/9/06 (Week 21)	Dewater Slot B complete Dewater Downstream Slot C complete Dewater Upstream Slot C complete Complete lower concrete slot B Dewater downstream Slot A Flood Slot B Dewater Slot B Complete dnstrm concrete slot C Remove dnstrm BH slot C complete (flood dnstrm slot C) Complete add conc dnstrm slot A (100% complete) Partial demo conc slot B (Blocks 19 to 26) Partial add conc upstrm slot C (Blocks 15 to 17)
8	1/16/06 (Week 22)	Dewater Slot B complete Dewater Downstream Slot C complete Dewater Upstream Slot C complete Complete lower concrete slot B Dewater downstream Slot A Flood Slot B Dewater Slot B Complete dnstrm concrete slot C Remove dnstrm BH slot C complete (flood dnstrm slot C) Complete add conc dnstrm slot A Complete demo conc slot B (Blocks 27 to 30) Complete add conc upstrm slot C (Block 18) Remove dnstrm BH slot A (flood dnstrm slot A)
9	1/23/06 (Week 23)	Dewater Slot B complete Dewater Downstream Slot C complete Dewater Upstream Slot C complete Complete lower concrete slot B Dewater downstream Slot A Flood Slot B Dewater Slot B Complete dnstrm concrete slot C Remove dnstrm BH slot C complete (flood dnstrm slot C) Complete add conc dnstrm slot A Remove dnstrm BH slot A complete (flood dnstrm slot A) Complete add conc upstrm slot C Complete demo conc slot B Partial add upper conc slot B (19.8% complete)

Wanapum Dam
 Future Unit Fish Bypass
 Jacobs Civil Inc
 July 8, 2005

Step No.	Schedule Date	Description (Bold text is work in progress, completed work is regular weight, Changes are highlighted)
10	2/20/06 (Week 27)	Dewater Slot B complete Dewater Downstream Slot C complete Dewater Upstream Slot C complete Complete lower concrete slot B Dewater downstream Slot A Flood Slot B Dewater Slot B Complete dnstrm concrete slot C Remove dnstrm BH slot C complete (flood dnstrm slot C) Complete add conc dnstrm slot A Complete demo conc slot B Remove dnstrm BH slot A complete (flood dnstrm slot A) Complete conc upstrm slot C Complete upper conc slot B (100% complete) Dewater upstrm slot A (after all other work is complete)
11	6/5/06 (Week 42)	Dewater Slot B complete Dewater Downstream Slot C complete Dewater Upstream Slot C complete Complete lower concrete slot B Dewater downstream Slot A Flood Slot B Dewater Slot B Complete dnstrm concrete slot C Remove dnstrm BH slot C complete (flood dnstrm slot C) Complete add conc dnstrm slot A Complete demo conc slot B Remove dnstrm BH slot A complete (flood dnstrm slot A) Complete conc upstrm slot C Complete upper conc slot B Dewater upstrm slot A Complete upstrm conc slot A, (100% complete)

3.2 Results:

The results of our analysis are summarized in the table below:

Step Number	Foundation Crack Length - ft	Sliding Factor of Safety without Cohesion	Maximum Bearing Pressure - psi
0	3.34	3.41	216
1	8.64	3.19	220
2	5.76	3.38	222
3	8.07	3.36	229
4	8.53	3.26	224
5	5.43	3.38	221
6	5.65	3.41	224
7	5.26	3.41	222
8	5.89	3.44	225
9	4.66	3.47	224
10	8.29	3.40	233
11	0	3.67	221

Wanapum Dam
Future Unit Fish Bypass
Jacobs Civil Inc
July 8, 2005

The estimated base pressures, foundation crack lengths and sliding factors of safety are within allowable values and are acceptable. It bears noting that the crack length never exceeds that calculated for the FERC stability analysis prepared during project planning. These results, as previously discussed, are preliminary and will likely change when a detailed sequence and schedule is submitted.

The revisions described and incorporated into the analysis provide an improvement over the previous sequence and are worth further review and development by General Construction.



APPENDIX CC

Wanapum Fish Bypass
Weekly progress report

W/E July 17 05

1. Safety- Daryl Sylvester to be on site July 18 and July 19. Daryl to on site each week for 2 or 3 days per week.
2. Quality-
3. Progress last week:
 - 3.1 Work plans continuing: Bulkhead installation, U/S concrete, dredging
 - 3.2 Met with carpenters-pilebuck B.A.
 - 3.2.1 Travel/parking/crew-bus.
 - 3.2.2 BA stated that they will put a steward on the job
 - 3.2.3 Requested F/M as we were not bringing key people
 - 3.3 Contract Admin class held on July 12 and 13.
4. Projected next two weeks:
 - 4.1 KLB to perform D/S bulkhead grading work on July 19.
 - 4.2 U/S mob and prep to begin on July 25.
 - 4.3 D/S assembly of marine equipment to begin on July 25.
5. Issues:
 - 5.1 Have been informed that our submitted construction sequence appears to be acceptable. This will involve flooding the U/S concrete to elevation 540 for a period of 4-5 weeks while concrete demolition is underway.
 - 5.2 Met with PUD and Jacobs to explain our box setting sequence.
 - 5.2.1 Jacobs OK with placing powerhouse trench from elev. 392 to 432.
 - 5.2.2 Discussed making a second leveling pour from 432 to 444. Jacobs considering
 - 5.3 CPM contract ratification will be an issue. CPM behind in submittals which could affect concrete work. Required to have mix design in 90 days prior to beginning of concrete.
6. Personnel
 - 6.1 Night shift superintendent not yet assigned to project.
7. Equipment
 - 7.1 Floats from Benicia and Skyway set to load July 25
 - 7.2 Rendrags to load Aug 12 from Hood Canal
 - 7.3 Skiff from Hood Canal Aug 12
 - 7.4 4100 U/S to arrive Aug.1
 - 7.5 4100 D/S to arrive Aug 10
 - 7.6 Still waiting on management determination on the tug



APPENDIX DD



GENERAL CONSTRUCTION COMPANY

18472 POWDER HILL PLACE • POULSBRO, WA 99370
(360) 778-3200 • FAX: (360) 778-3132
WWW.GENERALCONSTRUCTIONCO.COM

Town File

Sept. 7, 2005

Serial Letter - 0035

Grant County PUD #2
15655 Wanapum Village Lane SW
Beverly, WA 99321

Attention: Dana Jeske, P.E.

Subject: Wanapum Fish Bypass
Contract 330-2023
Response to Submittal # 20 - comment # 1

*See Submittal
20 A for a different
version of this letter
that was addressed in
revised comments*

This letter will serve as response to your correspondence WFUFB-0018. Specifically this letter addresses comment No. 1 and references the requirement for minimum two feet of rock excavation.

General Construction understands that the contract documents indicate that minimum two feet of rock is to be excavated. However at the time our bid was submitted we qualified our bid with the Narrative Report for Bid Schedule.

The Narrative Report for Bid Schedule that General Construction submitted with our bid, states in section 1.4, that the foundation "will be prepared using a clam shell dredge to remove the sand and rock overburden, and air lift to clean the rock surface of gravel, sand and silt the clam shell has left behind". We at no time describe rock excavation as part of our work sequence.

Sections SR-14 (A) and Instructions to the bidders permitted us to state our work methods, assumptions in performing the work and variations from the plans and specifications. General Construction excluded all rock excavation over and beyond cleaning the rock.

As permitted by section T-12, 3.02 (A) we have proposed variations from the rock elevations and grades shown. These variations as stated in the Narrative Report indicate that our precast foundation boxes will be set on existing clean rock.

Our position is that our qualified bid was accepted and hence our means and methods were accepted. If any rock excavation is required General Construction would perform

Appendix DD
Page 1 of 2

this work on a change order basis. Rock excavation is outside of the scope of work that was included in our qualified bid.

Any requirement for rock excavation will extend our project schedule for many months. It may not be possible to complete the rock excavation that you request during the first in water work period. This requirement could delay the project forcing it into another construction year.

Attached is our submittal # 20A which includes a plan for any rock excavation that you requested. This plan is subject to change as we determine what the actual rock excavation requirements will be.

General Construction is still planning to begin clam shell dredging on Sept. 15.

Feel free to contact me if you have any questions.

Sincerely,



Dave Bishop
Project Manager

APPENDIX EE

Mail Message

 **Messaging Architects™**

From: George Thompson
To : Jeske, Dana ; Reynolds, Michael ; Boss, Richard ; Schultz, Thomas
Date Thursday, January 05, 2006 4:22 PM
Received:
Subject: Today's inspection report.
 GIDR01052006.doc

about:blank

08977

1/14/2009
Coleman 5/23/12
Appendix EE Exhibit 18
Page 1 of 2

ENGINEERING INSPECTOR

DAILY REPORT

ROUTING	INITIALS
Construction Manager	
Project Manager	
Project Engineer	
Work Order File	

PROJECT: WANAPUM FUTURE UNIT BYPASS	
Project ID: 100057	Contract No. 330-2023
Contract Title CONSTRUCTION OF WANAPUM FUTURE UNIT BYPASS	
Date 1/5/2006	
Contractor GENERAL CONSTRUCTION CO.	Contractor's Rep. Ben Hugel
Sub Contractor	Sub Contractor's Rep.
Feature Upstream Dowel Holes	Location: Slot B
Weather	Shift Day
Field Book Ref. No.	

Description of work and remarks (What, Where, Who, Why, When?)

Ed Kittle requested an inspection of the upstream dowel holes in the floor and walls of Slot B in preparation for installing dowels. All the holes in the floor were inspected and the holes in each side wall were inspected up to about 12 feet above the floor. A line was painted on the walls at the last inspected hole. All holes met criteria. The floor holes were 1-3/4" diameter by 21" deep (minimum). The depth of the holes in the walls was 18". This was an approved departure from the specification due to the possibility of hitting post-tensioned anchors that are in the walls. All of the holes need to be cleaned before epoxying the dowels. The floor holes are especially dirty due to flowing water that carries debris into the holes. The flowing water needs to be stopped before installing the dowels. All this was communicated to Ed Kittle (GCC superintendent).

A concern about dam stability was raised this morning by Dave Moore (GCPUC dam safety engineer). The 2D and 3D crack monitors for the unit 10/unit 11 joint show significantly increased movement. This was communicated to GCC. Jacobs Civil was also contacted and asked to perform a stability analysis. They were told to contact Dave Moore directly for any additional information. GCC has altered their planned pour sequence. The District asked them to make their next pour in the upstream portion of Slot B instead of downstream as planned. [Note that their first pour (made on 1/3/2006) was a downstream pour that was only partially completed due to a lack of compliance with the contract specification. GCC's intent after that partial pour was to place the next lift on top of that partial pour. Their original sequence would have been to move to the upstream portion.] Ed Kittle said that they will make at least two pours in the upstream portion. Their current schedule is to install the upstream formwork tonight, install dowels tomorrow, tie the rebar cage on Saturday, and pour on Monday.

Pg 1

CONSTRUCTION NOT PER PLAN AND SPEC.

ENGINEERING INSPECTOR:

LABOR: See Contractor's Daily Employee Sign-in sheet.

Labor and equipment narrative:

Accident or hazardous situation:

Delays:

APPENDIX FF

Date Book for Dana Jeske

January 06, 2006 **January 09, 2006**

Curt,

I have sent all Wanapum future bypass & Alternative Top Spill concept meeting minutes so can you help Martin sort out what might be relevant.

Thanks,

Dana

>>> Martin Weis 01/05/06 8:54 AM >>> In my wrap up hours to get the BOp annual report ready I need the following ASAP Please:

Reports and Trip Memos (JACOBS) for the Wanapum future bypass & Alternative Top Spill concepts @ Priest both going back to 2003 to date: If they are not electronic I would be glad to arrange for photo copying, thanks for your help. MW

8:00a - 9:00a:

9:30a - 10:40a:

11:00a - 12:00p:

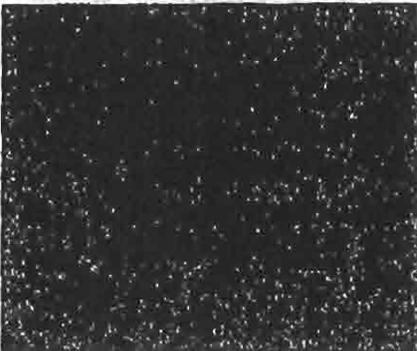
3:30p - 4:30p:

4:30p - 9:30p:
Note

10:30p - 11:30p:



Met with Ben, Chuck, Dave M and Ed on Future unit stability, trends of work to-date and monolith 10-11 crackmeter movements. Discussed their plans and how they can help to prevent the District from shutting the job down until the a and c slots are filled



Saturday 1/7/2006

11:30a - 1:00p:

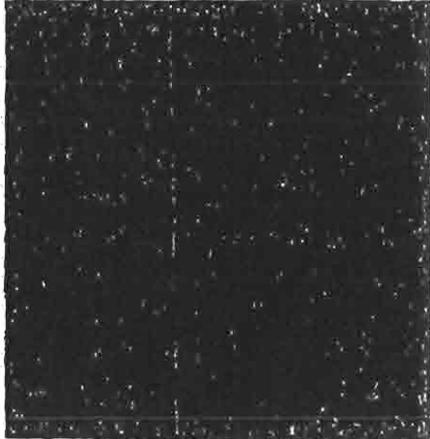
12:30p - 5:00p:

1:00p - 5:00p:

5:00p - 6:00p:

6:00p - 10:00p:
Note

Contract 330-2023 coordination.



10:00p - 11:55p:

Sunday 1/8/2006

8:30a - 9:30a:

9:30a - 9:45a:

4:00p - 4:30p:

4:30p - 4:30p:



Monday 1/9/2006

6:30a - 6:00a:

6:00a - 7:00a:

6:00a - 8:30p:

7:00a - 9:00a:

8:00a - 9:00a:

Note

8:00a - 8:00a:

Note

8:30a - 8:30a:

Note

Contract 330-2023 coordination.

Turbine coordination meeting (Wanapum 7th floor con)

Engineering staff and coordination meeting

Review Generals schedule

FISH, WILDLIFE, WATER QUALITY Conference Call

The call-in number is 1-800-977-8002 moderator code 577999 Participant Code: 001211

IHR Monday call

Hydraulic modeling conference call with just IHR staff (fish passage issues and water quality issues).

APPENDIX GG

Date Book for Dana Jeske

January 09, 2006 - January 11, 2006

8:00a - 10:00a: Contract 330-2023 staff meeting
 Note Attendees -> George, Chuck, Layne, Tom, and Dana

Discussed -> Adv Turbine concerns (Tom -> operations and Adv Turbine team meeting)
 -> This and all future bypass meetings will be at 9:00 AM Monday (Dana -at- all)
 -> Oil leak documentation and source (Tom -> continuation)
 -> Final Tremle pour & Wed. Upstream pour - Timing (Chuck & George-> schedule)
 -> Deck concrete removal and replacement (George-> Submittals)
 -> FERC Monthly report (George-> Submittals)
 -> CC cost estimate for filling Future Units 12 thru 16 (Update still coming - original cost \$11,004,343)
 -> Dam stability with dewatered slots and future unit movement (Remaining issues for GCC and GCPUD)
 -> Yakima Precast schedule discussion (Chuck & George-> YPC - will submit schedule by Wed)

10:00a - 12:20p: BIDp Implementation Coordination Meeting (RED)

Note The cell-in number is 1-800-977-8002 Code:2888450. We need follow up on the trailer options for the 2006 and beyond survival evaluations.

12:30p - 1:30p: [Redacted]

12:30p - 1:30p: Met with Dave D., in coordination of the 2006 Survival studies.

1:50p - 2:30p: Met with Ben on slot pours strength and YPC schedule

1:30p - 1:30p: [Redacted]

2:30p - 3:30p: Met with Pat B. in coordination of the 2006 Survival studies.

2:30p - 2:30p: [Redacted]

3:00p - 4:20p: [Redacted]

4:30p - 6:30p: [Redacted]

Note

7:50p - 8:30p: [Redacted]
 8:30p - 11:15p: [Redacted]

Tuesday 1/10/2006

8:45a - 9:30a: [Redacted]

9:30a - 7:00a: [Redacted]
 7:00a - 8:00a: [Redacted]

9:00a - 9:50p: Contract 330-2023 coordination.
 9:00a - 4:30p: [Redacted]

12:00p - 1:20p: Met with Curt on coordinating my bypass work with NER

2:30p - 4:30p: GCC's preactivity meeting on tomorrow's Upstream Pour's (2nd pour in 'B' slot)

4:30p - 6:30p: Note [Redacted]

8:30p - 9:45p: [Redacted]

Wednesday 1/11/2006

8:00a - 9:00a: [Redacted]

8:00a - 8:00p: Contract 330-2023 coordination. Continued GCC's Upstream Pour's (2nd pour in 'B' slot)

8:30a - 7:20a: [Redacted]

Date Book for Dana Jeske

January 11, 2006 - January 12, 2006

- 9:00a - 10:30a: Met with Stuart on coordination issues we are having with the adv. turbine team & fish ladder work. Also discussed Jacob's short comings on submittal review, WFUB bulkhead design, and stability analysis (In addition - PR Bypass support and hatchery work)
- 9:30a - 9:30a: Also discussed personal issues, Tom's full time status, and additional work we have picked up for the concrete testing lab (PR apron repairs, WFUB, and advanced turbine) and the length of their employment.
- 10:30a - 12:00p: Wanapum Rolling Schedule Meeting (Wanapum 7th floor)
- 12:00p - 2:30p: [REDACTED]
- 3:00p - 4:25p: Met with Ben and George on pour sequence for Slob A, B, and C and also discussed how this effects the stability.

Thursday 1/12/2006

- 6:00a - 6:20p: Contract 330-2023 coordination.
- 6:00a - 8:30a: [REDACTED]
- 6:30a - 7:30a: [REDACTED]
- 7:30a - 8:30a: Prepared for upcoming conf. call and progress meeting
- 8:15a - 8:15a: [REDACTED]
- 8:30a - 10:00a: Hydraulic modeling conference call (fish passage issues and water quality issues).

Note

Toll Free Dial In Number:
 (877) 475-9234
 HOST CODE: 119280
 PARTICIPANT CODE:
 847625

Attendees -> Dana Jeske,
 Reece Vostkuilen, Duncan Hay,
 Marlan Musto, Curt Doleon,
 Stuart Hammond (not on call),
 Mike Nichols (not on call),
 Troy Lyons, Pete Haug, and
 Larry Weber.

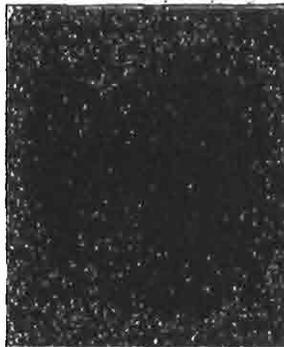
* Modeling issues remaining:
 -> Fish Bypass Bulkhead
 Closure design



H(8/05)->Three-Dimensional
 Computational Fluid Dynamics
 Modeling of Fish Passage
 Routes at Wanapum Dam: for
 Numerical Fish Surrogate
 Analysis, Fish Passage
 Radio-Telemetry Studies, and
 Future Unit Concept
 Development

H(8/05)->Three-Dimensional
 (3-D) Computational Fluid
 Dynamics (CFD) Modeling of
 Fish Passage through Various
 Bypass Routes at Future Units
 of Wanapum Dam

I(2/06)->A Comparison of
 Hydrodynamic Parameters
 Associated with Various Fish
 Passage Routes at Wanapum
 Dam



I(2/06)->Wanapum Dam
 Apron Rock Report

APPENDIX HH

Date Book for Dana Jeske

January 13, 2006 January 16, 2006

11:30a - 12:00p:



12:00p - 2:00p: Working Lunch with Ben on Contract 330-2023 issues (stability analysis, Pour sequence, schedule for YPC and site pours, and Spend down needed for 2006/cash flow)

2:00p - 2:45p:

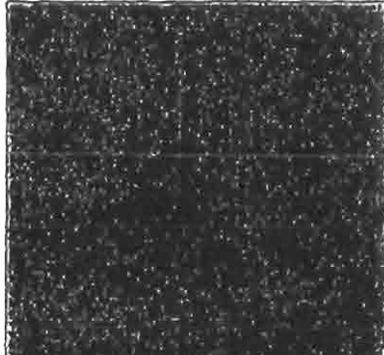


2:45p - 3:45p: Met with George and Chuck on project issues

Saturday 1/14/2006

9:00a - 9:30p: Contract 330-2023 coordination.

11:30a - 1:00p:



1:00p - 4:30p:

4:30p - 8:30p: Note

9:00p - 12:15a:



Sunday 1/15/2006

9:30a - 9:30a:



12:00p - 9:45p:



Note

3:15p - 4:15p:



6:00p - 10:00p:



Monday 1/16/2006

8:30a - 8:00a:



6:00a - 6:30a:



6:30a - 8:30p:

Contract 330-2023 coordination.

6:30a - 8:00a: Note

General's monthly mass safety meeting I have been requested to discuss security measures @ the project.

I presented the Districts Security Plan for the Priest Rapids Project.

7:00a - 7:00a:

Turbine coordination meeting (Wanapum 7th floor con)

8:00a - 8:00a:

FISH, WILDLIFE, WATER QUALITY Conference Call

Note

The call-in number is 1-800-977-8002 moderator code 577988 Participant Code: 001211

8:00a - 8:00a:

Engineering staff and coordination meeting

Note

Review General's schedule
Upstream pours Wed, Thurs, Fri

8:30a - 8:30a: Note

IHR Monday call
Hydraulic modeling conference call with just IHR staff (fish passage issues and water quality issues).

9:00a - 10:00a: Note

Contract 330-2023 staff meeting
Attendees -> George, Layne, Tom, and Dana

Discussed -> FERC Monthly report and dewatering plan (to be sent separately)(George-> Submittals)
-> Adv Turbine concerns (Tom -> operations and Adv Turbine team meeting)
-> Oil leak documentation and source (Tom -> continuation)
-> Additional Tremle pours & Wed. Upstream pour - Timing (Chuck, Layne & George-> schedule)
-> Deck concrete removal and replacement (George-> Submittals)
-> Dam stability with dewatered slots and future unit movement (Remaining issues for GCC and GCPUD)

APPENDIX II



Project	<u>Wanapum Future Unit Fish Bypass</u>	Submittal:	<u>0054A Rev 1</u>
		Contract:	<u>330-2023</u>
To:	<u>Mr. Dana Jeske</u> <u>Grant County Public Utility District No. 2</u> <u>15655 Wanapum Village Lane SW</u> <u>Beverly, WA 99321</u>	From:	<u>Mr. M. Reece Voskuilen</u> <u>Jacobs Civil Inc.</u> <u>600 108th Avenue NE</u> <u>Suite 700</u> <u>Bellevue, WA 98004</u>
Dwg. Ref:		Received:	<u>February 8, 2006</u>
Spec. Ref:	<u>T-10</u>	Returned:	<u>February 15, 2006</u>

Brief Description of Submittal Received:	
Item 1: Concrete Removal Demolition Plan.	
Sketch Attached:	None

Submittal Review Comments and Response:	
We have reviewed the supplemental information included in the referenced submittal and have the following review comments. There are no marks on the submittal.	
<u>Submittal 0054 Comments:</u>	
<ol style="list-style-type: none"> 1. Review comment number 1 from submittal 0054 is satisfactorily addressed. 2. The proposed overall construction sequence was reviewed and a stability analysis performed. See the attached summary report for additional information. It was found generally acceptable <u>subject to the following conditions.</u> <ol style="list-style-type: none"> a. <u>Slot B is filled with water to above elevation 570.00 and procedures and equipment are in place to maintain that water level.</u> b. More detailed information is needed to evaluate intermediate steps as described in the attached summary report. c. The District is notified at least a week in advance before those steps where the maximum forebay elevation must be managed as described in the attached summary report. 	
We recommend that the submittal be approved as noted.	
<u>Note to District:</u> The stability analysis recommends that the forebay water level be managed to stay below elevation 570.85 for one step of this sequence. Please verify that this is acceptable. Note that this recommendation is based upon a conservative maximum crack length and could be further refined to raise the allowed forebay level.	
Attachment	Summary Report: Stability Analysis of Submittal 0054A Construction Sequence

Distribution: Project Files

Summary Report:
Stability Analysis of Submittal 0054A Construction Sequence

1.0 General

The comment 2 response lays out a proposed overall construction sequence for construction in slots A and C as follows:

- A. Place concrete in slot B to elevation 492.00.
- B. Flood the remainder of Slot B with water.
- C. Dewater and place all concrete in slot C.
- D. Remove the Slot C upstream bulkhead and set it in Slot A.
- E. At an agreed upon rate with the District's engineers, water and concrete will be removed from Slot B concurrently with the placement of concrete in Slot A.

2.0 Assumptions

- o The analysis methods and modeling assumptions are the same as those used for the FERC stability report prepared as part of the project design.
- o The construction sequence analyzed is based upon the sequence proposed by General Construction Company (GCC). See Section 3.0.
- o Dam monitoring found continuous movement of the future unit when slot B was fully dewatered and no concrete was placed. This movement, though small, exceeded historical trends. Based upon this experience, the maximum calculated crack length was reduced to the length calculated when slot B is dewatered and concrete is placed to elevation 492. See Section 3.0 below.

3.0 Construction Sequence Used for Analysis

The table below is based upon the GCC sequence with explanatory notes that fully explain the assumptions used for the analysis. Work in bold is completed immediately prior to the step.

Step Number	Description	Comments/Discussion
1	Concrete placed in slot B to elevation 492.00. Slots A and C are flooded to match forebay.	The water level in Slot B is higher than the 540 elevation proposed by the contractor in July of 2005
2	Flood Slot B to at least Elevation 570. Slots A & C are flooded to match forebay.	The water level in Slot B is higher than the 540 elevation proposed by the contractor in July of 2005
3A	Dewater Slot C Slot B is flooded to EL 570. Slot A is flooded to match forebay.	Forebay water elevation at maximum operating elevation, Elevation 571.5.
3B	Dewater Slot C Slot B is flooded to EL 570. Slot A is flooded to match forebay.	Forebay water elevation at elevation that limits crack length to that calculated for step 1.
4	Complete Slot C concrete. Slot B is flooded to EL 570. Slot A is flooded to match forebay.	
5A	Dewater Slot A Slot B is flooded to EL 570.	Forebay water elevation at maximum operating elevation, Elevation 571.5.

Step Number	Description	Comments/Discussion
6	Place upstream concrete in slot A to EL. 487. Dewater Slot B	Added non-mandatory step to identify a potential step that would allow slot B to be dewatered. This is provided for information only as other steps will be considered and reviewed.

4.8 Analysis Results

The results of the analysis are summarized in the table below.

Step Number	Description	Crack Length Feet	Comments/Discussion
1	Concrete placed in slot B to elevation 492.00. Slots A and C are flooded to match forebay.	5.22	Used as maximum crack length for evaluating results.
2	Flood Slot B to at least Elevation 570. Slots A & C are flooded to match forebay.	1.78	
3A	Dewater Slot C Slot B is flooded to EL 570. Slot A is flooded to match forebay.	6.82	Exceeds step 1 crack length.
3B	Dewater Slot C Slot B is flooded to EL 570. Slot A is flooded to match forebay.	5.24	Forebay at Elevation 570.85. Crack length approximately equal to step 1 crack length.
4	Complete Slot C concrete. Slot B is flooded to EL 570. Slot A is flooded to match forebay.	0	
5	Dewater Slot A Slot B is flooded to EL 570.	4.05	
6 (Not Mandatory, For info. only)	Place upstream concrete in slot A to EL. 487. Dewater Slot B	4.63	First 3 upstream lifts of slot A upstream concrete placed and slot B dewatered. Lift heights are based upon information received from GCC in June 2005.

The calculated foundation crack lengths are typically lower than the step 1 crack length. The only step where the step 1 crack length is exceeded is for step 3A. The crack length for this step can be controlled by managing the forebay water elevation to not exceed 570.85 until sufficient concrete is placed in slot A to reduce the crack length. Step 6 indicates that slot B can be dewatered after a moderate amount of upstream concrete is placed in slot A.

The proposed overall sequence is acceptable. Added detail is needed to evaluate the sequence of placing concrete in slot C and to the sequence for work performed after step 5.



Project	<u>Wanapum Future Unit Fish Bypass</u>	Submittal:	<u>0054A Rev 2</u>
		Contract:	<u>330-2023</u>
To:	<u>Mr. Dana Jeske</u> <u>Grant County Public Utility District No. 2</u> <u>15655 Wanapum Village Lane SW</u> <u>Beverly, WA 99321</u>	From:	<u>Mr. M. Reece Voskuilen</u> <u>Jacobs Civil Inc.</u> <u>600 108th Avenue NE</u> <u>Suite 700</u> <u>Bellevue, WA 98004</u>
Dwg. Ref:		Received:	<u>February 6, 2006</u>
Spec. Ref:	<u>T-10</u>	Returned:	<u>February 15, 2006</u>

Brief Description of Submittal Received:	
Item 1: Concrete Removal Demolition Plan.	
Sketch Attached:	None

Submittal Review Comments and Response:	
We have reviewed the supplemental information included in the referenced submittal and have the following review comments. There are no marks on the submittal.	
<u>Submittal 0054 Comments:</u>	
<ol style="list-style-type: none"> 1. Review comment number 1 from submittal 0054 is satisfactorily addressed. 2. The proposed overall construction sequence was reviewed and a stability analysis performed. See the attached summary report for additional information. It was found generally acceptable <u>subject to the following conditions.</u> <ol style="list-style-type: none"> a. <u>Slot B is filled with water to match forebay and procedures and equipment are in place to maintain that water level.</u> b. More detailed information is needed to evaluate intermediate steps as described in the attached summary report. c. The District is notified at least a week in advance before those steps where the maximum forebay elevation must be managed as described in the attached summary report. 	
We recommend that the submittal be approved as noted.	
<u>Note to District:</u> The stability analysis recommends that the forebay water level be managed to stay below elevation 570.85 for one step of this sequence. Please verify that this is acceptable. Note that this recommendation is based upon a conservative maximum crack length and could be further refined to raise the allowed forebay level.	
Attachment	Summary Report: Stability Analysis of Submittal 0054A Construction Sequence

Distribution: Project Files

Summary Report:
Stability Analysis of Submittal 0054A Construction Sequence

1.0 General

The comment 2 response lays out a proposed overall construction sequence for construction in slots A and C as follows:

- A. Place concrete in slot B to elevation 492.00.
- B. Flood the remainder of Slot B with water.
- C. Dewater and place all concrete in slot C.
- D. Remove the Slot C upstream bulkhead and set it in Slot A.
- E. At an agreed upon rate with the District's engineers, water and concrete will be removed from Slot B concurrently with the placement of concrete in Slot A.

2.0 Assumptions

- o The analysis methods and modeling assumptions are the same as those used for the FERC stability report prepared as part of the project design.
- o The construction sequence analyzed is based upon the sequence proposed by General Construction Company (GCC). See Section 3.0.
- o Dam monitoring found continuous movement of the future unit when slot B was fully dewatered and no concrete was placed. This movement, though small, exceeded historical trends. Based upon this experience, the maximum calculated crack length was reduced to the length calculated when slot B is dewatered and concrete is placed to elevation 492. See Section 3.0 below.

3.0 Construction Sequence Used for Analysis

The table below is based upon the GCC sequence with explanatory notes that fully explain the assumptions used for the analysis. Work in bold is completed immediately prior to the step.

Step Number	Description	Comments/Discussion
1	Concrete placed in slot B to elevation 492.00. Slots A and C are flooded to match forebay.	The water level in Slot B is higher than the 540 elevation proposed by the contractor in July of 2005
2	Flood Slot B to match forebay. Slots A & C are flooded to match forebay.	The water level in Slot B is higher than the 540 elevation proposed by the contractor in July of 2005
3A	Dewater Slot C Slot B is flooded to match forebay. Slot A is flooded to match forebay.	Forebay water elevation at maximum operating elevation, Elevation 571.5.
3B	Dewater Slot C Slot B is flooded to match forebay. Slot A is flooded to match forebay.	Forebay water elevation at elevation that limits crack length to that calculated for step 1.
4	Complete Slot C concrete. Slot B is flooded to match forebay. Slot A is flooded to match forebay.	
5A	Dewater Slot A Slot B is flooded to match forebay.	Forebay water elevation at maximum operating elevation, Elevation 571.5.

Step Number	Description	Comments/Discussion
6	Place upstream concrete in slot A to El. 487. Dewater Slot B	Added non-mandatory step to identify a potential step that would allow slot B to be dewatered. This is provided for information only as other steps will be considered and reviewed.

4.9 Analysis Results

The results of the analysis are summarized in the table below.

Step Number	Description	Crack Length Feet	Comments/Discussion
1	Concrete placed in slot B to elevation 492.00. Slots A and C are flooded to match forebay.	5.22	Used as maximum crack length for evaluating results.
2	Flood Slot B to match forebay. Slots A & C are flooded to match forebay.	1.78	
3A	Dewater Slot C Slot B is flooded to match forebay. Slot A is flooded to match forebay.	6.82	Exceeds step 1 crack length.
3B	Dewater Slot C Slot B is flooded to match forebay. Slot A is flooded to match forebay.	5.24	Forebay at Elevation 570.85. Crack length approximately equal to step 1 crack length.
4	Complete Slot C concrete. Slot B is flooded to match forebay. Slot A is flooded to match forebay.	0	
5	Dewater Slot A Slot B is flooded to match forebay.	4.05	
6 (Not Mandatory, For info. only)	Place upstream concrete in slot A to El. 487. Dewater Slot B	4.63	First 3 upstream lifts of slot A upstream concrete placed and slot B dewatered. Lift heights are based upon information received from GCC in June 2005.

The calculated foundation crack lengths are typically lower than the step 1 crack length. The only step where the step 1 crack length is exceeded is for step 3A. The crack length for this step can be controlled by managing the forebay water elevation to not exceed 570.85 until sufficient concrete is placed in slot A to reduce the crack length. Step 6 indicates that slot B can be dewatered after a moderate amount of upstream concrete is placed in slot A.

The proposed overall sequence is acceptable. Added detail is needed to evaluate the sequence of placing concrete in slot C and to the sequence for work performed after step 5.



Project	<u>Wanapum Future Unit Fish Bypass</u>	Submittal:	<u>0054A</u>
		Contract:	<u>330-2023</u>
To:	<u>Mr. Dana Jaske</u> <u>Grant County Public Utility District No. 2</u> <u>15655 Wanapum Village Lane SW</u> <u>Beverly, WA 99321</u>	From:	<u>Mr. M. Reese Voskullen</u> <u>Jacobs Civil Inc.</u> <u>600 108th Avenue NE</u> <u>Suite 700</u> <u>Bellevue, WA 98004</u>
Dwg. Ref:		Received:	<u>February 6, 2006</u>
Spec. Ref:	<u>T-10</u>	Returned:	<u>February 15, 2006</u>

Brief Description of Submittal Received:	
Item 1: Concrete Removal Demolition Plan.	
Sketch Attached:	None

Submittal Review Comments and Response:	
We have reviewed the supplemental information included in the referenced submittal and have the following review comments. There are no marks on the submittal.	
<u>Submittal 0054 Comments:</u>	
<ol style="list-style-type: none"> 1. Review comment number 1 from submittal 0054 is satisfactorily addressed. 2. The proposed overall construction sequence was reviewed and a stability analysis performed. See the attached summary report for additional information. It was found generally acceptable <u>subject to the following conditions.</u> <ol style="list-style-type: none"> a. <u>Slot B is filled with water to above elevation 570.00 and procedures and equipment are in place to maintain that water level.</u> b. <u>More detailed information is needed to evaluate intermediate steps as described in the attached summary report.</u> c. The District is notified at least a week in advance before those steps where the maximum forebay elevation must be managed as described in the attached summary report. 	
We recommend that the submittal be approved as noted.	
<u>Note to District:</u> The stability analysis recommends that the forebay water level be managed to stay below elevation 570.85 for one step of this sequence. Please verify that this is acceptable. Note that this recommendation is based upon a conservative maximum crack length and could be further refined to raise the allowed forebay level.	
Attachment	Summary Report: Stability Analysis of Submittal 0054A Construction Sequence

Distribution: Project Files

Summary Report:
Stability Analysis of Submittal 0054A Construction Sequence

1.0 General

The comment 2 response lays out a proposed overall construction sequence for construction in slots A and C as follows:

- A. Place concrete in slot B to elevation 492.00.
- B. Flood the remainder of Slot B with water.
- C. Dewater and place all concrete in slot C.
- D. Remove the Slot C upstream bulkhead and set it in Slot A.
- E. At an agreed upon rate with the District's engineers, water and concrete will be removed from Slot B concurrently with the placement of concrete in Slot A.

2.0 Assumptions

- o The analysis methods and modeling assumptions are the same as those used for the FERC stability report prepared as part of the project design.
- o The construction sequence analyzed is based upon the sequence proposed by General Construction Company (GCC). See Section 3.0.
- o Dam monitoring found continuous movement of the future unit when slot B was fully dewatered and no concrete was placed. This movement, though small, exceeded historical trends. Based upon this experience, the maximum calculated crack length was reduced to the length calculated when slot B is dewatered and concrete is placed to elevation 492. See Section 3.0 below.

3.0 Construction Sequence Used for Analysis

The table below is based upon the GCC sequence with explanatory notes that fully explain the assumptions used for the analysis. Work in bold is completed immediately prior to the step.

Step Number	Description	Comments/Discussion
1	Concrete placed in slot B to elevation 492.00. Slots A and C are flooded to match forebay.	The water level in Slot B is higher than the 540 elevation proposed by the contractor in July of 2005
2	Flood Slot B to at least Elevation 470. Slots A & C are flooded to match forebay.	The water level in Slot B is higher than the 540 elevation proposed by the contractor in July of 2005
3A	Dewater Slot C Slot B is flooded to EL 570. Slot A is flooded to match forebay.	Forebay water elevation at maximum operating elevation, Elevation 571.5.
3B	Dewater Slot C Slot B is flooded to EL 570. Slot A is flooded to match forebay.	Forebay water elevation at elevation that limits crack length to that calculated for step 1.
4	Complete Slot C concrete. Slot B is flooded to EL 570. Slot A is flooded to match forebay.	
5A	Dewater Slot A. Slot B is flooded to EL 570.	Forebay water elevation at maximum operating elevation, Elevation 571.5.

Step Number	Description	Comments/Discussion
6	Place upstream concrete in slot A to El. 487. Dewater Slot B	Added non-mandatory step to identify a potential step that would allow slot B to be dewatered. This is provided for information only as other steps will be considered and reviewed.

4.0 Analysis Results

The results of the analysis are summarized in the table below.

Step Number	Description	Crack Length Feet	Comments/Discussion
1	Concrete placed in slot B to elevation 492.00. Slots A and C are flooded to match forebay.	5.22	Used as maximum crack length for evaluating results.
2	Flood Slot B to at least Elevation 470. Slots A & C are flooded to match forebay.	1.78	
3A	Dewater Slot C Slot B is flooded to EL 570. Slot A is flooded to match forebay.	6.82	Exceeds step 1 crack length.
3B	Dewater Slot C Slot B is flooded to EL 570. Slot A is flooded to match forebay.	5.24	Forebay at Elevation 570.85. Crack length approximately equal to step 1 crack length.
4	Complete Slot C concrete. Slot B is flooded to EL 570. Slot A is flooded to match forebay.	0	
5	Dewater Slot A Slot B is flooded to EL 570.	4.05	
6 (Not Mandatory, For info. only)	Place upstream concrete in slot A to El. 487. Dewater Slot B	4.63	First 3 upstream lifts of slot A upstream concrete placed and slot B dewatered. Lift heights are based upon information received from GCC in June 2005.

The calculated foundation crack lengths are typically lower than the step 1 crack length. The only step where the step 1 crack length is exceeded is for step 3A. The crack length for this step can be controlled by managing the forebay water elevation to not exceed 570.85 until sufficient concrete is placed in slot A to reduce the crack length. Step 6 indicates that slot B can be dewatered after a moderate amount of upstream concrete is placed in slot A.

The proposed overall sequence is acceptable. Added detail is needed to evaluate the sequence of placing concrete in slot C and to the sequence for work performed after step 5.

APPENDIX JJ

Mail Message



From: George Thompson
To : Voskuilen, Reece
CC : Moore, David ; Jeske, Dana ;
Date Tuesday, February 21, 2006 11:43 AM
Received:
Subject: Fwd: RFI #62
  RFI #62

Reece,
This is the sequence we discussed yesterday. Dave said this morning that the settlement readings are back to normal since we've added the concrete in Slot B. I've asked him to take some readings today or tomoprow before we dewater slot C and then some frequent readings while Slot C is dewatered. Dave said he would send you their most recent readings.

Please review the attached proposed sequence and analyze the stability for it.

Thanks,
George

GT006679

REQUEST FOR INFORMATION		RFI NUMBER
CONTRACT NUMBER: 330-2023		62
CONTRACT TITLE: Wanapum Future Unit Fish Bypass		
PRIME CONTRACTOR	SUBCONTRACTOR / SUPPLIER	
General Construction Company		

SUBJECT OF RFI:			
DRAWINGS:	DETAILS:	SPECIFICATION	
INFORMATION REQUESTED:			
<p>Removal of the downstream bulkheads is a key component associated with both the upstream (Unit 11) and in-water downstream (Bypass Foundation) concrete placement. The driving force is the concrete placement in the 'A' & 'C' slots, namely the upstream of 'C' and the downstream of 'A'.</p> <p>GCC requests the following sequence for the concrete placement in Future Unit 11 Slots: A, B, and C be considered. This will allow GCC to pursue the work in a more efficient and expeditious manner.</p> <ol style="list-style-type: none"> 1. Concrete placed in slot B to the elevations shown in (Attachment 1). 2. Flood slot B to forebay elevation. 3. Dewater slot C. 4. Place all upstream concrete in slot C. 5. Transfer the upstream bulkhead from slot C to slot A and begin dewatering slot A. Place downstream concrete in slot C concurrently with the bulkhead move and dewatering in slot A. 6. Place downstream concrete in slot A. 7. At an agreed upon rate with the District's engineers, water and concrete will be removed from slot B concurrently with the placement of concrete in slot A. 8. Place upstream concrete in slot A. <p>Step five (5) in the above sequence differs from our earlier proposed sequence. In this proposal the entire slot C upstream and approximately 75% of the downstream concrete will be placed prior to dewatering slot A.</p> <p>Removal of the downstream bulkheads can be accomplished upon completion of step six (6) above. This allows in-water work on the bypass foundation to proceed at the downstream face of the future units at an earlier date.</p>			

Date Response Required By:	Date RFI Submitted:	Signature:
	2/21/2006	Tanner Vetsch

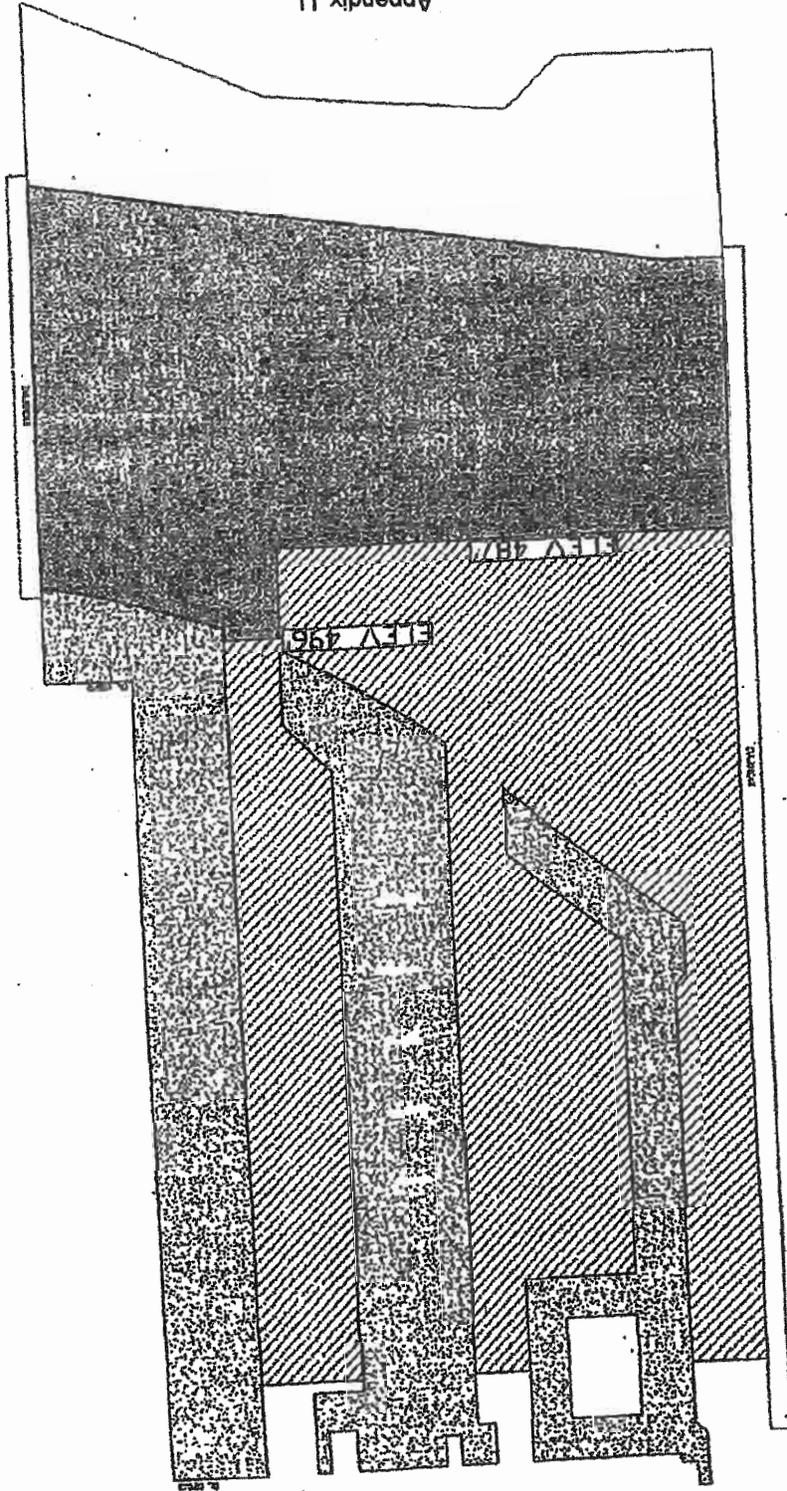
CONTRACTOR RECOMMENDATION:		

From:	Date Received:	Signature:
To:	Date Returned:	

GT006680

REQUEST FOR INFORMATION		RFI NUMBER
CONTRACT NUMBER: 330-2023		62
CONTRACT TITLE: Wanapum Future Unit Fish Bypass		
PRIME CONTRACTOR	SUBCONTRACTOR / SUPPLIER	
General Construction Company		

REPLY:



SLOT B

GT006881

APPENDIX KK

Mail Message



From: George Thompson
To : ben.hugel@kiewit.com
Date Monday, February 27, 2006 1:57 PM
Received:
Subject: Fwd: RFI 062 Response - FUFB
 RFI 062 Response - FUFB

fyi.

Mail Message



From: "Wittmann-Todd, Steve" <Steve.Wittmann-Todd@jacobs.com>
To : Jeske, Dana ;
CC : Thompson, George ; Voskuilen, Marinus
Date Friday, February 24, 2006 2:10 PM
Received:
Subject: RFI 062 Response - FUFB
RFI 062 Response.doc
RFI 062 Response.pdf
TEXT.htm

Dana/George,

Our response is attached. Please note that some of our recommendations require action by the District as detailed in the "Note to District"

Please contact me with any questions/comments.

Steve Wittmann-Todd, PE SE

Jacobs Civil Inc.
500 108th Avenue NE
Suite 700
Bellevue, WA 98004
425-452-8000
steve.wittmann-todd@jacobs.com
<<RFI 062 Response.pdf>> <<RFI 062 Response.doc>>

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Request for Information (RFI)
Response

Project	<u>Wanapum Future Unit Fish Bypass</u>	RFI No.:	<u>062</u>
		Contract:	<u>330-2023</u>
To:	<u>Mr. Dana Jeske</u> <u>Grant County PUD</u> <u>15655 Wanapum Village Lane SW</u> <u>Beverly, WA 99321</u>	From:	<u>Mr. M. Reace Voskuilen</u> <u>Jacobs Civil Inc.</u> <u>600 108th Avenue NE, Suite 700</u> <u>Bellevue, WA 98004</u>
Dwg. Ref:		Received:	<u>2/21/06</u>
Spec. Ref:		Returned:	<u>2/24/06</u>

Information Requested:

The RFI question is restated here for convenience:

Removal of the downstream bulkheads is a key component associated with both the upstream (Unit 11) and in-water downstream (Bypass Foundation) concrete placement. The driving force is the concrete placement in the 'A' & 'C' slots, namely the upstream of 'C' and the downstream of 'A'.

GCC requests the following sequence for the concrete placement in Future Unit 11 Slots: A, B, and C be considered. This will allow GCC to pursue the work in a more efficient and expeditious manner.

1. Concrete placed in slot B to the elevations shown in (Attachment 1).
2. Flood slot B to forebay elevation.
3. Dewater slot C.
4. Place all upstream concrete in slot C.
5. Transfer the upstream bulkhead from slot C to slot A and begin dewatering slot A. Place downstream concrete in slot C concurrently with the bulkhead move and dewatering in slot A.
6. Place downstream concrete in slot A.
7. At an agreed upon rate with the District's engineers, water and concrete will be removed from slot B concurrently with the placement of concrete in slot A.
8. Place upstream concrete in slot A.

Step five (5) in the above sequence differs from our earlier proposed sequence. In this proposal the entire slot C upstream and approximately 75% of the downstream concrete will be placed prior to dewatering slot A.

Removal of the downstream bulkheads can be accomplished upon completion of step six (6) above. This allows in-water work on the bypass foundation to proceed at the downstream face of the future units at an earlier date.

Sketch Attached: Copy of RFI 62 (2 pages)

RFI Response

Response:

A stability analysis was performed for the proposed sequence to verify that dam stability requirements are maintained for each step. When a proposed step did not meet stability requirements, alternatives were investigated to identify measures needed to improve the stability of the future unit. Based upon this analysis we found that the proposed overall sequence is acceptable when measures are taken to control the crack length in steps 4A and 8A. See the attached stability analysis summary report for full details.

Provide at least 1 week notice to the District before implementing any step.

Added construction sequence information is needed to evaluate the stability of the future unit for work performed after step 8. This can be submitted as a separate submittal or RFI.

Note to District:

Please note the following:

- (1) To maintain stability during step 4B requires that the forebay water elevation must be less than or equal to 571.00. This is the only practical means to maintain stability without severely modifying the contractor's procedure. Since it is a moderate amount below the normal maximum operating elevation, we recommend that it be implemented by the District.
- (2) Three alternatives were investigated to maintain the required stability for step 8. Two alternatives require limits on the forebay water elevation (8B and 8D), while the third alternative is addressed by concrete alone (8C).

Since alternatives 4B, 8B and 8D require action by the District to maintain stability, the limitations on forebay elevation need to be reviewed and, if acceptable, incorporated into the dam operating procedures during those construction steps. If any alternatives are not acceptable to the District, please notify us and we will rewrite the RFI response and summary report to omit those alternatives.

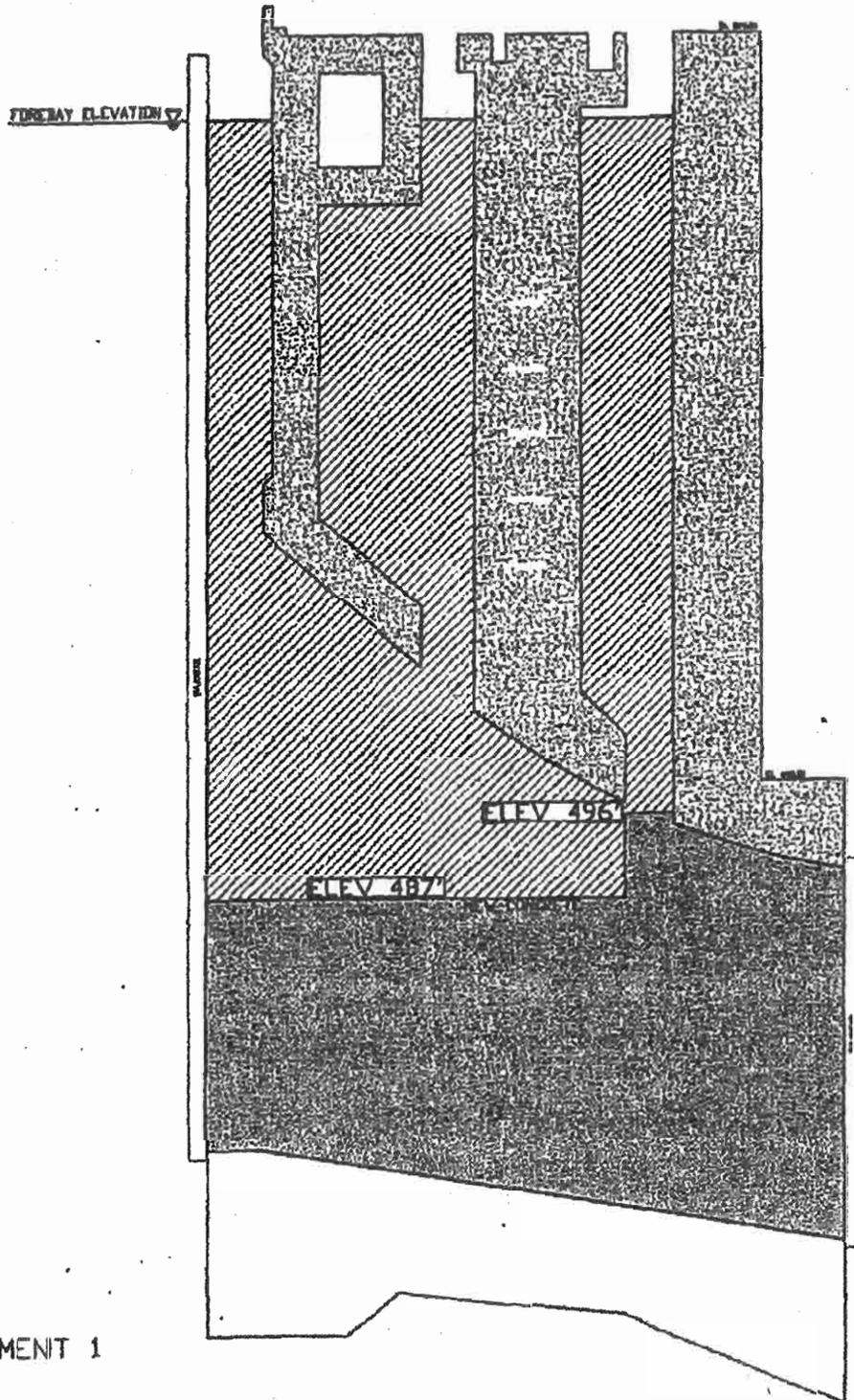
Sketch Attached:	Summary Report: Stability Analysis of RFI 62 Construction Sequence, February 24, 2006, 4 pages
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Distribution: Project Files

REQUEST FOR INFORMATION		RFI NUMBER
CONTRACT NUMBER: 330-2023		62
CONTRACT TITLE: Wanapum Future Unit Fish Bypass		
PRIME CONTRACTOR	SUBCONTRACTOR / SUPPLIER	
General Construction Company		

SUBJECT OF RFI:			
DRAWINGS:	DETAILS:	SPECIFICATION	
INFORMATION REQUESTED:			
<p>Removal of the downstream bulkheads is a key component associated with both the upstream (Unit 11) and in-water downstream (Bypass Foundation) concrete placement. The driving force is the concrete placement in the 'A' & 'C' slots, namely the upstream of 'C' and the downstream of 'A'.</p> <p>GCC requests the following sequence for the concrete placement in Future Unit 11 Slots: A, B, and C be considered. This will allow GCC to pursue the work in a more efficient and expeditious manner.</p> <ol style="list-style-type: none"> Concrete placed in slot B to the elevations shown in (Attachment 1). Flood slot B to forebay elevation. Dewater slot C. Place all upstream concrete in slot C. Transfer the upstream bulkhead from slot C to slot A and begin dewatering slot A. Place downstream concrete in slot C concurrently with the bulkhead move and dewatering in slot A. Place downstream concrete in slot A. At an agreed upon rate with the District's engineers, water and concrete will be removed from slot B concurrently with the placement of concrete in slot A. Place upstream concrete in slot A. <p>Step five (5) in the above sequence differs from our earlier proposed sequence. In this proposal the entire slot C upstream and approximately 75% of the downstream concrete will be placed prior to dewatering slot A.</p> <p>Removal of the downstream bulkheads can be accomplished upon completion of step six (6) above. This allows in-water work on the bypass foundation to proceed at the downstream face of the future units at an earlier date.</p>			
Date Response Required By:	Date RFI Submitted:	Signature:	
	2/21/2006	Tanner Vetsch	
CONTRACTOR RECOMMENDATION:			
From:	Date Received:	Signature:	
To:	Date Returned:		
REPLY:			

SLOT B



ATTACHMENT 1

Wanapum Dam
 Future Unit Fish Bypass
 Jacobs Civil Inc.
 February 24, 2006

Summary Report:
Stability Analysis of RFI 62 Construction Sequence
February 24, 2006

1.0 General

RFI 62, see attached, proposes a revision to the construction sequence within the future unit. The proposed sequence, as described in the text of the RFI is as follows:

GCC requests the following sequence for the concrete placement in Future Unit 11 Slots: A, B, and C be considered. This will allow GCC to pursue the work in a more efficient and expeditious manner.

1. Concrete placed in slot B to the elevations shown in (Attachment 1).
2. Flood slot B to forebay elevation.
3. Dewater slot C.
4. Place all upstream concrete in slot C.
5. Transfer the upstream bulkhead from slot C to slot A and begin dewatering slot A. Place downstream concrete in slot C concurrently with the bulkhead move and dewatering in slot A.
6. Place downstream concrete in slot A.
7. At an agreed upon rate with the District's engineers, water and concrete will be removed from slot B concurrently with the placement of concrete in slot A.
8. Place upstream concrete in slot A.

Step five (5) in the above sequence differs from our earlier proposed sequence. In this proposal the entire slot C upstream and approximately 75% of the downstream concrete will be placed prior to dewatering slot A.

Removal of the downstream bulkheads can be accomplished upon completion of step six (6) above. This allows in-water work on the bypass foundation to proceed at the downstream face of the future units at an earlier date.

A stability analysis was performed for the proposed sequence to verify that dam stability requirements are maintained at each step of the sequence. When a proposed step does not meet stability requirements, alternatives were investigated to identify steps needed to improve the stability of the future unit.

2.0 Assumptions

- The analysis methods and modeling assumptions are the same as those used for the FERC stability report prepared as part of the project design.
- The construction sequence analyzed is based upon the sequence proposed by General Construction Company (GCC). See Section 3.0.
- Dam monitoring found continuous movement of the future unit when slot B was fully dewatered and no concrete was placed. This movement, though small, exceeded historical trends. Based upon this experience, the maximum calculated crack length was reduced to the length calculated when slot B is dewatered and concrete is placed to elevation 487. See Section 3.0 below.

Wanapum Dam
 Future Unit Fish Bypass
 Jacobs Civil Inc.
 February 24, 2006

3.0 Construction Sequence Used for Analysis

The table below is based upon the GCC sequence with explanatory notes provided to explain the assumptions used for the analysis in greater detail. Note that step 1, dewatering of slot B, has already been accomplished. It is included to document the overall sequence being evaluated.

Step Number	Description of New Work for Each Step	Comments/Discussion
1	Dewater Slot B - Already Complete	Already complete, included to document construction progress status.
2	Slot B concrete complete to EL 487	Moderately less concrete than previously proposed.
3	Flood Slot B to Match Forebay	Slot flooded to match forebay water level.
4A	Dewater Slot C	Base Condition Evaluation: Evaluates future unit stability when the forebay water level is at the maximum normal operating condition.
4B	Dewater Slot C Limit Forebay water level to EL 571	Alternative Evaluation to Improve Stability: Forebay water level is lowered to improve the stability of the future unit.
5	Slot C Upstream Concrete Complete	
6A	Dewater Slot A Upstream Slot C Concrete Complete	Minimum Concrete Evaluation: Evaluates future unit stability when only the upstream slot C concrete is complete.
6B	Dewater Slot A All Slot C Concrete Complete	Maximum Concrete Evaluation: Evaluates future unit stability when all slot C concrete is complete.
7	Slot A Downstream Concrete Complete	
8A	Dewater Slot B	Base Condition Evaluation: Evaluates future unit stability when the forebay water level is at the maximum normal operating condition.
8B	Dewater Slot B Limit Forebay water level to EL 570	Alternative Evaluation to Improve Stability: Forebay water level is lowered to improve the stability of the future unit.
8C	Dewater Slot B Slot A Upstream Concrete to EL 497	Alternative Evaluation to Improve Stability: Upstream concrete in slot A is added to improve the stability of the future unit.
8D	Dewater Slot B Slot A Upstream Concrete to EL 477 Limit Forebay water level to EL 571.	Alternative Evaluation to Improve Stability: Forebay water level is lowered and upstream concrete in slot A is added to improve the stability of the future unit.

Wanapum Dam
 Future Unit Fish Bypass
 Jacobs Civil Inc.
 February 24, 2006

4.0 Analysis Results

The results of the analysis are summarized in the table below.

Step No.	Description of New Work for Each Step	Crack Length Feet	Comments/Discussion
1	Dewater Slot B - Already Complete	8.64	As noted above, this crack length was judged too long based upon field experience.
2	Slot B concrete complete to EL 487	5.96	Used as maximum crack length for evaluating results. This is a known stable condition.
3	Flood Slot B to Match Forebay	2.17	
4A	Dewater Slot C	7.27	Base Condition Evaluation: Exceeds step 2 crack length. Not acceptable. See 4B for an acceptable alternative.
4B	Dewater Slot C Limit Forebay water level to EL 571	5.96	Alternative Evaluation to Improve Stability: Forebay water level limited to about EL 571 so crack length approximately matches the step 2 crack length.
5	Slot C Upstream Concrete Complete	0	
6A	Dewater Slot A Upstream Slot C Concrete Complete	3.62	Evaluates stability when the minimum amount of concrete is placed.
6B	Dewater Slot A All Slot C Concrete Complete	4.48	Evaluates stability when the maximum amount of concrete is placed. The crack length is longer because this concrete is near the downstream edge and thus tends to rotate the future unit.
7	Slot A Downstream Concrete Complete	5.30	
8A	Dewater Slot B	8.93	Base Condition Evaluation: Exceeds the step 2 crack length as well as the step 1 crack length. Not acceptable. See 8B through 8D for acceptable alternatives.
8B	Dewater Slot B Limit Forebay water level to EL 570	5.96	Alternative Evaluation to Improve Stability: Maximum forebay level limited to EL 570 to maintain adequate stability.
8C	Dewater Slot B Slot A Upstream Concrete to EL 497	5.85	Alternative Evaluation to Improve Stability: Minimum amount of Slot A concrete needed to maintain adequate stability with normal limits on the forebay water level.
8D	Dewater Slot B Slot A Upstream Concrete to EL 477 Limit Forebay water level to EL 571.	6.12	Alternative Evaluation to Improve Stability: Minimum amount of Slot A concrete needed to maintain adequate stability when the maximum forebay water level is limited to EL 571. The crack length exceeds the step 2 crack length by only 5%. This is judged acceptable.

Wanepum Dam
Future Unit Fish Bypass
Jacobs Civil Inc.
February 24, 2006

Except for steps 4A and 8A, the calculated foundation crack lengths are less than the step 2 length and thus are acceptable. For step 4A the excessive crack length is effectively controlled by limiting the forebay water level to maximum elevation of 571. For step 8A the excessive crack length can be controlled by limiting the forebay water level, adding upstream slot A concrete or by adding concrete and limiting the forebay water level. Steps 8B, 8C and 8D are potential non-mandatory alternatives. Other alternative may be proposed for review.

The results for step 6 found that slot A can be flooded at any time after the upstream concrete in slot C is complete (See step 6A). The downstream slot C concrete can be completed after slot A is dewatered.

The proposed overall sequence is acceptable when measures are taken to control the crack length in steps 4A and 8A. Added construction sequence information is needed to evaluate the stability of the future unit for work performed after step 8. This can be submitted as a separate submittal or RFI.

APPENDIX LL



**Public Utility District No. 2 of Grant County
 Priest Rapids Project / Fish Bypass System
 Contract 430-1287 / Jacobs Job. No. W3-X444-00**

March 17, 2008

Memorandum for the Record DRAFT #1

To: Dana Jeske, Grant PUD
 George Thompson, Grant PUD

From: M. Reece Voskuilen, Jacobs

Subject: Wanapum Future Unit Fish Bypass – Contract 330-2023
 Claims Document Review

1.0 APPROACH

An Adobe Acrobat PDF file of the GCC Claim Document, dated March 11, 2008 was received on March 13, 2008. We have reviewed portions of the document and prepared comments on it in support of on going meetings between the District and GCC. The primary focus of this memo is on the "One Slot/Two Slot" issue raised by the Contractor.

To facilitate the review and transposition of our review comments into other compiled documents, we have prepared our comments in tabular form with a page number and comment number reference. Copies of the referenced pages are included with the comment numbers written on the page to identify the text section being discussed.

2.0 REVIEW COMMENTS

Page	Comment No.	Comment
1	1-1	GCC contends that its construction plan was developed in reliance upon "PUD representations". Instructions to Bidders, Item 3, of the Contract documents clearly prohibits this. Even if such representations were made, a point which we strongly dispute, they would not be binding upon the District.
2	2-1	GCC again contends that it developed a plan based upon "representations relied upon during bid preparation". As noted previously, such action is contrary to Instructions to Bidders, Item 3. The representations that are claimed by GCC later in the document are also clearly and logically shown to be false.

Ex. 100

Memorandum for the Record

Page	Comment No.	Comment
4	4-4	<p>As discussed in the previous comment, the sequence was incremental, with GCC proposing a sequence, the District analyzing it and providing either review comments or alternate suggestions, until a mutually agreeable sequence was developed. The primary factor in review of these various construction sequences was that dam stability not be compromised.</p> <p>The Contractor also characterizes this as an "agreement", implying a firm and unchangeable process. This would be an incorrect reading of the document. The document was more of an acceptance in principal of the work to be performed and still required a formal submittal by the Contractor for review and approval. It was further clarified that "These results, as previously discussed, are preliminary and will likely change when a detailed sequence and schedule is submitted."</p>
4	4-5	<p>During the prosecution of the work, the existing Future Unit 11 monolith began to show increased rotation about the base. It was speculated at the time that perhaps the assumed contribution of the upstream anchors was not as effective as originally assumed. For safety reasons, the construction sequence was reviewed and mitigation steps were implemented to improve stability. Although these changed the plan somewhat, they were not a complete reversal to a consecutive basis construction.</p>
4	4-6	<p>The original contract requirements for construction sequence were not altered. The District permitted an alternate sequence as long as the project safety was not impacted. The modifications necessitated by the future unit 11 rotation in January of 2006 merely moved the work requirements closer to those originally (and still) included in the contract and also visibly demonstrated why those provisions were included in the first place. The implied "change" in work sequence was merely a reaffirmation of the sequence required.</p>
4	4-7	<p>It is our opinion that the Contractor is not entitled to either cost or schedule for this item. At the beginning of the job, the Contractor agreed to the provisions of the contract. The fact that improvements to the schedule related to work sequence within the future unit section did not follow either the Contractor's original narrative description or the modified versions of the work sequence developed later is not a basis for a claim. The Contractor was bound to follow the prescribed sequence and agreed that it could do so.</p>

APPENDIX MM

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07-202150

KABA K. KNUTSON
FILED

JUL 09 2009

KIMBERLY A. ALLEN
Grant County Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,
Plaintiff,
v.
PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON,
a Washington municipal corporation,
Defendant,
PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, a Washington
municipal corporation,
Third-Party Plaintiff,
v.
GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,
and TRAVELERS CASUALTY &
SURETY COMPANY, BOND NUMBER
41S103871237BCM,
Third-Party Defendants.

No. 08-2-01339-8

**DECLARATION OF DAVID F. BISHOP
IN OPPOSITION TO DEFENDANT
PUBLIC UTILITY DISTRICT NO. 2 OF
GRANT COUNTY'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

DECLARATION OF DAVID F. BISHOP IN OPPOSITION TO PUD'S MOTION
FOR PARTIAL SUMMARY JUDGMENT- 1

STEWART SOKOL & GRAY LLC

ATTORNEYS AT LAW
2100 NW FIFTH AVENUE, SUITE 210
PORTLAND, OREGON 97201-5947
(503) 223-9699
FAX (503) 223-5706

1 GENERAL CONSTRUCTION
 COMPANY, a Delaware corporation,)
 2
 Fourth-Party Plaintiff,)
 3
 v.)
 4 GLOBAL DIVING & SALVAGE, INC.,)
 5 a Washington corporation,)
 6 Fourth-Party Defendant.)
 7

8 I, DAVID F. BISHOP, declare under penalty of perjury the following in support of
 9 General Construction Company's Opposition to the Motion for Partial Summary
 10 Judgment filed by Defendant Public Utility District No. 2 of Grant County, Washington
 11 ("PUD"):

12 1. At all times material from June, 2005 through November 28, 2005, I was
 13 the Project Manager for General Construction Company ("GCC") with respect to the
 14 Wanapum Future Unit Fish Bypass, Contract 330-2023 ("Project"), and have personal
 15 knowledge of the matters set forth herein. At all times during my involvement with the
 16 Project, Mr. Dana Jeske served as the principal on-site representative for the PUD with
 17 respect to the Project.

18 2. GCC commenced mobilizing to the Project site in July, 2005. In August of
 19 2005, Mr. Jeske indicated that issues that arose during the Project would be dealt with
 20 in the course of project meetings and related discussions. These issues would
 21 ultimately be resolved by agreements between him and I. This ongoing collection of
 22 issues was referred to as the "Ledger" or PCO Log, a sample of which is attached as
 23 Exhibit D. By early September, 2005, GCC began to discover potential contract
 24 changes with respect to the Project plans and specifications upon which GCC based its
 25 bid. One such issue concerned rock excavation. GCC's proposal, as accepted by PUD
 26 and incorporated into the contract specifications, specifically excluded rock excavation.

DECLARATION OF DAVID F. BISHOP IN OPPOSITION TO PUD'S MOTION
 FOR PARTIAL SUMMARY JUDGMENT- 2

STEWART SOKOL & GRAY LLC
 ATTORNEYS AT LAW
 1100 NW FIRST AVENUE, SUITE 1100
 PORTLAND, OREGON 97209-3247
 (503) 221-0499
 FAX (503) 223-5706

1 excavation, as per plans and specs were a part of our bid. There
2 would be no additional compensation for rock excavation.
3 Repeatedly referred to G-16. Also stated only once that he would pay
4 for rock excavation.
5 Dana refuted our position that we had qualified our bid.
6 Dana stated that our submittal for rock excavation and the letter
7 were tied together. He would not approve the submittal unless we
8 took the letter back.

9 Attached as Exhibit C is a copy of my meeting notes of September 9, 2005 with Mr.
10 Jeske concerning the rock excavation claim. Those notes state, in relevant part:

11 9:00 am "Met Dana / Scott / Chris Aker.

12 Decide to soften the letter #35. Remove any statement that we have
13 excluded rock excavation.

14 2:30 pm Later Dana alone.

15 * * *

16 Dana agrees to pay for 2' rock excavation & if we have to chase
17 fissures

18 Dana annoyed by GCC (my) attempt to state our position

19 Dana referenced that he has the authority to have me removed from
20 the project. Attempt at a threat.

21 5. Consistent with Mr. Jeske's unequivocal directives concerning the PUD-
22 required way for GCC to approach contract changes and issues on the Project, such
23 contract changes and issues were discussed informally with the PUD at Project
24 meetings and discussions to establish merit of Potential Change Orders. In addition to
25 establishing merit, these included cost discussions of the rough order of magnitude of
26 these changes. Per the unequivocal statements of Mr. Jeske, on behalf of the PUD,

DECLARATION OF DAVID F. BISHOP IN OPPOSITION TO PUD'S MOTION
FOR PARTIAL SUMMARY JUDGMENT- 4

1 minutes and by direct conversation between project management for GCC and Dana
2 Jeske, documented in the Minutes and the contemporaneous diaries of GCC personnel
3 and Mr. Jeske. Departure from that process was strongly and unequivocally
4 discouraged by Mr. Jeske from the outset of the Project in 2005, as referenced above.

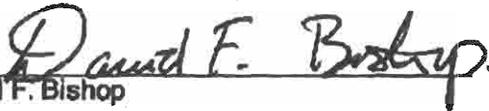
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6 I declare under penalty of perjury under the laws of the State of Washington that
7 the foregoing is true and correct.

8 EXECUTED on this 1st day of July, 2009 in Poulsbo, Washington.

9

10


David F. Bishop

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M:\wdocs\segmain\3458\3458 023\PLEAD\003082 68 WPD

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DECLARATION OF DAVID F. BISHOP IN OPPOSITION TO PUD'S MOTION
FOR PARTIAL SUMMARY JUDGMENT- 5

STEWART SOKOL & GRAY LLC

ATTORNEYS AT LAW

2400 SW FIRST AVE 4TH FL SUITE 200
PORTLAND OREGON 97201 3047
(503) 221-0099
FAX (503) 221-5706

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DECLARATION OF DAVID BISHOP IN OPPOSITION TO PUD'S MOTION FOR PARTIAL SUMMARY JUDGMENT** on:

**David E. Sonn
Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road
PO Box 1688
Wenatchee, Washington 98807-1688
Attorneys for Defendant and Third-Party Plaintiff
Public Utility District No. 2 of Grant County**

**Pamela M. Andrews
Johnson Andrews & Skinner, P.S.
Attorneys at Law
200 West Thomas Street, Suite 500
Seattle, Washington 98119-4296
Attorneys for Fourth-Party Defendant
Global Diving & Salvage, Inc.**

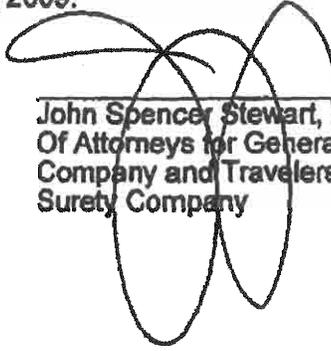
by the following indicated method or methods:

by mailing a full, true and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Portland, Oregon on the date set forth below.

by causing a full, true and correct copy thereof to be hand-delivered to the attorney at the attorney's last-known office address listed above on the date set forth below.

by sending a full, true and correct copy thereof via overnight courier in a sealed, prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, on the date set forth below.

DATED this 8th day of July, 2009.



John Spencer Stewart, WSBA #15887
Of Attorneys for General Construction
Company and Travelers Casualty &
Surety Company

CERTIFICATE OF SERVICE

STEWART SOKOL & GRAY LLC
ATTORNEYS AT LAW
2300 NW FIRST AVENUE SUITE 100
PORTLAND OREGON 97201-2047
(503) 221-0299
FAX (503) 221-2706

Trans file



GENERAL CONSTRUCTION COMPANY

19472 POWDER HILL PLACE • POULSBRO, WA 98370
(360) 778-3200 • FAX (360) 778-3132
WWW.GENERALCONSTRUCTIONCO.COM

Sept. 7, 2005

Serial Letter - 0035

Grant County PUD #2
15655 Wanapum Village Lane SW
Beverly, WA 99321

Attention: Dana Jeske, P.E.

*See Submittal
20 A for a different
version that was addressed in
review comments*

Subject: Wanapum Fish Bypass
Contract 330-2023
Response to Submittal # 20 - comment # 1

This letter will serve as response to your correspondence WFUFB-0018. Specifically this letter addresses comment No. 1 and references the requirement for minimum two feet of rock excavation.

General Construction understands that the contract documents indicate that minimum two feet of rock is to be excavated. However at the time our bid was submitted we qualified our bid with the Narrative Report for Bid Schedule.

The Narrative Report for Bid Schedule that General Construction submitted with our bid, states in section 1.4, that the foundation "will be prepared using a clam shell dredge to remove the sand and rock overburden, and air lift to clean the rock surface of gravel, sand and silt the clam shell has left behind". We at no time describe rock excavation as part of our work sequence.

Sections SR-14 (A) and Instructions to the bidders permitted us to state our work methods, assumptions in performing the work and variations from the plans and specifications. General Construction excluded all rock excavation over and beyond cleaning the rock.

As permitted by section T-12, 3.02 (A) we have proposed variations from the rock elevations and grades shown. These variations as stated in the Narrative Report indicate that our precast foundation boxes will be set on existing clean rock.

Our position is that our qualified bid was accepted and hence our means and methods were accepted. If any rock excavation is required General Construction would perform

this work on a change order basis. Rock excavation is outside of the scope of work that was included in our qualified bid.

Any requirement for rock excavation will extend our project schedule for many months. It may not be possible to complete the rock excavation that you request during the first in water work period. This requirement could delay the project forcing it into another construction year.

Attached is our submittal # 20A which includes a plan for any rock excavation that you requested. This plan is subject to change as we determine what the actual rock excavation requirements will be.

General Construction is still planning to begin clam shell dredging on Sept.15.

Feel free to contact me if you have any questions.

Sincerely,



Dave Bishop
Project Manager

Sept. 8.

8:00
a.m.

GAVE Dana. letter on rock excavation.

- Dana stated that min 2' rock excavation is included in our price.
- Dana stated that attorneys may not let us begin digging on the 15th
- Dana asked me to take letter back.

During course of 10:00 am meeting:

Dana contradicted himself. May fine he stated that Rock excavation, as per plans and specs were a part of our bid. There would be no additional compensation for rock excavation. Repeatedly refused to G-16. Also stated otherwise that he would pay for rock excavation.

Dana Refuted our position that we had qualified our bids.

- Dana stated that our submittal for rock excavation and the letter were tied together. He would not approve the submittal unless we took the letter back.

Air Lift. - Dan Proctor

EXHIBIT B
Page 1 of 5

Dan

- Schedule.
- List of RPI'S
- Coming upstream on Tuesday.
- TOONS QUALITY ISSUES.

- Jim - Had Submitted
- Conc. Lift Plan. - ^{1st} week.
 - Dewatering Plan - ^{next} week
 - Design Train Syst.
 - Precast Box. - ^{work} after ^{next}

QC/QA plan. from iakima.

variance on Yalowa precast.

- if we don't meet turbidity what are we going to do.
- Dept of ecology does not want us in place (we).
- we PUD looking for a 2nd method of preservation, turbidity
- Jim to provide notification on bridge w/s & begin in design by a 15th

Days

38,000 cfs ... Ende
 elev. 486. 68-80, ki
 early morning best
 n

Faces on end of fish way
get' forces

- fish tunnel
- wall @

- model to be destroyed @ Noon 15
- Jacobs to be able to answer
questions.

table rebar.

TODD to interview Dana @ 1:30.

- Documents - Priest Kopitz is
Woodward

- Present the week Sept. 19.

- electronic transfer missy to records
@ Chris Alena

Unit 10 outage. Thu/Fri. till
we finish setting slab C bulkhead

Power needs for connex @ laydown.
Pod to move to maintenance yard

- Discuss train, workup. Pod
not yet dimensioned

- Theoretically meet @ PACE
- on mix design submittals
- Discuss design plan

mid day
tomorrow

Mtg. minutes (Pod) Pagnal.



approve submittal. 2 papers change and
by proxy Chris

submittal for commercial candidate's bid
to get the

thing

Bliss
Langdon

- state plan & coordinates.
- NAD 83.
- what zone. Washington/North/South
- depths bathymetry

EXHIBIT B
Page 4 of 5

Laurence
to
working

engine -

- parking
- sliding beam
-
- crane rail.
-

Demo starts 1 Nov. 10.

~~1:00~~
7:00
a.m.

Met Dana / Scott / Chris Allen.

- decide to soften the letter #35.
- remove any statement that we have excluded rock excavation.

1:30
p.m.

Later Dana alone

- concerned about message missing out of our motivation. Add missing sentences
- concerned about (1) rock statement left a big mistake.

Dana agrees to pay for 7' rock excavation if we have to chase permits

- Dana annoyed by Gcc. (my) attempt to state our position
- Dana referenced that he has the authority to have removed for the project. attempt at a threat

PCO #	PCO-LOG	VALUE		VALUE	Status	PCO Preparation
1	Grant County Provides power hook up	\$ 30,000.00				GCPLUD
2	Grant County provides power (monthly charges 12 mon x \$7000)	\$ 84,000.00				GCPLUD
3			GCC moves precumeter at unit 11	\$ 15,000.00	PUD informed of extra cost-requested not to do work	Ray
4			GCC extra expense to provide bus	\$ 200,000.00	letter to PUD-without merit	Dave B.
5			Revised and approved plot B	\$ 10,000.00		Tanner
6			Increase cement to pump mix 2	\$ 40,000.00		CPM/Dave B.
7		\$ 2,000.00	GCC to provide seal @ unit 10/11	\$ 40,000.00		Brian
8			includes rebar includes grating includes additional concrete	\$ 90,000.00		GCPLUD
9			Nitrogen/air-wash out/hump/ conflict	\$ 25,000.00		Brian
11			18" holes 25' lower than shown on drawings	\$ 100,000.00		CPM/Dave B.
12			Rax roth RFI # 26	\$ 35,000.00		Tanner
14			Changed rock conditions-Box 16-17-diff	\$ 500,000		Jim D.
15			Max 1 solve Jacobson fuel issues CTL	\$ 125,000.00		Ed Kille
16			Diver effort to clean forms under bulkhead	\$ 45,000.00		Tanner

July 21/15

Sept 29/15

Oct 5/15

Nov 4/15

Nov 22/15

of Proc
for
12/20/15
12/20/15

APPENDIX NN



07-202147

KARA K. KNUTSON
FILED

JUL 09 2009

KIMBERLY A. ALLEN
Grant County Clerk

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,

Plaintiff,

v.

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON,
a Washington municipal corporation,

Defendant,

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, a Washington
municipal corporation,

Third-Party Plaintiff,

v.

GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,
and TRAVELERS CASUALTY &
SURETY COMPANY, BOND NUMBER
41S103871237BCM,

Third-Party Defendants.

No. 08-2-01339-8

**DECLARATION OF SCOTT HANSON
IN OPPOSITION TO DEFENDANT
PUBLIC UTILITY DISTRICT NO. 2 OF
GRANT COUNTY'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
RELATIVE TO NACE PAINTING
INSPECTOR CLAIM**

DECLARATION OF SCOTT HANSON IN OPPOSITION TO PUD'S MOTION
FOR PARTIAL SUMMARY JUDGMENT RELATIVE TO NACE CLAIM - 1

1 GENERAL CONSTRUCTION
COMPANY, a Delaware corporation,

2 Fourth-Party Plaintiff,

3 v.

4 GLOBAL DIVING & SALVAGE, INC.,
5 a Washington corporation,

6 Fourth-Party Defendant.
7

8 I, SCOTT HANSON, declare under penalty of perjury the following in support of
9 the timely filed NACE Paint Inspection Claim, which is the subject of a Motion for Partial
10 Summary Judgment filed by Defendant Public Utility District No. 2 of Grant County,
11 Washington ("PUD"):

12 1. At all times material, I was Project Sponsor for General Construction
13 Company ("GCC") with respect to the Wanapum Future Unit Fish Bypass,
14 Contract 330-2023 ("Project"), and have personal knowledge of the matters set forth
15 herein.

16 2. The genesis of the NACE Paint Inspection Claim is that, in connection
17 with the Project, GCC subcontracted the detailing, fabrication, painting and delivery of
18 Flow Fairings Modules 1-4 for the Project to Selway Corporation ("Selway").

19 3. In connection with the Selway work, the Contract Specification required
20 that a certified NACE CIP Level 2 inspector be on-site during coating operations.

21 4. PUD changed the Specifications by adding the requirement the NACE
22 inspector be an independent third party rather than an employee of the fabricator.
23 Selway had included the inspection cost in its quotation to GCC. This changed
24 requirement prospectively added additional expense and impact as the independent
25 inspector costs were well in excess of the amount budgeted by Selway, for use of a
26 Selway employee.

DECLARATION OF SCOTT HANSON IN OPPOSITION TO PUD'S MOTION
FOR PARTIAL SUMMARY JUDGMENT RELATIVE TO NACE CLAIM - 2

STEWART SOKOL & GRAY LLC

ATTORNEYS AT LAW

2100 5TH AVENUE, SUITE 200
PORTLAND, OREGON 97201-50-07
(503) 325-0889
FAX (503) 221-0706

1 5. The matter associated with an independent third-party inspector was at
2 issue in late 2006 at a time when Selway made a demand that GCC assume
3 responsibility for the additional cost. GCC declined to do so and continued to negotiate
4 the issue of whether PUD's Specification required a third-party inspector or one
5 employed by the fabricator with PUD.

6 6. During the course of these discussions and prior to any time when there
7 was an occurrence giving rise to the claim, PUD issued a 10-day cure notice to GCC
8 suggesting that it was going to terminate for default GCC from completing the contract.

9 7. In response to the improvident default termination notice, I sent a letter to
10 PUD dated January 8, 2007. (Exhibit A). That letter outlined the negotiations
11 associated with Change Order Nos. 2 and 3 which related to the new final design
12 issued by PUD for the permanent stoplogs required for the Project as well as other
13 claims associated with the fabrication and installation of a hoisting device to set and
14 remove the permanent stoplogs in Slot B.

15 8. These were significant claims which involved several million dollars as
16 well as an extension of time of more than 350 calendar days. During the period 2005
17 and 2006 these obvious design changes had been discussed informally with the PUD
18 and meetings had been held to negotiate the Change Orders and to monetize the
19 amount of the Change Orders as well as the extension in contract time. Notices with
20 respect to these matters were dealt with by the weekly meeting minutes and by direct
21 conversation between project management for GCC and Dana Jeske, the principal on-
22 site representative for PUD. There were no formalized notices of claim or notices of
23 entitlement to additional time, as that process was strongly and unequivocally
24 discouraged by Mr. Jeske from the outset of the Project in 2005. Indeed, at one
25 junction early in the Project, Mr. Jeske demanded that GCC's Project Manager, David
26 Bishop, withdraw a notice letter or Mr. Jeske would consider demanding that GCC

DECLARATION OF SCOTT HANSON IN OPPOSITION TO PUD'S MOTION
FOR PARTIAL SUMMARY JUDGMENT RELATIVE TO NACE CLAIM - 3

1 replace him. Mr. Bishop considered that notification to be a threat. Indeed, later
2 Mr. Jeske suggested Mr. Bishop be removed from the Project.

3 9. Following receipt of my January 8, 2007 letter, counsel for PUD, Mr. Ray
4 Foianini and counsel for GCC, Mr. John Spencer Stewart and Mr. David D. Beaudoin,
5 Associate General Counsel for GCC, arranged a series of meetings that were held in
6 Beverly, Washington and in Portland, Oregon for the purpose of accomplishing the
7 negotiation and execution of Change Order Nos. 2 and 3, implementation of a new
8 schedule for completion of all work, and resolution of outstanding claims at that time.

9 10. In connection with those meetings, I attended as Project Sponsor. The
10 President of GCC, Mr. Ronald H. Morford, also attended.

11 11. On February 1, 2007, GCC and PUD had a meeting at the office of
12 Stewart Sokol & Gray which was attended by Tim Culbertson, General Manager, and
13 Joe Lukas, Associate General Manager of PUD, as well as Ronald H. Morford,
14 President of GCC, Steve Hansen, Executive Vice President of Kiewit, and John
15 Spencer Stewart and David D. Beaudoin, as counsel for GCC. Mr. Foianini was not in
16 attendance and attended by telephone part of the time, but provided permission and
17 consent for Attorneys Stewart and Beaudoin to attend the meeting. At that time I
18 prepared and submitted a list of adjustments to Change Order No. 3, which was dated
19 February 1, 2007, a copy of which is attached as Exhibit B. Also attached as Exhibit C
20 is another copy of that list, which is the actual personal copy of Mr. Stewart and has
21 Mr. Stewart's handwriting. Exhibit D is Mr. Joe Lukas' copy. Included in the matters to
22 be resolved, both by extras and credits in favor of PUD or in favor of GCC was the
23 NACE paint inspector at Selway matter. At that time that matter was not a claim, as it
24 had not been paid by anyone and it was still in the process of negotiation among
25 Selway, GCC and PUD. At that time we understood that the matter had a potential
26 monetary value of \$80,000, as noted. Exhibit B was given to PUD, and it was one of

DECLARATION OF SCOTT HANSON IN OPPOSITION TO PUD'S MOTION
FOR PARTIAL SUMMARY JUDGMENT RELATIVE TO NACE CLAIM - 4

1 the working papers that was utilized in connection with the ultimate preparation,
2 negotiation and execution of Exhibit B to the Release and Settlement Agreement, which
3 was ultimately executed on February 8, 2007.

4 12. At the time of the presentation of Exhibit B, I had direct discussions with
5 Mr. Culbertson and Mr. Lukas, and Mr. Morford did as well with respect to the
6 background associated with the claim. No moneys had been paid in connection with
7 the NACE inspection matter yet, and the parties were still attempting to negotiate that
8 matter as well as a number of other matters in connection with the ultimate negotiation
9 of Change Order Nos. 2 and 3.

10 13. At the time of preparation of Exhibit B, I made a specific presentation to
11 Messrs. Culbertson and Lukas with respect to GCC's interpretation of the Specification;
12 namely, that a NACE paint inspector could be an employee of the fabricator and did not
13 need to be independently employed, and also provided other information associated
14 with the matter. After listening to our presentation, Mr. Culbertson said to, "take off list"
15 the NACE paint inspector at Selway claim, expressly indicating that that would need to
16 be presented as a claim in the future at the completion of the work.

17 14. At the time of those discussions, our counsel had prepared a form of
18 Release and Settlement Agreement and had circulated it to all parties at the meeting. It
19 was the subject of discussion at that time.

20 15. When it became clear on February 1 and also on February 2, 2007 that
21 PUD believed its Specification required an independently employed paint inspector, I
22 witnessed our attorney handwrite in the exception column the exception for the NACE
23 paint inspector at Selway claim. (Exhibit E).

24 16. At the end of the day on February 1, 2007, that Release and Settlement
25 Agreement was retyped with the exception for the NACE painting inspection claim
26 included. (Exhibit F).

DECLARATION OF SCOTT HANSON IN OPPOSITION TO PUD'S MOTION
FOR PARTIAL SUMMARY JUDGMENT RELATIVE TO NACE CLAIM - 5

1 17. On February 2, 2007, and after Mr. Ray Folanini prepared some changes
2 with respect to the Release and Settlement Agreement, our counsel, Mr. Stewart,
3 corresponded with Mr. Ray A. Folanini concerning the Settlement Agreement
4 requesting final versions of Change Order Nos. 2 and 3 for approval. (Exhibit G).

5 18. In response, Mr. Ray Folanini indicated that he was waiting to hear from
6 the PUD with respect to the approval of the revised documents. (Exhibit H).

7 19. In connection with the meeting in Portland, Oregon on February 2, 2007,
8 Mr. Culbertson requested that the revised Settlement Agreement be forwarded to him
9 at the Embassy Suites in Portland, where he and Mr. Lukas would review the
10 documents. (Exhibit I).

11 20. The agreements were not executed at that time, and the parties again met
12 during the week of Monday, February 5, 2007. On February 6, Ray Folanini (PUD)
13 counsel, corresponded with GCC counsel, John Stewart, designating his associate,
14 Michael Smith, to determine what changes were made in order that the matter could be
15 timely resolved. (Exhibit J).

16 21. At the same time, on Tuesday, February 6, 2007, Mr. Ron Morford,
17 President of GCC, corresponded with Mr. Joe Lukas, Mr. Culbertson's associate,
18 indicating that Change Order No. 3 required some work based upon the list of items to
19 be paid and the list of items to be reserved as claims. In paragraph 1 of Mr. Morford's
20 e-mail, he stated:

21 1. The \$69,000 amount we agreed to for the added list of
22 items last Thursday needs to be added to the Change Order
23 amount and the new contract total also needs to be
24 increased by the same \$69,000. Along with this amount we
25 need to have an Appendix added which shows the list of
26 items that comprise this \$69,000 amount (the Thursday list
less the NACE Paint Inspection Issue, less the Concrete
Finish Issue).

Based on a conversation this morning with our Scott Hanson
we understand that the Revision 15 drawings (which we still

DECLARATION OF SCOTT HANSON IN OPPOSITION TO PUD'S MOTION
FOR PARTIAL SUMMARY JUDGMENT RELATIVE TO NACE CLAIM - 6

Appendix NN
Page 6 of 53

6879 037-00178817, 1

13774

STEWART SOKOL & GRAY LLC
ATTORNEYS AT LAW
2300 NW FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97201-9047
(503) 231-0889
FAX (503) 233-3946

1 have not seen, but are told we will get this pm) will contain
2 revised notes about the changed concrete finish issue. We
3 either need to have the appropriate drawing revisions on the
Drawing List deleted, or alternatively add a reservation of
rights sentence for this issue to the Settlement Agreement.

4 (Exhibit K).

5 22. On February 6, 2007, the final draft of the Settlement Agreement along
6 with the February 2 revised project schedule along with the February 2 claim
7 adjustments was forwarded for final review to Messrs. Foianini and Smith. At the same
8 time, GCC's counsel, Mr. Stewart, corresponded with Mr. Foianini that he had not seen
9 an executed copy of the Release and Settlement Agreement and requested that
10 Mr. Foianini call. (Exhibit L).

11 23. Thereafter, on February 6, 2007 at 2:29 p.m. Mr. Michael Smith
12 (Mr. Foianini's associate) enclosed a copy of the confirmed Release and Settlement
13 Agreement which excepted the NACE paint inspector at Selway claim, among others,
14 and included as Exhibit A, the new project schedule, and as Exhibit B, the additional
15 claims to be paid with the payments of Change Order Nos. 2 and 3. (Exhibit M).

16 24. On February 6, 2007 at 5:40 p.m. Mr. Smith faxed another copy of the
17 Release and Settlement Agreement. (Exhibit N).

18 25. On February 8, 2007 Mr. Ronald H. Morford, President of GCC, and
19 Mr. Tim Culbertson, General Manager of PUD, executed the Release and Settlement
20 Agreement excepting the performance and completion of Slots B and C on a concurrent
21 basis, the NACE paint inspector at Selway claim, the revised and changed concrete
22 finish revised drawings contained in Revision 15, and all contract drawing revisions
23 issued subsequent to Revision 15, and all contract drawing revisions issued
24 subsequent to Revision 15. (Exhibit O). Each of the excepted claims was expressly
25 understood to be carried forward and resolved when the Project was completed or at
26

DECLARATION OF SCOTT HANSON IN OPPOSITION TO PUD'S MOTION
FOR PARTIAL SUMMARY JUDGMENT RELATIVE TO NACE CLAIM - 7

1 some earlier time by the senior executives who agreed that they would meet on a
2 periodic basis through until the end of the Project.

3 26. Thus, GCC fully complied with any purported notice requirement with
4 respect to the NACE paint inspector at Selway claim with its re-tendered claim notice on
5 February 1, 2007 (Exhibit B), as well as its discussions, as well as the express
6 exception of that claim in writing signed by both GCC and PUD on February 8, 2007.

7 27. Thereafter, on May 8, 2007, well after GCC's written claim notice to PUD,
8 GCC resolved the NACE paint inspector at Selway claim with Selway Corporation for
9 the sum of \$67,000. In connection with the settlement, Selway assigned and set over
10 unto GCC all of its right, title and interest in and to the inspection claim to GCC's pursuit
11 against PUD. (Exhibit P).

12 28. In connection with the execution of Change Order Nos. 2 and 3, PUD's
13 payment of the various claims which are itemized on Exhibit B to Exhibit O, which is the
14 Settlement and Release Agreement, PUD never ever raised an issue of the timeliness
15 of the notice of the claims associated with those matters. Indeed, PUD was very well
16 aware of the process that had been ongoing on the project site concerning the
17 discussion, negotiation and resolution of claims by the on-site individuals. (See
18 paragraph 8, *supra*.)

19 29. In connection with the NACE paint inspector at Selway claim, GCC had
20 direct discussions with Messrs. Culbertson and Lukas, expressly reserving that claim,
21 discussing the claim and memorializing that reservation in the Settlement Agreement
22 three months prior to the claim being ultimately resolved, all in a fashion consistent with
23 the contract requirements concerning claim notice.

24 30. Prior to February 1, 2007, when PUD indicated to me and to Mr. Morford
25 that it would not pay the NACE paint inspector claim at Selway, we had no basis for
26 making claim as we had not paid Selway. When PUD made clear on February 1 that it

DECLARATION OF SCOTT HANSON IN OPPOSITION TO PUD'S MOTION
FOR PARTIAL SUMMARY JUDGMENT RELATIVE TO NACE CLAIM - 8

1 would not pay the NACE paint inspector claim, we reiterated the written claim
2 (Exhibit B) and reaffirmed that claim by the reservation set forth in the Settlement
3 Agreement, all of which was at least three months prior to our paying the claim.

4 I declare under penalty of perjury under the laws of the State of Washington that
5 the foregoing is true and correct.

6 EXECUTED on this 6 day of July, 2009 in _____, Washington.

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Scott Hanson

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DECLARATION OF SCOTT HANSON IN OPPOSITION TO PUD'S MOTION
FOR PARTIAL SUMMARY JUDGMENT RELATIVE TO NACE CLAIM - 9

STEWART SOKOL & GRAY LLC

ATTORNEYS AT LAW

1000 SW FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97201-3047
(503) 223-6000
FAX (503) 223-8706

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DECLARATION OF SCOTT HANSON
IN OPPOSITION TO PUD'S MOTION FOR PARTIAL SUMMARY JUDGMENT
RELATIVE TO NACE CLAIM**, on:

David E. Sonn
Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road
PO Box 1688
Wenatchee, Washington 98807-1688
Attorneys for Defendant and Third-Party Plaintiff
Public Utility District No. 2 of Grant County

Pamela M. Andrews
Johnson Andrews & Skinner, P.S.
Attorneys at Law
200 West Thomas Street, Suite 500
Seattle, Washington 98119-4296
Attorneys for Fourth-Party Defendant
Global Diving & Salvage, Inc.

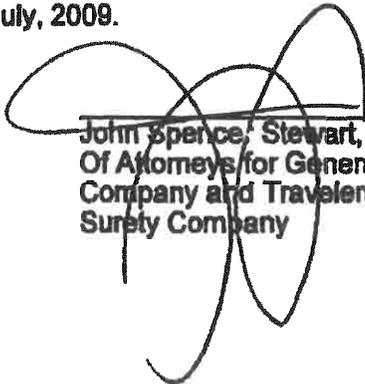
by the following indicated method or methods:

by mailing a full, true and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Portland, Oregon on the date set forth below.

by causing a full, true and correct copy thereof to be hand-delivered to the attorney at the attorney's last-known office address listed above on the date set forth below.

by sending a full, true and correct copy thereof via overnight courier in a sealed, prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, on the date set forth below.

DATED this 8th day of July, 2009.



John Spence, Stewart, WSBA #15887
Of Attorneys for General Construction
Company and Travelers Casualty &
Surety Company

CERTIFICATE OF SERVICE

STEWART SOKOL & GRAY LLC
ATTORNEYS AT LAW
2500 SW FIRST AVENUE, SUITE 200
PORTLAND, OREGON 97201-5007
(503) 251-6000
FAX (503) 221-2704



GENERAL CONSTRUCTION COMPANY

19472 POWDER HILL PLACE • POUSSBO, WA 98370
(360) 778-9200 • FAX: (360) 778-3132
WWW.GENERAL.CONSTRUCTIONCO.COM

January 8, 2007

Serial Letter 0291

Dana Jeske, PE
Grant County PUD #2
15655 Wanapum Village Lane SW
Beverly, WA 99321

Subject: Wanapum Fish Bypass
Contract 330-2023
Notice received from PUD on Default

Dear Mr. Jeske:

We are in receipt of your Serial Letter WFUFB-0267 dated January 2, 2007 which we received on January 3, 2007. We are surprised by the tone of and the fact that the Grant County Public Utility District ("PUD") would even consider sending a cure letter given the history of this project. Suffice it to say, General Construction Company ("GCC") is not now and never has been in default with respect to this procurement. Rather, as documented below, the PUD has materially breached this contract by its repudiation of previously agreed-upon Change Orders.

In discussion with you on January 3, you informed us that Contract Change Order #2 ("CCO#2") has been rescinded, Contract Change Order #3 ("CCO#3") will not be processed and we are to consider that all the issues previously agreed to in those change orders are no longer valid. Your elimination of these change orders will severely affect the completion of the project and are considered cardinal breaches of contract.

It is important to review the history of these change orders to understand their effect upon project completion:

Contract Change Order #2-

The original contract drawings did not provide a final design of the permanent stoplogs required for the project. Revised drawings were sent to us for re-pricing when the design was complete. It is important to note that the permanent stoplogs are required by contract to be in-place in order to complete installation and testing of the vertical and inclined gates prior to opening slot B to let water through the new fish bypass structure.

On April 4, 2006, eleven months after we were awarded the project, we received final contract drawings enabling us to price the revised permanent stoplogs. At that time we commenced the process of pricing the added and changed work with our supplier Jesse Engineering. We received Jesse's price on May 10. Jesse advised us that due to the volatility of steel prices their price was good for 10 days and that the 7" and 8" steel plate had to be ordered from the mill by May 25, 2006 to accomplish rolling within 5 months from ordering. On May 11, we instructed Jesse Engineering to proceed with the changed work and that the PUD-initiated change order would follow. This was done after full consultation with the PUD. You were fully informed that we were proceeding with the purchase of this long-lead steel with Jesse Engineering in good faith in order to keep the project on schedule.

Throughout the remaining month of May and early June, 2006 our project manager continued to negotiate with you to finalize the stoplog changes along with several other project issues. Negotiation of the final price for CCO#2 was completed on June 20, 2006. Incorporated in these negotiations of CCO #2 was the agreement by you and our project manager that CCO#3 would cover time extension issues related to the added work of CCO#2, the associated impacts and extended overhead costs to be incorporated in CCO#3 resulted from the delay due to the re-designed stoplogs for which the direct costs were negotiated in CCO#2. Again in good faith we proceeded with the work related to the fabrication and delivery of the permanent stoplogs. At that time you were informed that the new permanent stoplogs could not be delivered in time to be used for keeping slot B dry during the installation and testing of the new gates. At that time it was thought by all that the temporary bulkhead in place at slot B could be used in lieu of the permanent stoplogs enabling us to complete the work in slot B on schedule. This was a change from our approved plan and schedule at that time. CCO #2 was finally received from the PUD on September 5, almost three months later.

Prior to September 5, we determined that this new PUD plan would not in fact be effective and we would have to revert to our original plan of using the permanent stoplogs to hold back the water while we removed the temporary bulkhead and completed the installation of the flow fairings on the upstream side of slot B along with the installation of the gates. On August 23 we submitted our updated project schedule reflecting completion of the gates on June 26, 2007. A major reason for this revision was that the newly designed stoplogs that were required by CCO#2 could not be delivered until April 30, 2007. We then had to complete the installation of the concrete weight to the fabricated stoplogs. Discussions followed and on September 8 we met with you, Chris Akers and Stewart Hammond to discuss the schedule implications arising as a result of CCO#2. The PUD did not accept our June 26 completion schedule and asked us to work with you to attempt to find a method to complete the gates by the third week of April so that your "fish tests" could commence. In that meeting it was agreed that we would not sign and return CCO#2 until CCO #3 was finalized as CCO#3 was to

include the necessary time extension and impact cost recognition of the new stoplog procurement.

Discussions continued and your recommended plan was developed to modify the second temporary bulkhead to fit in the permanent stoplog slots to be used to keep slot B dry in order to complete the installation and testing of the gates. The cost of the modification was to be included in CCO#3. Once the modified bulkhead was in place, the installation of the flow fairings could be completed.

In good faith, we have spent well over \$1 million thus far in addressing CCO#2. Work has progressed with the fabrication of the new permanent stoplogs. Your purported rescission of CCO#2 has put completion of the permanent stoplogs in jeopardy. We request instruction as how to proceed.

Contract Change Order #3:

CCO#3 centers around the fabrication and installation of a hoisting device to set and remove the permanent stoplogs in slot B. Also included in the change are the time issues for the fabrication of the revised permanent stoplogs in CCO#2 and modifications to our second temporary bulkhead to be used in lieu of the permanent stoplogs. Also included are time impacts for denial of unit outages as well as impacts from slot B dewatering issues.

The drawings for the hoisting device were given to us on September 11 and we proceeded with the pricing of the issues outlined above. The drawings and details of CCO#3 were given to our supplier Jesse Engineering and our electrical subcontractor Burke Electric. We received their quotes by October 6 and we finished our estimate and on October 31 we submitted to the PUD our quotation of \$6,454,865.

You did not agree with our requested time extension and insisted we remove \$1,230,886 from our price for 8 weeks of time extension and directed us to file a claim for this delay cost. We made the directed revisions and submitted a new quotation of \$5,223,979 on November 8. At that time you requested more detail with respect to Jesse's and Burke's prices. We assembled that information and submitted the data the week of November 20 after your return from vacation. On November 28 we met to discuss a revised price of \$4,623,997. During that meeting the PUD required revisions to our quotation for a fourth time to \$4,467,002. In addition, the PUD reserved the right to re-evaluate Burke Electric's price.

On December 12 we met with you and Burke Electric and you requested that Burke make some additional changes. On December 19 we submitted a final revised quotation of \$4,358,998 and a 5-week time extension to April 22, 2007 which we understood was approved by you with your assurance that you would submit to the PUD Commission for approval.

During the week of December 18 our Project Manager informed you that we could no longer complete the gate work in late April and that it would be late June before the gates could be opened to pass water through the slot for the fish test.

With the rescission of CCO#2 and CCO#3 our work cannot be completed per the contract requirements.

To be proactive we are continuing to proceed with CCO#2. We have instructed Jesse Engineering to continue with the fabrication of the new permanent stoplogs and we otherwise intend to honor CCO#2, with the understanding that time related issues still need to be resolved.

We are however unable to proceed with the contract without resolution of CCO#3. In particular the electrical work related to the operation of the gates and the hoist for the new permanent stoplogs must be resolved. Were we to continue with the original electrical details in the contract, we would compromise the revised electrical details of CCO#3.

It is our intention to complete the project in as timely a manner as possible. On January 4 we were asked for the submittal details for CCO#3. We do not understand this directive given your apparent rescission of CCO#3. To be proactive in continuing to progress the work, we are instructing Burke Electric to continue with the electrical details of CCO#3 that would be embedded in concrete should we be directed to reinstate CCO#3.

We address your Notice of Default.

First, GCC is not and has not been in default with respect to this contract.

Second, GCC is powerless to proceed with completion unless and until the PUD rescinds its rescission of CCO#2 and CCO#3, executes the Change Orders and permits GCC to proceed in accordance with PUD's revised design.

Third, consistent with GC-4 (B)(1), the project status cannot be advanced until PUD takes the above actions, at which time GCC will proceed with dispatch to complete the contract work.

Fourth, given the fact that the project status cannot be remedied within the 10-day period stated in your Notice, we are entitled to a determination by the Engineer that GCC has undertaken all reasonable action subject to PUD's retraction of its January 2, 2007 Notice of Default.

On a personal note, GCC's receipt of your Notice of Default is a "first" for GCC in its long and distinguished history. ~~Notwithstanding the lack of any justifiable contractual~~

basis for such notice, you and the Grant County PUD are to be assured that GCC will continue to work with the PUD in a partnering effort to complete the project. To that end you are reminded that throughout all of the difficult months since PUD has chosen to significantly change its design, GCC has proceeded on a double-shift, 6-day per week schedule (clearly a compensable change under the contract) in an effort to demonstrate its commitment to work with the PUD to successfully complete this project. It is our unwavering intent to continue that process.

Sincerely,
General Construction Company



Scott Hanson
Area Manager

C: Jerry Stubbs - GCC
Ron Morford - GCC
Dave Beaudoin - GCC
John Stewart - Stewart Sokol & Gray

Wanapum Fish Bypass Project			
Adjustments to CCO 3 Feb.1, 2007	GCC	PUD	
Jesse Modify dogs	\$ 1,000	\$ 1,000	
Jesse Misc RFI's	\$ 16,650	\$ -	The PUD feels they have given on fab errors of Jesse. We and Jesse disagree
Stainless steel angles	\$ 10,000	\$ 10,000	
Lead paint removal	\$ 5,000	\$ -	We have a cost of about \$2500
Change to type III concrete in B slot	\$ 16,000	\$ 16,000	
Nace paint Inspector at Selway	\$ 80,000	\$ -	see attached info on this issue
Add concrete to ceiling in 11C tunnel	\$ 15,000	\$ -	The PUD feels this is a result of our demo methods
Additional diver time for CCO 2 new seal 10/11 joint	\$ 15,000	\$ -	We have a real cost of \$11375
Additional surveying due to Point E-1	\$ 10,000	\$ -	A long story which the PUD doesn't agree.
Added water stop- gallery, F wall, 500 level, future unit, etc	\$ 10,000	\$ 10,000	
SIS bolted joints instead of shop weld	\$ 20,000	\$ -	We are still talking a little on this
Re-handle temporary stoplogs to storage	\$ 1,500	\$ -	
Added rebar in Ogee fillet	\$ 1,200	\$ -	
Burke add for increases	\$ 17,313	\$ -	the PUD thinks since our schedule has slowed so should Burkes estimate
Sack finish	\$ 140,000	\$ 80,000	We agree on the quantity but not the production
UHMW pads on Bulkhead	\$ 37,500	\$ -	Leon says \$388,000 is it.
Remove blocks from slots (credit)	\$ (10,000)	\$ (10,000)	
Missing splice plates and shims from Selway	\$ 4,000	\$ 4,000	
Rev. 12	\$ 5,000	\$ 5,000	
Lightning Rods on cylinder on gates	\$ 10,000	\$ 10,000	
Rebar on end wall	\$ 5,000	\$ 5,000	
Conduit on parapet for lights	\$ 3,000	\$ 3,000	
credit for pour back 11A	\$ (5,000)	\$ (5,000)	
Epoxy credit inlieu of cementitious	\$ -	\$ (156,000)	As you know this is an approved equal issue. See attached for testing cost
Credit to leave gallery wall as is	\$ (10,000)	\$ (10,000)	
	\$ 398,163	\$ (37,000)	

13784

2/1/07

CO#3

SS

Wanapum Fish Bypass Project		
Adjustments to CCO 3 Feb 1, 2007	GCC	PUD
Jesse Modify dogs	\$ 1,000	\$ 1,000
Stainless steel angles	\$ 10,000	\$ 10,000
Change to type III concrete in B slot	\$ 16,000	\$ 16,000
Nace paint inspector at Selway	\$ 80,000	\$ -
Additional surveying due to Point E-1	\$ 10,000	\$ 10,000
Added water stop- gallery, F wall, 500 level, future unit, etc	\$ 10,000	\$ 10,000
SIS bolted joints instead of shop weld	\$ 15,000	\$ 15,000
Sack finish	\$ 140,000	\$ 80,000
UHMW pads on Bulkhead	\$ 87,500	\$ -
Remove blocks from slots (credit)	\$ (10,000)	\$ (10,000)
Missing splice plates and shims from Selway	\$ 4,000	\$ 4,000
Rev. 12	\$ 5,000	\$ 5,000
Lightning Rods on cylinder on gates	\$ 15,000	\$ 15,000
Rebar on end wall	\$ 5,000	\$ 5,000
Conduit on parapet for lights	\$ 3,000	\$ 3,000
credit for pour back 11A	\$ (5,000)	\$ (5,000)
Epoxy credit in lieu of cementitious	\$ -	\$ (156,000)
Credit to leave gallery wall as is	\$ (10,000)	\$ (10,000)
	\$ 326,500	\$ (7,000)

→ take off list -

→ sit on it -
→ sit on it

→ actual

69, m-

EXHIBIT C
Page 1 of 1

13785

Wanapum Fish Bypass Project		
Adjustments to CCO 3 Feb 1, 2007	GCC	PUD
Jesse Modify dogs	\$ 1,000	\$ 1,000
Stainless steel angles	\$ 10,000	\$ 10,000
Change to type III concrete in B slot	\$ 16,000	\$ 16,000
Nace paint inspector at Selway	\$ 99,000	\$
Additional surveying due to Point E-1	\$ 10,000	\$ 10,000
Added water stop- gallery, F wall, 500 level, future unit, etc	\$ 10,000	\$ 10,000
SIS bolted joints instead of shop weld	\$ 15,000	\$ 15,000
Sack finish	\$ 148,000	\$ 80,000
UHMMW parts on Bulkhead	\$ 27,500	\$
Remove blocks from slots (credit)	\$ (10,000)	\$ (10,000)
Missing splice plates and shims from Selway	\$ 4,000	\$ 4,000
Rev 12	\$ 5,000	\$ 5,000
Lightning Rods on cylinder on gates	\$ 15,000	\$ 15,000
Rebar on end wall	\$ 5,000	\$ 5,000
Conduit on parapet for lights	\$ 3,000	\$ 3,000
credit for pour back 11A	\$ (5,000)	\$ (5,000)
Epoxy credit in lieu of cementitious	\$	\$ (156,000)
Credit to leave gallery wall as is	\$ (10,000)	\$ (10,000)
	\$ 326,500	\$ (7,000)

X - Future claim?

X - Pricing Disagreement - Price Negotiate vs. Means estimate
- Future Change Order

186,500
106,500
37,500
67,000

EXHIBIT D
Page 1 of 1
JL006165

13786

RELEASE AND SETTLEMENT AGREEMENT

This agreement is made by and between General Construction Company (hereinafter called "GCC"), and Public Utility District No. 2 of Grant County (hereinafter called "District"), collectively referred to herein as the "parties".

Recitals

In 2005 the District awarded Contract No. 330-2023 ("Contract") to GCC for the construction of the Wanapum Future Unit Bypass ("Project").

The parties intend by this settlement agreement to resolve outstanding Project related claims, resolve issues relating to the schedule for completion of the work and otherwise modify the Contract as expressly set forth in this Agreement and the attached Change Orders.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein it is hereby agreed as follows:

1. **EXECUTION OF CHANGE ORDERS.** Attached hereto and incorporated herein by this reference are Change Order Nos. 2 and 3 which have been mutually agreed to and which shall be executed by GCC and the District contemporaneously with the execution of this Agreement.

2. **GCC RELEASE AND DISTRICT ACKNOWLEDGMENT.** GCC, on behalf of itself and all subcontractors and suppliers does hereby release the District and its directors, officers, agents and employees of and from any and all debts, actions, causes of action, suits, damages and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity which GCC now has or ever had arising from or related in any way to the Contract, all Contract Change Orders, schedule for completion of the work, and/or performance of any labor or work or the supply of any materials or equipment by GCC and/or any of its subcontractors or suppliers in connection with the Project up to and including through the date of this Agreement; EXCEPTING, GCC reserves all of its rights with respect to entitlement to additional contract time and additional compensation concerning the issue of performance and completion of Slots B and C on a concurrent basis, ~~change items identified on Exhibit B attached hereto and all contract drawing revisions issued subsequent to Revision 15 (which was given to GCC on September 11, 2006).~~ *change items identified on Exhibit B attached hereto and all contract drawing revisions issued subsequent to Revision 15 (which was given to GCC on September 11, 2006).*

the Name Point Inspection is being admin x

District acknowledges and represents that it has no knowledge of any claims against GCC arising from or relating in any way to the Contract except:

3. **MODIFICATION OF SCHEDULE FOR COMPLETION OF WORK.** Notwithstanding any other provision of the Contract, GCC shall complete all work in strict accordance with the new mutually agreed upon schedule set forth in Exhibit A attached hereto and by this reference made a part of the Contract. Said schedule shall supersede all prior schedules which are in conflict or inconsistent therewith. GCC understands and acknowledges that time is of the essence for completion of the work in accordance with the schedule set forth in Exhibit A. In the event GCC fails to meet any of the specified completion dates, liquidated damages per Contract section G-14 shall be applicable in the amount of \$5,000.00 per calendar day for each and every calendar day that the work described in Exhibit A, milestones 2, 7, and 9 remains uncompleted after the date specified for the particular milestone; and liquidated damages in the amount of \$5,000.00 per calendar day shall be applicable for each and every

calendar day that the work described in Exhibit A, milestone 5 remains uncompleted after the date specified. Milestone 7 provides for installation of wall extension forms—prior to Contractor performing any concrete pour in these forms the Contractor must provide to the District a detailed workplan that the District will then review with the appropriate regulatory Agencies for their requirements for performance of the work. In the event regulatory agencies require changes to method or timing for performance of said work, GCC shall strictly comply with the same at its sole cost and expense.

4. **DISTRICT COVENANTS.** On or before _____, the District will release to GCC progress payments currently being withheld by the District in the amount of \$1,191,171.63 plus WSST.

5. **NO ADMISSION OF LIABILITY.** It is understood and agreed that the settlement contained in this agreement is a compromise of disputed claims and that neither the release of the \$1,191,171.63 plus WSST currently withheld by the District, nor any other covenants by the parties shall be construed as an admission of liability by either party, its directors, officers, commissioners, agents, sureties or employees.

6. **SUCCESSOR AND ASSIGNS.** All terms and provisions of this agreement shall be binding upon and inure to the benefit of and be enforced by the parties, their successors and assigns. This agreement is solely for the benefit of the parties signatory hereto, and shall not create rights in any third parties.

7. **ENTIRE AGREEMENT.** This agreement supersedes all prior offers, proposed agreements, correspondence and any other conversations relating to the subject matter of the settlement. This agreement is the product of drafting and negotiation by the parties and their legal counsel, and it shall be deemed to have been drafted by neither individually, but as a joint effort of the parties.

8. **CONTRACT DOCUMENTS 330-2023.** Except as otherwise specifically modified by this Agreement and the attached change orders, all terms and conditions set forth in Contract Documents 330-2023 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have approved and executed this agreement.

GENERAL CONSTRUCTION COMPANY

By:

Its:

Dated:

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON

By:

Its:

Dated:

STATE OF WASHINGTON)
)
) : SS.
)
County of Grant)

On this _____ day of _____, 2007, before me, a notary public of the State of Washington, personally came _____, known as the Manager of Public Utility District No. 2 of Grant County, which executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said party for the uses and purposes mentioned therein, and on oath stated that he was authorized to execute said instrument on behalf of such entity.

WITNESS my hand and official seal the day and year first above written.

Notary Public for Washington

Residing at

Commission expires

RELEASE AND SETTLEMENT AGREEMENT

This agreement is made by and between General Construction Company (hereinafter called "GCC"), and Public Utility District No. 2 of Grant County (hereinafter called "District"), collectively referred to herein as the "parties".

Recitals

In 2005 the District awarded Contract No. 330-2023 ("Contract") to GCC for the construction of the Wanapum Future Unit Bypass ("Project").

The parties intend by this settlement agreement to resolve outstanding Project related claims, resolve issues relating to the schedule for completion of the work and otherwise modify the Contract as expressly set forth in this Agreement and the attached Change Orders.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein it is hereby agreed as follows:

1. EXECUTION OF CHANGE ORDERS. Attached hereto and incorporated herein by this reference are Change Order Nos. 2 and 3 which have been mutually agreed to and which shall be executed by GCC and the District contemporaneously with the execution of this Agreement.

2. GCC RELEASE AND DISTRICT ACKNOWLEDGMENT. GCC, on behalf of itself and all subcontractors and suppliers does hereby release the District and its directors, officers, agents and employees of and from any and all debts, actions, causes of action, suits, damages and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity which GCC now has or ever had arising from or related in any way to the Contract, all Contract Change Orders, schedule for completion of the work, and/or performance of any labor or work or the supply of any materials or equipment by GCC and/or any of its subcontractors or suppliers in connection with the Project up to and including through the date of this Agreement; EXCEPTING, GCC reserves all of its rights with respect to entitlement to additional contract time and additional compensation concerning the issue of performance and completion of Slots B and C on a concurrent basis, the Nace Paint Inspector at Selway claim, and all contract drawing revisions issued subsequent to Revision 15.

District acknowledges and represents that it has no knowledge of any claims against GCC arising from or relating in any way to the Contract except:

3. MODIFICATION OF SCHEDULE FOR COMPLETION OF WORK. Notwithstanding any other provision of the Contract, GCC shall complete all work in strict accordance with the new mutually agreed upon schedule set forth in Exhibit A attached hereto and by this reference made a part of the Contract. Said schedule shall supersede all prior schedules which are in conflict or inconsistent therewith. GCC understands and acknowledges that time is of the essence for completion of the work in accordance with the schedule set forth in Exhibit A. In the event GCC fails to meet any of the specified completion dates, liquidated damages per Contract section G-14 shall be applicable in the amount of \$5,000.00 per calendar day for each and every calendar day that the work described in Exhibit A, milestones 1, 2, 7, and 9 remains uncompleted after the date specified for the particular milestone; and liquidated damages in the amount of \$35,000.00 per calendar day shall be applicable for each and every

calendar day that the work described in Exhibit A, milestone 5 remains uncompleted after the date specified.

4. **DISTRICT COVENANTS.** On or before _____, the District will release to GCC progress payments currently being withheld by the District in the amount of \$1,191,171.63 plus WSST.

5. **NO ADMISSION OF LIABILITY.** It is understood and agreed that the settlement contained in this agreement is a compromise of disputed claims and that neither the release of the \$1,191,171.63 plus WSST currently withheld by the District, nor any other covenants by the parties shall be construed as an admission of liability by either party, its directors, officers, commissioners, agents, sureties or employees.

6. **SUCCESSOR AND ASSIGNS.** All terms and provisions of this agreement shall be binding upon and inure to the benefit of and be enforced by the parties, their successors and assigns. This agreement is solely for the benefit of the parties signatory hereto, and shall not create rights in any third parties.

7. **ENTIRE AGREEMENT.** This agreement supersedes all prior offers, proposed agreements, correspondence and any other conversations relating to the subject matter of the settlement. This agreement is the product of drafting and negotiation by the parties and their legal counsel, and it shall be deemed to have been drafted by neither individually, but as a joint effort of the parties.

8. **CONTRACT DOCUMENTS 330-2023.** Except as otherwise specifically modified by this Agreement and the attached change orders, all terms and conditions set forth in Contract Documents 330-2023 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have approved and executed this agreement.

GENERAL CONSTRUCTION COMPANY

By:

Its:

Dated:

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON

By:

Its:

Dated:

STATE OF WASHINGTON)
 : SS.
County of Grant)

On this _____ day of _____, 2007, before me, a notary public of the State of Washington, personally came _____, known as the Manager of Public Utility District No. 2 of Grant County, which executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said party for the uses and purposes mentioned therein, and on oath stated that he was authorized to execute said instrument on behalf of such entity.

WITNESS my hand and official seal the day and year first above written.

Notary Public for Washington

Residing at

Commission expires

Wanapum Fish Bypass Project

**EXHIBIT A – REVISED PROJECT SCHEDULE
Interim and Final Milestone / Completion Dates
With Energy Stoplog Hoist
February 1, 2007**

	Required Completion Date
Upstream Fairings:	
1. Complete setting Temporary Stoplogs	3/23/2007 * \$5k/day
2. Complete installation of Module 2 & 3	4/23/2007 * \$5k/day
3. Complete Module 1	9/30/2007
B Slot Work:	
4. Complete Installation of Stoplog Guides	3/16/2007
5. Complete Gates and Dry Test	9/12/2007 ** \$35k
Downstream In-water Work:	
6. Remove north side and east end of coffer cell and set all blocks	4/03/2007
7. Complete installation of wall extensions	9/30/2007 * \$5k/day
8. Complete removal of south sheets of coffer cell and backfill.	10/11/2007
9. Final Completion	12/15/2007* \$5k/day

Exhibit A

STEWART SOKOL & GRAY LLC

ATTORNEYS AT LAW

John Spencer Stewart PC *†
Jan D Sokol*†
Arnold L Gray †
Susan Z Whitney*
H Lee Cook*
Thomas A. Larkin*
*

2300 SW FIRST AVENUE, SUITE 200
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Angela M. Otto*
Robert B. Coleman
Lawrence A. Wagner
Tyler J. Stord
Neil N. Olsen
Scott D. Schuack

Roger A. Lennberg*
Of Counsel

February 2, 2007

All Members of Oregon Bar
*Washington Bar
† District of Columbia Bar
◊ Alaska Bar
◊ Idaho Bar

E-mail: jstewart@lawsg.com
Direct Fax: (503) 419-0281

Mr. David E. Sonn
Jeffers Danielson Sonn & Aylward PS
Attorneys at Law
2600 Chester Kimm Road
Wenatchee, Washington 98801-8116

By E-mail
Original by Mail

Mr. Ray A. Folanini
Grant County Public Utility District No. 2
PO Box 908
Ephrata, Washington 98823-0908

By E-mail
Original by Mail

Re: General Construction Company/Wanapum Dam/
Grant County Public Utility District
Wanapum Fish Bypass; Contract 330-2023
Our File No. 3458.023

Dear Dave and Ray:

Previously we sent to you the draft Settlement Agreement which we believe is wholly consistent with our discussions yesterday in the office and with Ray's fine original draft with corrections concerning milestones and drawing revisions.

As we discussed with Tim and Joe yesterday, we would very much like to have final versions of Change Order Nos. 2 and 3 for our review and approval today if at all possible so that we can verify the revised language that was agreed upon yesterday with respect specifically to Change Order No. 3.

We understand that Mr. Culbertson intends to take this matter to the Commission on Monday for their approval, and our review today will ensure that Tim will have all of the documents appropriately approved by General and its counsel necessary to gain that approval.

Mr. David E. Sonn
Mr. Ray A. Folanini
February 2, 2007
Page 2

I will be in the office all day today and will be happy to assist in anyway I can to facilitate that process.

Thank you both again, and also to you, Tim and Joe, for your exceeding goodwill and good faith in bringing these matters to a speedy and professional conclusion.

Very truly yours,

STEWART SOKOL & GRAY LLC

John Spencer Stewart

JSS:kag

cc: Tim Culbertson, General Manager, Grant County PUD (By E-mail and Mail)
Joe Lukas, Associate General Manager, Grant County PUD (By E-mail and Mail)

bc: **REDACTED**

W:\Work\Clients K-M\Kiewit Pacific\General Const.Wenapum\JSS\Sonn Folanini.001.wpd

FILE COPY

Kaja A Guttomson

From: Kaja A Guttomson on behalf of John Stewart
Sent: Friday, February 02, 2007 11:13 AM
To: David E. Sonn (DavidS@jdsalaw.com); 'Ray Folanini'
Cc: Tim Culbertson (tculber@gcpud.org); Joe Lukas (jluks@gcpud.org)
Subject: General Const/Wanapum Dam; 3458.023
Attachments: Sonn Folanini.001.pdf

Attached is February 2, 2007 letter.



Sonn
lanlnl.001.pdf (75 K)

John Spencer Stewart PC
Stewart Sokol & Gray LLC
2300 SW First Avenue, Suite 200
Portland, OR 97201-5047
Telephone: 503-221-0699, Ext. 230
Fax: 503-419-0281 (Direct); Firm Fax: 503-227-5028
E-mail: jstewart@lawssg.com
Web: www.lawssg.com

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Kaja A Guttormson

FILE COPY

From: Ray Foianini [rfoian@copud.org]
Sent: Friday, February 02, 2007 12:07 PM
To: John Stewart
Cc: Joe Lukas; Leon Hoepner; Tim Culbertson; davids@jdsalaw.com
Subject: Re: General Const./Wanapum Dam; 3456.023

John,

I am waiting to hear from the District if the revised documents, as modified at your meeting yesterday, meet with their approval. The Settlement and Change Orders require approval by official action of the Board of Commissioners.

>>> "John Stewart" <JStewart@lawsg.com> 02/02/07 11:12 AM >>>
Attached is February 2, 2007 letter.

<<Sonn Foianini.001.pdf>>

John Spencer Stewart PC
Stewart Sokol & Gray LLC
2300 SW First Avenue, Suite 200
Portland, OR 97201-5047
Telephone: 503-221-0699, Ext. 230
Fax: 503-419-0281 (Direct); Firm Fax: 503-227-5028
E-mail: jstewart@lawsg.com
Web: www.lawsg.com

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FILE COPY

Kaja A Guttormson

From: Tim Culbertson [Tculber@gcpud.org]
Sent: Friday, February 02, 2007 2:04 PM
To: John Stewart
Subject: Re: General Const./Wanapum Dam; 3458.023

John - We have located the letters you delivered to the Embassy Suites and Joe and Tim will pick them up at the conclusion of their meeting. Thank you.

Carol

>>> "John Stewart" <JStewart@lawssg.com> 2/2/2007 11:12 AM >>>

Attached is February 2, 2007 letter.

<<Sonn FolanInl.001.pdf>>

John Spencer Stewart PC
Stewart Sokol & Gray LLC
2300 SW First Avenue, Suite 200
Portland, OR 97201-5047
Telephone: 503-221-0699, Ext. 230
Fax: 503-419-0281 (Direct); Firm Fax: 503-227-5028
E-mail: jstewart@lawssg.com
Web: www.lawssg.com

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FILE COPY

Kaja A Guttormson

From: Ray Folanini [rfolanini@gcpud.org]
Sent: Tuesday, February 06, 2007 1:08 PM
To: John Stewart
Cc: Michael Smith; Tim Culbertson
Subject: Re: General Const./Wanapum Dam; 3458.023

John,

I am currently out of the office on vacation and will not return until next Tues. I was under the impression that tentative agreement had been reached on the Settlement Agreement and CO nos. 2 and 3 last week.

I have asked my associate Michael Smith to find out what if any changes have been made and the reasons therefor. If GCC has issues with the changes we will obviously need to see if we can get them resolved.

>>> "John Stewart" <JStewart@lawssg.com> 02/06/07 10:53 AM >>>
Attached is February 6, 2007 letter.

<<Folanini.002.pdf>>

John Spencer Stewart PC
Stewart Sokol & Gray LLC
2300 SW First Avenue, Suite 200
Portland, OR 97201-5047
Telephone: 503-221-0699, Ext. 230
Fax: 503-419-0281 (Direct); Firm Fax: 503-227-5028
E-mail: jstewart@lawssg.com
Web: www.lawssg.com

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FILE COPY

Kaja A Guttormson

From: Ron.Morford [RON.MORFORD@kiewit.com]
Sent: Tuesday, February 06, 2007 1:08 PM
To: jlukas@gcpud.org
Subject: Fw: General Const./Wanapum Dam; 3458.023 (FW: Change orders contract 330-2023)

Attachments: 330-2023 CO#2.pdf; 330-2023 CO# 3 Final020207.pdf



330-2023
CO#2.pdf (540 KB)



330-2023 CO# 3
Final020207.pdf...

Joe,

Steve Hansen and I are in a meeting all day today, but have quickly reviewed the attached Change Order drafts which were sent to John Stewart this morning.

I have reviewed Change Order No. 2 and it appears to be fine as drafted.

Change Order 3 needs some work as follows:

1. The \$69,000 amount we agreed to for the added list of items last Thursday needs to be added to the Change Order amount and the new contract total also needs to be increased by the same \$69,000. Along with this amount we need to have an Appendix added which shows the list of items that comprise this \$69,000 amount (the Thursday list less the NACE Paint Inspection Issue, less the Concrete Finish Issue).

Based on a conversation this morning with our Scott Hanson we understand that the Revision 15 drawings (which we still have not seen, but are told we will get this pm) will contain revised notes about the changed concrete finish issue. We either need to have the appropriate drawing revisions on the Drawing List deleted, or alternatively add a reservation of rights sentence for this issue to the Settlement Agreement.

Please give me a call at your convenience to discuss so we can get these items cleaned up this afternoon.

Thanks for your help on this.

Ron Morford

Ron

—Original Message—

From: Kaja A Guttormson <KGuttormson@lawsg.com>
To: Ron.Morford
CC: Steve.Hansen; Dave.Beaudon
Sent: Tue Feb 06 10:47 20 2007
Subject: General Const./Wanapum Dam; 3458.023 (FW: Change orders contract 330-2023)

<<330-2023 CO#2.pdf>> <<330-2023 CO# 3 Final020207.pdf>> Forwarded herewith is February 6, 2007 e-mail from Michael Smith of Grant County PUD.

John Stewart

John Spencer Stewart PC
Stewart Sokol & Gray LLC
2300 SW First Avenue, Suite 200
Portland, OR 97201-5047
Telephone: 503-221-0699, Ext. 230
Fax: 503-419-0281 (Direct); Firm Fax: 503-227-5028

E-mail: jstewart@lawssg.com
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—Original Message—

From: Michael Smith [mailto:Mike.Smith@gopud.org]
Sent: Tuesday, February 06, 2007 8:37 AM
To: John Stewart
Cc: Dawn Woodward; Joe Lukas; Ray Folanini; Tim Culbertson; David Sonn
Subject: Change orders contract 330-2023

John,

I am Ray Folanini's associate attorney. The District has asked that I forward to you Change Order #2 and Change Order #3 relative to contract 330-2023 for your review. They are attached. If you have any questions, please feel free to contact us.

STEWART SOKOL & GRAY LLC

ATTORNEYS AT LAW

John Spencer Stewart PC *†
Jan D. Sokol *†
Arnold L. Gray †
Susan Z. Whitney *
H. Lee Cook *
Thomas A. Larkin *

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PORTLAND, OREGON 97201-5047
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Angela M. Otto *
Robert B. Coleman
Lawrence A. Wagner
Tyler J. Storti
Neil N. Olsen
Scott D. Schnuck

Roger A. Lennberg *
Of Counsel

February 6, 2007

All Members of Oregon Bar
* Washington Bar
† District of Columbia Bar
◊ Alaska Bar
◻ Idaho Bar

E-mail: jstewart@lawsg.com
Direct Fax: (503) 419-0281

Mr. Ray A. Folanini
Grant County Public Utility District No. 2
PO Box 908
Ephrata, Washington 98823-0909

By E-mail

Re: General Construction Company/Wanapum Dam/
Grant County Public Utility District
Wanapum Fish Bypass; Contract 330-2023
Our File No. 3458.023

Dear Ray:

Our people are reviewing your draft Change Order Nos. 2 and 3. However, I do not see in your materials the agreement which we reached, which of course has a reservation with respect to several key claims. The agreement obviously needs to be executed before our clients execute the Change Orders so that there is no question but that those reserved claims are not waived.

Please call me at your early convenience. Thank you.

Very truly yours,

STEWART SOKOL & GRAY LLC

1/s/ John Spencer Stewart
John Spencer Stewart

JSS:kag

cc: Mr. David E. Sonn (By E-mail)

W:\Work\Clients K-M\Gwilt Pacific\General Const\Wanapum\JSS\Folanini 002.wpd

FILE COPY

Kaja A Guttormson

From: Kaja A Guttormson on behalf of John Stewart
Sent: Tuesday, February 06, 2007 10:54 AM
To: 'Ray Folanini'
Cc: David E. Sonn (DavidS@jdsalaw.com)
Subject: General Const./Wanapum Dam; 3458.023

Attachments: Folanini.002.pdf

Attached is February 6, 2007 letter.



Folanini.002.pdf
(72 KB)

John Spencer Stewart PC
Stewart Sokol & Gray LLC
2300 SW First Avenue, Suite 200
Portland, OR 97201-5047
Telephone: 503-221-0699, Ext. 230
Fax: 503-419-0281 (Direct); Firm Fax: 503-227-5028
E-mail: jstewart@lawsg.com
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FILE COPY

Kaja A Guttormson

From: Michael Smith [Mike.Smith@gcpud.org]
Sent: Tuesday, February 06, 2007 2:29 PM
To: John Stewart
Cc: Dawn Woodward; Joe Lukas; Leon Hoepner; Ray Folanini; Tim Culbertson
Subject: Settlement Agreement

Attachments: Release and Settlement Agreement(Final with Exhibits A and B_1.pdf



Release and
Settlement Agreement.

John,

Here is a copy of the settlement agreement. It is my understanding that staff has added the three bullet points to section 2 and included exhibit B as agreed to earlier. Please contact me if you have any questions.

RELEASE AND SETTLEMENT AGREEMENT

This agreement is made by and between General Construction Company (hereinafter called "GCC"), and Public Utility District No. 2 of Grant County (hereinafter called "District"), collectively referred to herein as the "parties".

Recitals

In 2005 the District awarded Contract No. 330-2023 ("Contract") to GCC for the construction of the Wanapum Future Unit Bypass ("Project").

The parties intend by this settlement agreement to resolve outstanding Project related claims, resolve issues relating to the schedule for completion of the work and otherwise modify the Contract as expressly set forth in this Agreement and the attached Change Orders.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein it is hereby agreed as follows:

1. EXECUTION OF CHANGE ORDERS. Attached hereto and incorporated herein by this reference are Change Order Nos. 2 and 3 which have been mutually agreed to and which shall be executed by GCC and the District contemporaneously with the execution of this Agreement.

2. GCC RELEASE AND DISTRICT ACKNOWLEDGMENT. GCC, on behalf of itself and all subcontractors and suppliers does hereby release the District and its directors, officers, agents and employees of and from any and all debts, actions, causes of action, suits, damages and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity which GCC now has or ever had arising from or related in any way to the Contract, all Contract Change Orders, schedule for completion of the work, and/or performance of any labor or work or the supply of any materials or equipment by GCC and/or any of its subcontractors or suppliers in connection with the Project up to and including through the date of this Agreement; EXCEPTING, GCC reserves all of its rights with respect to entitlement to additional contract time and additional compensation concerning the issues of:

- performance and completion of Slots B and C on a concurrent basis,
- the Nace Paint Inspector at Selway claim, and
- all contract drawing revisions issued subsequent to Revision 15.

All other issues are settled as identified in attached EXHIBIT B for a payment of \$69,000.00 to GCC by the District.

3. MODIFICATION OF SCHEDULE FOR COMPLETION OF WORK. Notwithstanding any other provision of the Contract, GCC shall complete all work in strict accordance with the now mutually agreed upon schedule set forth in Exhibit A attached hereto and by this reference made a part of the Contract. Said schedule shall supersede all prior schedules which are in conflict or inconsistent therewith. GCC understands and acknowledges that time is of the essence for completion of the work in accordance with the schedule set forth in Exhibit A. In the event GCC fails to meet any of the specified completion dates, liquidated damages per Contract section G-14 shall be applicable in the amount of \$5,000.00 per calendar day for each and every calendar day that the work described in Exhibit A, milestones 1, 2, 7, and 9 remains uncompleted after the date specified for the particular milestone; and liquidated

damages in the amount of \$35,000.00 per calendar day shall be applicable for each and every calendar day that the work described in Exhibit A, milestone 5 remains uncompleted after the date specified.

4. **DISTRICT COVENANTS.** On or before _____, the District will release to GCC progress payments currently being withheld by the District in the amount of \$1,191,171.63 plus WSST.

5. **NO ADMISSION OF LIABILITY.** It is understood and agreed that the settlement contained in this agreement is a compromise of disputed claims and that neither the release of the \$1,191,171.63 plus WSST currently withheld by the District, nor any other covenants by the parties shall be construed as an admission of liability by either party, its directors, officers, commissioners, agents, sureties or employees.

6. **SUCCESSOR AND ASSIGNS.** All terms and provisions of this agreement shall be binding upon and inure to the benefit of and be enforced by the parties, their successors and assigns. This agreement is solely for the benefit of the parties signatory hereto, and shall not create rights in any third parties.

7. **ENTIRE AGREEMENT.** This agreement supersedes all prior offers, proposed agreements, correspondence and any other conversations relating to the subject matter of the settlement. This agreement is the product of drafting and negotiation by the parties and their legal counsel, and it shall be deemed to have been drafted by neither individually, but as a joint effort of the parties.

8. **CONTRACT DOCUMENTS 330-2023.** Except as otherwise specifically modified by this Agreement and the attached change orders, all terms and conditions set forth in Contract Documents 330-2023 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have approved and executed this agreement.

GENERAL CONSTRUCTION COMPANY

By:

Its:

Dated:

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON

By:

Its:

Dated:

STATE OF WASHINGTON)
: SS.
County of Grant)

On this day of , 2007, before me, a notary public of the State of Washington, personally came _____, known as the Manager of Public Utility District No. 2 of Grant County, which executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said party for the uses and purposes mentioned therein, and on oath stated that he was authorized to execute said instrument on behalf of such entity.

WITNESS my hand and official seal the day and year first above written.

Notary Public for Washington

Residing at

Commission expires

Wanapum Fish Bypass Project

RELEASE AND SETTLEMENT AGREEMENT
EXHIBIT A - REVISED PROJECT SCHEDULE
Interim and Final Milestone / Completion Dates
With Emergency Stoplog Hoist
February 2, 2007

	Required Completion Date
Upstream Fairings:	
1. Complete setting Temporary Stoplogs	3/23/2007 * \$5k/day
2. Complete installation of Module 2 & 3	4/23/2007 * \$5k/day
3. Complete Module 1	9/30/2007
B Slot Work:	
4. Complete Installation of Stoplog Guides	3/16/2007
5. Complete Gates and Dry Test	9/12/2007 ** \$35k/day
Downstream In-water Work:	
6. Remove north side and east end of coffer cell and set all blocks	4/03/2007
7. Complete installation of wall extensions	9/30/2007 * \$5k/day
8. Complete removal of south sheets of coffer cell and Backfill	10/11/2007
9. Final Completion	12/15/2007* \$5k/day

Exhibit A

Wanapum Fish Bypass Project

RELEASE AND SETTLEMENT AGREEMENT
EXHIBIT B - CLAIMS ADJUSTMENTS

February 2, 2007

Jesse Modify dogs	\$ 1,000
Stainless steel angles	\$ 10,000
Change to type III concrete in B slot	\$ 16,000
Additional surveying due to Point E-1	\$ 10,000
Added water stop gallery, F wall, 500 level future unit	\$ 10,000
SIS bolted joints instead of shop weld	\$ 15,000
Remove blocks from slots	\$ (10,000)
Missing splice plates and shims from Selway	\$ 4,000
Rev. 12	\$ 5,000
Lighting Rods on cylinder on gates	\$ 15,000
Rebar on end wall	\$ 5,000
Conduit on parapet for lights	\$ 3,000
Credit for pour back 11A	\$ (5,000)
<u>Credit to leave gallery</u>	<u>\$ (10,000)</u>
Total	\$ 69,000

RAY A. FOIANINI
MICHAEL W SMITH

FOIANINI LAW OFFICES
ATTORNEYS AT LAW
120 FIRST AVENUE NW / POST OFFICE BOX 908
BPHRATA, WASHINGTON 98823

Michael@foianini.com
Michael@foianini.com
PHONE: (509) 734-3591
FAX: (509) 734-5070

FACSIMILE COVER SHEET

DATE/TIME SENT: 2/6/07 5:40 p.m.
FROM: Michael Smith
TO: John Stewart
COMPANY: Stewart Sokol & Gray
FACSIMILE NO.: 503-419-0281
RE: Release and Settlement Agreement Contract 330-2023
OPERATOR: MWS
NUMBER OF PAGES TRANSMITTED (including cover sheet): 6

COMMENTS

(Please see attached)

THE ORIGINAL WILL:

- BE SENT BY FIRST-CLASS MAIL
- BE SENT BY FED-EX/OVERNIGHT
- BE SENT BY MESSENGER
- NOT BE SENT

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RELEASE AND SETTLEMENT AGREEMENT

This agreement is made by and between General Construction Company (hereinafter called "GCC"), and Public Utility District No. 2 of Grant County (hereinafter called "District"), collectively referred to herein as the "parties".

Recitals

In 2005 the District awarded Contract No. 330-2023 ("Contract") to GCC for the construction of the Wanapum Future Unit Bypass ("Project").

The parties intend by this settlement agreement to resolve outstanding Project related claims, resolve issues relating to the schedule for completion of the work and otherwise modify the Contract as expressly set forth in this Agreement and the attached Change Orders.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein it is hereby agreed as follows:

1. EXECUTION OF CHANGE ORDERS. Attached hereto and incorporated herein by this reference are Change Order Nos. 2 and 3 which have been mutually agreed to and which shall be executed by GCC and the District contemporaneously with the execution of this Agreement.

2. GCC RELEASE AND DISTRICT ACKNOWLEDGMENT. GCC, on behalf of itself and all subcontractors and suppliers does hereby release the District and its directors, officers, agents and employees of and from any and all debts, actions, causes of action, suits, damages and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity which GCC now has or ever had arising from or related in any way to the Contract, all Contract Change Orders, schedule for completion of the work, and/or performance of any labor or work or the supply of any materials or equipment by GCC and/or any of its subcontractors or suppliers in connection with the Project up to and including through the date of this Agreement; EXCEPTING, GCC reserves all of its rights with respect to entitlement to additional contract time and additional compensation concerning the issues of:

- performance and completion of Slots B and C on a concurrent basis,
- the Nace Paint Inspector at Selway claim,
- revised and changed concrete finish revised drawings contained in revision 15 drawings;
and
- all contract drawing revisions issued subsequent to Revision 15.

All other issues are settled as identified in attached EXHIBIT B for a payment of \$69,000.00 to GCC by the District.

District acknowledges and represents that it has no knowledge of any claims against GCC arising from or relating in any way to the Contract except:

- Concrete spill / over pour at Wanapum Dam

3. MODIFICATION OF SCHEDULE FOR COMPLETION OF WORK. Notwithstanding any other provision of the Contract, GCC shall complete all work in strict accordance with the new mutually agreed upon schedule set forth in Exhibit A attached hereto and by this reference made a part of the Contract. Said schedule shall supersede all prior



schedules which are in conflict or inconsistent therewith. GCC understands and acknowledges that time is of the essence for completion of the work in accordance with the schedule set forth in Exhibit A. In the event GCC fails to meet any of the specified completion dates, liquidated damages per Contract section G-14 shall be applicable in the amount of \$5,000.00 per calendar day for each and every calendar day that the work described in Exhibit A, milestones 1, 2, 7, and 9 remains uncompleted after the date specified for the particular milestone; and liquidated damages in the amount of \$35,000.00 per calendar day shall be applicable for each and every calendar day that the work described in Exhibit A, milestone 5 remains uncompleted after the date specified.

4. **DISTRICT COVENANTS.** On or before _____, the District will release to GCC progress payments currently being withheld by the District in the amount of \$1,191,171.63 plus WSST.

5. **NO ADMISSION OF LIABILITY.** It is understood and agreed that the settlement contained in this agreement is a compromise of disputed claims and that neither the release of the \$1,191,171.63 plus WSST currently withheld by the District, nor any other covenants by the parties shall be construed as an admission of liability by either party, its directors, officers, commissioners, agents, sureties or employees.

6. **SUCCESSOR AND ASSIGNS.** All terms and provisions of this agreement shall be binding upon and inure to the benefit of and be enforced by the parties, their successors and assigns. This agreement is solely for the benefit of the parties signatory hereto, and shall not create rights in any third parties.

7. **ENTIRE AGREEMENT.** This agreement supersedes all prior offers, proposed agreements, correspondence and any other conversations relating to the subject matter of the settlement. This agreement is the product of drafting and negotiation by the parties and their legal counsel, and it shall be deemed to have been drafted by neither individually, but as a joint effort of the parties.

8. **CONTRACT DOCUMENTS 330-2023.** Except as otherwise specifically modified by this Agreement and the attached change orders, all terms and conditions set forth in Contract Documents 330-2023 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have approved and executed this agreement.

GENERAL CONSTRUCTION COMPANY

By:

Its:

Dated:

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON

By:

Its:

Dated:

STATE OF WASHINGTON)
: SS.
County of Grant)

On this day of , 2007, before me, a notary public of the State of Washington, personally came _____, known as the Manager of Public Utility District No. 2 of Grant County, which executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said party for the uses and purposes mentioned therein, and on oath stated that he was authorized to execute said instrument on behalf of such entity.

WITNESS my hand and official seal the day and year first above written.

Notary Public for Washington

Residing at

Commission expires

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Recitals

In 2005 the District awarded Contract No. 330-2023 ("Contract") to GCC for the construction of the Wanapum Future Unit Bypass ("Project").

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NOW, THEREFORE, in consideration of the mutual promises and covenants herein it is hereby agreed as follows:

1. **EXECUTION OF CHANGE ORDERS.** Attached hereto and incorporated herein by this reference are Change Order Nos. 2 and 3 which have been mutually agreed to and which shall be executed by GCC and the District contemporaneously with the execution of this Agreement.

2. **GCC RELEASE AND DISTRICT ACKNOWLEDGMENT.** GCC, on behalf of itself and all subcontractors and suppliers does hereby release the District and its directors, officers, agents and employees of and from any and all debts, actions, causes of action, suits, damages and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity which GCC now has or ever had arising from or related in any way to the Contract, all Contract Change Orders, schedule for completion of the work, and/or performance of any labor or work or the supply of any materials or equipment by GCC and/or any of its subcontractors or suppliers in connection with the Project up to and including through the date of this Agreement; EXCEPTING, GCC reserves all of its rights with respect to entitlement to additional contract time and additional compensation concerning the issues of:

- performance and completion of Slots B and C on a concurrent basis,
- the Naco Paint Inspector at Selway claim,
- revised and changed concrete finish revised drawings contained in revision 15 drawings;
and
- all contract drawing revisions issued subsequent to Revision 15.

All other issues are settled as identified in attached EXHIBIT B for a payment of \$69,000.00 to GCC by the District.

District acknowledges and represents that it has no knowledge of any claims against GCC arising from or relating in any way to the Contract except:

- Concrete spill / overflow related to underwater pour at Wanapum Dam

3. **MODIFICATION OF SCHEDULE FOR COMPLETION OF WORK.** Notwithstanding any other provision of the Contract, GCC shall complete all work in strict accordance with the new mutually agreed upon schedule set forth in Exhibit A attached hereto and by this reference made a part of the Contract. Said schedule shall supersede all prior

schedules which are in conflict or inconsistent therewith. GCC understands and acknowledges that time is of the essence for completion of the work in accordance with the schedule set forth in Exhibit A. In the event GCC fails to meet any of the specified completion dates, liquidated damages per Contract section G-14 shall be applicable in the amount of \$5,000.00 per calendar day for each and every calendar day that the work described in Exhibit A, milestones 1, 2, 7, and 9 remains uncompleted after the date specified for the particular milestone; and liquidated damages in the amount of \$35,000.00 per calendar day shall be applicable for each and every calendar day that the work described in Exhibit A, milestone 5 remains uncompleted after the date specified.

4. DISTRICT COVENANTS. On or before February 23, 2007, the District will release to GCC progress payments currently being withheld by the District in the amount of \$1,191,171.63 plus WSST.

5. NO ADMISSION OF LIABILITY. It is understood and agreed that the settlement contained in this agreement is a compromise of disputed claims and that neither the release of the \$1,191,171.63 plus WSST currently withheld by the District, nor any other covenants by the parties shall be construed as an admission of liability by either party, its directors, officers, commissioners, agents, sureties or employees.

6. SUCCESSOR AND ASSIGNS. All terms and provisions of this agreement shall be binding upon and inure to the benefit of and be enforced by the parties, their successors and assigns. This agreement is solely for the benefit of the parties signatory hereto, and shall not create rights in any third parties.

7. ENTIRE AGREEMENT. This agreement supersedes all prior offers, proposed agreements, correspondence and any other conversations relating to the subject matter of the settlement. This agreement is the product of drafting and negotiation by the parties and their legal counsel, and it shall be deemed to have been drafted by neither individually, but as a joint effort of the parties.

8. CONTRACT DOCUMENTS 330-2023. Except as otherwise specifically modified by this Agreement and the attached change orders, all terms and conditions set forth in Contract Documents 330-2023 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have approved and executed this agreement.

GENERAL CONSTRUCTION COMPANY

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON

Accepted By: Ronald H. Mufford

Accepted By: Jim Gilbert

Authorized Signature: Ronald H. Mufford

Title: General Manager

Title: President

Dated: 2-8-07

Dated: 2/8/07

Wanapum Fish Bypass Project

**RELEASE AND SETTLEMENT AGREEMENT
EXHIBIT A – REVISED PROJECT SCHEDULE
Interim and Final Milestone / Completion Dates
With Emergency Stoplog Hoist
February 2, 2007**

Upstream Fairings:	Required Completion Date
1. Complete setting Temporary Stoplogs	3/23/2007 * \$5k/day
2. Complete installation of Module 2 & 3	4/23/2007 * \$5k/day
3. Complete Module 1	9/30/2007
B Slot Work:	
4. Complete Installation of Stoplog Guides	3/16/2007
5. Complete Gates and Dry Test	9/12/2007 ** \$35k/day
Downstream In-water Work:	
6. Remove north side and east end of coffer cell and set all blocks	4/03/2007
7. Complete installation of wall extensions	9/30/2007 * \$5k/day
8. Complete removal of south sheets of coffer cell and Backfill	10/11/2007
9. Final Completion	12/15/2007* \$5k/day

Exhibit B

Wanapum Fish Bypass Project

RELEASE AND SETTLEMENT AGREEMENT
EXHIBIT B - CLAIMS ADJUSTMENTS
February 2, 2007

Jesse Modify dogs	\$ 1,000
Stainless steel angles	\$ 10,000
Change to type III concrete in B slot	\$ 16,000
Additional surveying due to Point E-1	\$ 10,000
Added water stop gallery, F wall, 500 level future unit	\$ 10,000
SIS bolted joints instead of shop weld	\$ 15,000
Remove blocks from slots	\$ (10,000)
Missing splice plates and shims from Selway	\$ 4,000
Rev. 12	\$ 5,000
Lighting Rods on cylinder on gates	\$ 15,000
Rebar on end wall	\$ 5,000
Conduit on parapet for lights	\$ 3,000
Credit for pour back 11A	\$ (5,000)
<u>Credit to leave gallery</u>	<u>\$ (10,000)</u>
Total	\$ 69,000

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") made this 8th day of May, 2007, by and between SELWAY CORPORATION, a Montana corporation ("Selway") and GENERAL CONSTRUCTION COMPANY, a Delaware corporation ("GCC").

WITNESSETH:

WHEREAS, prior hereto on December 5, 2005 Selway and GCC entered into a Material Contract ("Contract") relative to the detailing, fabrication and painting, and delivery of Flow Fairings Module 1-4 pursuant to project drawings, specifications and related contract documents for the construction of the Wanapum Future Unit Fish Bypass at Wanapum Dam ("Project") for Grant County Public Utility District ("PUD"), as owner;

WHEREAS, disputes have arisen with respect to the inspection requirements for the contract, and Selway submitted a claim to GCC on or about November 8, 2006, seeking a change order in the principal amount of Ninety Thousand Two-hundred Dollars (\$90,200) for alleged additional inspection directed by PUD; and

WHEREAS, the parties by this Agreement wish to and in fact have resolved those disputes and all disputes arising out of or related to the Contract.

NOW, THEREFORE, the parties agree as follows:

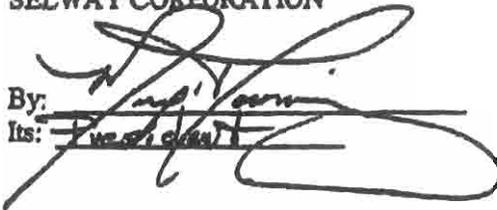
1. The foregoing are contractual, not merely recital.
2. Within fourteen (14) calendar days of the date of this Agreement GCC will pay Selway the total sum of Sixty-seven Thousand Dollars (\$67,000) in full and complete settlement of all claims, demands, and causes of action and/or suit arising out of said Contract and said Project by check payable to Selway and its counsel of record.
3. For good and valuable consideration, including the payment referred to in paragraph 2, *supra*, Selway and GCC, for themselves, their officers, directors, shareholders, employees, representatives, agents, attorneys, sureties (including but not limited to Travelers Casualty and Surety Company of America), successors and assigns, do herewith release, exonerate, acquit and discharge the other of and from any and all claims, past, present and future, arising out of said Contract and Project, EXCEPTING only unexpired contract warranties. GCC is unaware of any warranty issues.
4. In connection herewith, for valuable consideration, Selway assigns and sets over unto GCC all of its right, title and interest in and to said inspection claim for GCC's pursuit thereof in its own right against PUD. In connection therewith, Selway will cooperate with GCC in GCC's pursuit of said inspection claim against PUD.

Page 1 - SETTLEMENT AGREEMENT

5. The parties will execute such further documents as may be required to implement the terms and spirit of this Agreement.

SELWAY CORPORATION

GENERAL CONSTRUCTION COMPANY

By: 
Its: President

By: _____
Its: _____

5. The parties will execute such further documents as may be required to implement the terms and spirit of this Agreement.

SELWAY CORPORATION

GENERAL CONSTRUCTION COMPANY

By: _____
Its: _____

By: [Signature]
Its: President

Kaja A Guttormson

From: Kaja A Guttormson on behalf of John Stewart
Sent: Wednesday, May 23, 2007 2:48 PM
To: 'Ron.Morford'; 'Dave.Beaudoin'
Subject: General Const./Wanapum Dam (Selway); 3458.023
Attachments: Morford Beaudoin.002.pdf; Penner Letter.06-21-07.pdf; Selway-GCC Settlement Agreement.Executed.05-06-07.pdf; Penner.005.bc.pdf

Attached is May 23, 2007 letter, with enclosures.

John Spencer Stewart PC
Stewart Sokol & Gray LLC
2300 SW First Avenue, Suite 200
Portland, OR 97201-5047
Telephone: 503-221-0699, Ext. 230
Fax: 503-419-0281 (Direct); Firm Fax: 503-227-5028
E-mail: jstewart@lawssg.com
Web: www.lawssg.com

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APPENDIX OO

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

GENERAL CONSTRUCTION COMPANY,
a Delaware corporation,

Plaintiff,

vs. No. 08-2-01339-8

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON, a
Washington municipal corporation,

Defendant,

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, a Washington
municipal corporation,

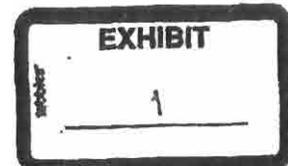
Third-Party Plaintiff,

vs.

GENERAL CONSTRUCTION COMPANY, a
Delaware corporation; TRAVELERS
CASUALTY & SURETY COMPANY; and
TRAVELERS CASUALTY & SURETY
COMPANY, BOND NUMBER
41S103871237BCM,

Third-Party Defendants.

DEPOSITION OF GEORGE THOMPSON
Taken on behalf of the Plaintiff
Tuesday, June 15, 2010



1 Q. Page 3. Paragraph 3?

2 A. Okay.

3 Q. Now, in your -- in your testimony earlier
4 today I was unclear of those document that you
5 received that you read and those that you don't
6 read. The impression I got was that you for sure
7 have a policy or a procedure of reading documents
8 that you considered important. My question to you
9 is did you consider Exhibit 36 important?

10 A. Yes.

11 Q. And therefore can I reasonably assume that
12 you read Exhibit 36 on or about the date you
13 received it?

14 A. Yes.

15 Q. I mean, Mr. Thompson, the fact is that all
16 the way up until January of 2006 when the dam moved
17 and you personally got involved on that day as you
18 recall, do you recall that?

19 A. Yes.

20 Q. Up until that date General was always
21 anticipating doing some concurrent slot dewatering
22 work. Correct?

23 A. Yes.

24 Q. At any time after you received Exhibit 36
25 up until that date in January which I believe to

1 have been either the 3rd or the 5th of January did.
2 you ever tell FERC that a different construction
3 sequence was going to be used than that set forth in
4 the contract?

5 A. I did not.

6 Q. Do you know if anyone at PUD told FERC?

7 A. I do not know.

8 Q. I have spent a great deal of days in a
9 dusty rambler house in Beverly looking at records
10 and I have not found anything. Are you aware of any
11 document, e-mail, letter, fax, whatever, that would
12 indicate that anyone at PUD ever told FERC?

13 MR. SONN: Object to the form to the
14 extent Counsel is testifying.

15 Q. Let me reask the question. Are you aware
16 of any document in existence where PUD advised FERC
17 that the contractor intended to employ a different
18 dewatering scheme or system than that set forth in
19 the contract?

20 A. Could you be more clear?

21 Q. Yes. The contract stated that there was
22 one dewatering system that was called out in the
23 contract but you recall this morning we talked about
24 the addendum 1 which said that the contractor could
25 use that system or he could use a different system

1 A. I don't understand your question.

2 MR. SONN: Counsel, you got the dates
3 mixed. You said January 21 then you said December
4 20 the second time. Just to help out.

5 Q. The analysis of July 7, 2005 that you
6 write is in fact the analysis that Jacobs did in
7 connection with the dewatering of slots A, B, and C.
8 Is that right?

9 A. Probably.

10 Q. What I'm just trying to get at, maybe ask
11 it a little more simple way. Between July 7, 2005
12 and December 20, 2005 are you aware of any changes
13 to that analysis? And I asked that because it would
14 seem as the writer of this letter you were saying
15 you've got to stick with this July 7 analysis.
16 That's the way I look at it but you may have meant
17 something else.

18 A. I don't recall any other analysis.

19 Q. Okay. So as far as you know -- I'm sorry.
20 So as far as you know as of at least December 20,
21 2005 you wanted to make sure that the contractor was
22 complying with the analysis of July 7, 2005.

23 Correct?

24 A. Yes.

25 Q. And it was that sequence that was then

1 A. No.

2 Q. So do I understand then that the
3 contractor was permitted to go forward with the
4 precise plan that had been approved on July 7? Is
5 that what your testimony is?

6 A. With regards to dewatering, yes.

7 Q. Were there any changes?

8 A. Yes.

9 Q. What were the changes?

10 A. Concrete placement sequence in slot B.

11 Q. Was changed? Was changed, correct?

12 A. Yes.

13 Q. Okay. And that was as a result of the dam
14 moving, was it not?

15 A. Yes.

16 Q. Now, I don't find one word in this report
17 to FERC about any of that, do you?

18 A. No.

19 Q. Why did you not tell the FERC people about
20 this?

21 A. I don't know.

22 Q. Were you told not to tell them?

23 A. No.

24 Q. Did you just not tell them on your own?

25 A. No.

1 A. No.

2 Q. Mr. Moore was there.

3 A. Yes.

4 Q. So somebody had identified them as a

5 Category 1 potential failure mode.

6 A. Yes.

7 Q. Do you know who had done that?

8 A. No.

9 Q. Was it you?

10 A. No.

11 Q. Was it PUD?

12 A. No.

13 Q. Was it FERC?

14 A. I don't know.

15 Q. Now, can you explain to me why in this

16 letter to Mr. Moore -- strike that. In this letter

17 to Mr. Regan Mr. Moore did not disclose to FERC the

18 fact that the dam had moved in early January 2006

19 and that that had resulted in a change in the

20 concrete placement schedule?

21 MR. SONN: Object to the form. Assuming

22 facts not in evidence.

23 Q. Well, excuse me. On the facts in

24 evidence, the dam moved in January. Correct?

25 A. Yes.

1 Q. The concrete pour schedule was changed as
2 a result of that. Correct?

3 A. Yes.

4 Q. Why were those facts not in this letter to
5 FERC? Do you know?

6 A. I do not know.

7 Q. If you had written this letter would you
8 have disclosed those facts to FERC?

9 A. I don't know.

10 Q. Well, if you're talking -- you're writing
11 -- your organization is writing a letter to the
12 Federal Energy Regulatory Commission specifically
13 about the integrity of this dam and the integrity of
14 the post-tensioned anchors. And approximately nine
15 months previous you'd had a situation which was
16 serious enough that you stopped work, changed the
17 sequence and so on. And from your perspective you
18 don't think that would be something that you should
19 have reported to FERC?

20 A. No.

21 Q. You don't think you should have?

22 A. No.

23 Q. Okay. In any event, Mr. Moore through Mr.
24 Hammond, your boss, says that he's enclosing three
25 copies of drawings, plans, and specifications and a

1 A. Some time shortly after it was issued.

2 Q. Okay. Was your -- was your opinion sought
3 with respect to any of the terms of the agreement?

4 A. No.

5 Q. I'm going to show you what we've marked as
6 Exhibit 54. This is the declaration of Dana Jeske.

7 MR. LARKIN: Fifty-five.

8 MR. STEWART: Fifty-five? You're right.

9 Excuse me.

10 (Whereupon the Declaration of Dana Jeske
11 was marked Exhibit 55 for identification.)

12 Q. Exhibit 55 is a declaration of Dana Jeske
13 which is dated July 17, 2009. Have you seen this
14 before?

15 A. Yes.

16 Q. Page 6 under oath Mr. Jeske states the
17 following: "GCC provided contemporaneous notice of
18 each item that change order 2, 3, 4, and 5
19 included." And then he lists what was included in
20 change order 2 and so forth. Do you see that?

21 A. I do.

22 (Whereupon General's Third Interrogatories
23 were marked Exhibit 56 for identification.)

24 Q. Exhibit No. 56 is General's third
25 interrogatories and fifth request for production

1 that are dated July 29, 2009. And I want to draw
2 your attention to page 7 interrogatory --
3 interrogatory number 2. Interrogatory number 2 says
4 "In paragraph 11 of the July 17, 2009 Declaration of
5 Dana Jeske, the declarant declares under penalty of
6 perjury that quote, GCC provided contemporaneous
7 notice of each item that change order 2 included."
8 And then I asked the following. "With respect to
9 the foregoing quoted declaration excerpt provide
10 separately with respect to each change order no. 2
11 item the following information." And then -- do you
12 see that?

13 A. I do.

14 (Whereupon the PUD's Answers to
15 Interrogatories were marked Exhibit 57 for
16 identification.)

17 Q. What you've just been handed was and
18 marked as Exhibit 57 is your answers with respect
19 thereto. And you signed these on August 27.
20 Correct? Is that your signature?

21 A. Yes.

22 Q. Now when you -- when you -- when you
23 signed those under oath did you take a look at
24 Exhibits 2, 3, 4, and 5 to determine what was
25 included within those documents?

1 A. Which exhibit?

2 THE VIDEOGRAPHER: This marks the end of
3 tape number 6 in the deposition of George Thompson.
4 The time is 4:48:56. We are off the record.

5 (Whereupon the proceedings were recessed
6 until 4:51 p.m.)

7 THE VIDEOGRAPHER: Back on record. Here
8 marks the beginning of tape number 7 in the
9 deposition of George Thompson. The time is 4:51 and
10 6 seconds.

11 Q. Was there a reason why you signed these
12 answers rather than Mr. Jeske?

13 A. I believe Mr. Jeske was not available that
14 day.

15 Q. Okay. So if you look at the settlement
16 agreement, Exhibit 54, after the first two -- after
17 the first three pages you'll see a listing of items
18 that total \$69,000. Do you see that?

19 A. I do.

20 Q. And then if you look at the next page
21 you'll see exhibit -- you'll see change order 2,
22 which the most significant part of which is a \$2.
23 million contract increase for providing newly
24 designed dewatering stop logs. Do you see that?

25 A. Yes.

1 Q. And then if you turn over a number of
2 pages you will see what is denominated change order
3 3?. And that has then a whole series of revised
4 drawings and you get over to page number 15 of
5 change order 3. And that increases the contract
6 price by another \$4.3 million. So if you look at
7 change orders 2 and 3 and the list which is attached
8 as Exhibit B this \$29 million contract price was
9 increased by more than 20 percent. The original
10 contract price was \$29 million. And the new
11 contract price is over 35 million. Now, in your
12 experience in general contracting would you say that
13 a 20 percent increase in contract price is a pretty
14 significant increase?

15 A. Yes.

16 Q. Now, let's look at your answer. I asked a
17 question, it's simple. Mr. Jeske said there was
18 contemporaneous notice given with respect to all
19 these items. And your answer was, to the extent I
20 could understand it--

21 MR. SONN: Which exhibit are you on,
22 Counselor?

23 MR. STEWART: I'm on Exhibit 57.

24 Q. Your answer at page 3 was a series of
25 objections followed by the following at line 14.

1 None of the items listed in Exhibit A to GCC's
2 third interrogatories gave rise to a claim under GC-
3 10 so the information that 2(a) and 2(b) seek, i.e.,
4 information based on language taken from GC-10 or
5 based on GC-10, then paren, the date of the
6 beginning of the event or occurrence giving rise and
7 the date on which GCC first gave notice is
8 information that is neither relevant or likely to --
9 or reasonably calculated to lead to the discovery of
10 admissible information. Now--

11 MR. SONN: Evidence.

12 Q. And then it says "Those with knowledge of
13 the above include Dana Jeske, George Thompson,
14 Reece, Mike Pierce." Okay? Are you there?

15 A. Yes.

16 Q. So is it your -- is it your testimony that
17 all of these claims that were paid, all these
18 amounts that were paid in Exhibit 54 had been
19 properly noticed to the District?

20 MR. SONN: Object to the form. It's a
21 mischaracterization.

22 Q. You can answer that.

23 A. No.

24 Q. I'm sorry?

25 A. No.

1 Q. They were not properly noticed?

2 A. No.

3 Q. Then why were they paid?

4 A. Some of those claims were District
5 requests that didn't require a notice to GCC.

6 Q. Let me get this straight now. So if it
7 was a District request then the notice was not
8 required, is that what you're saying?

9 A. Yes.

10 Q. Okay. Now, I asked you one last question
11 and I want you to go back and carefully look at your
12 response. In my interrogatory I asked you -- I
13 asked PUD, excuse me, to furnish me copies of all of
14 these alleged notices. My request for production
15 was "Please produce all documents referred to,
16 reviewed or relied upon, or identified in responding
17 to each of the subparts of plaintiff's foregoing
18 interrogatory." Do you see that?

19 A. No.

20 Q. It's in Exhibit 56, 56 page 10. Okay, do
21 you see that?

22 A. I do.

23 Q. Now, take a look at Exhibit 57. Right
24 above your signature on page 4. In response to my
25 request that you produce all these alleged notices

1 that Mr. Jeske talked about your answer is "GCC has
2 all such documents." Do you see that?

3 A. I do.

4 Q. Explain this to me, Mr. Thompson. Do you
5 think I was just asking that question because I had
6 nothing else to do that day? Seriously.

7 MR. SONN: Object to the form as
8 argumentative.

9 A. I don't know.

10 Q. Well, why did you answer it that way as
11 opposed to simply furnishing the documents?

12 A. Because we had previously produced
13 documents that we felt answered that question.

14 Q. So you previously produced -- I just want
15 to make sure I understand your testimony here today.
16 You believe that PUD had previously produced all of
17 GCC's notice letters?

18 A. I believe that the District had previously
19 produced the documents that pertained to your
20 request in that question.

21 Q. All right. So my next question to you is
22 are all the items that are in change orders 2 and 3
23 were they all District requests? The \$6.5 million
24 worth of work is all District requests?

25 A. No.

1 Q. How about on Exhibit 54, Exhibit B? This
2 list of about a dozen items that the District paid
3 GCC \$69,000 for, were those all District requests?

4 A. No.

5 Q. They were all paid, weren't they?

6 A. Yes.

7 (Whereupon the Supplemental Declaration of
8 James Durnford Exhibit 58 for identification.)

9 Q. Exhibit 58 is a supplemental declaration
10 of James Durnford that was filed previously. It is
11 dated November 4, 2009. Have you seen this document
12 before?

13 A. Yes.

14 Q. Now, in this document Mr. Durnford -- I'm
15 going to skip over the RFI 2007 but I want to go
16 directly to paragraph 4 of the declaration. And let
17 me ask you this question as a prelude to that. Were
18 you involved in connection with the negotiation of
19 change order 2?

20 A. No.

21 Q. Were you involved with the change order --
22 the execution of change order 3?

23 A. No.

24 Q. Were you consulted about change order 2 or
25 change order 3 during the course of the work?

CERTIFICATE OF FILING AND SERVICE

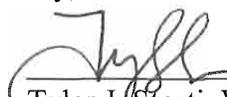
The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the 16th day of July, 2015, I filed by Federal Express to the Clerk of the Court at the address below the **SECOND AMENDED BRIEF OF RESPONDENT/CROSS-APPELLANT** and I caused a true and correct copy of the same to be delivered to counsel in the manner indicated below:

Clerk of the Court
Washington Court of Appeals, Division III
500 N. Cedar St.
Spokane, WA 99201

David E. Sonn, WSBA #07216
H. Lee Lewis, WSBA #46478
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*Attorneys for Defendant/ Appellant/Cross-
Respondent Public Utility District No. 2 of
Grant County*

 X by Federal Express addressed to the attorney as shown above, the last-known office address of the attorney on the date set forth below.

DATED this 16th day of July, 2015 in Portland, Oregon.



Tyler J. Storti, WSBA #40341
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