



CONSTRUCTION CPM CONFERENCE MOCK TRIAL PRESENTATION

2024 San Antonio TX – our 12th Conference – 26th Trial

Featuring:
Hon. John McClellan Marshall
Daniel Lund III of Phelps Dunbar
Jim Coleman of Zachry
Ranjeet Gadhoke of Zachry
Fredric L Plotnick, PhD, Esq., P.E.

What we Have Here is a Failure of Communication
Does the Engineer, Contractor and Software all
Speak the Same Language?

Our Panel

- Hon. John M. Marshall – presiding
- Daniel Lund, Esq. – attorney for TaxDOT
- Jim Coleman, Esq. – attorney for ConnedTractor
- Ranjeet Gadhoke – software expert of ConnedTractor
- Adam Saur – superintendent for ConnedTractor
- Fredric L. Plotnick, Ph.D., Esq., P.E. – moderator
– and CPM expert for ConnedTractor

The Honorable *don* John McClellan Marshall

Senior Judge, Fourteenth Judicial District of Texas

Sitting by Assignment

Honorary Professor of the University, UMCS



JUDICIAL SERVICE - Served as Judge Presiding, Municipal Court of Muenster, Texas, 1976-1980, Judge Presiding, Fourteenth Judicial District of Texas, 1981-2000; Judge for the Dallas County Emergency Medical-Legal Project, 1986-2000, Judge of the Sabine Valley Child Protection Court, 2001-2004.

EDUCATION AND PROFESSIONAL ACTIVITIES - BA – Virginia Military Institute, 1965 (Valedictorian); MA – Vanderbilt University, 1966; Juris Doctor (JD) - Southern Methodist University, 1975; LL.D. (Honorary), *Academia Mexicana de Derecho Internacional* 1985. Member of The International Academy of Astronautics, elected 1999. Life Fellow of the College of State Bar of Texas. Mensa, 1968-present (President, North Texas Mensa, 2020).



Prize-winning author [George Washington Medal of Freedoms Foundation ("The Bill of Rights") and State Bar College best article of the year 1999], specializing in procedural law [co-author, *West's Texas Rules of Civil Procedure, Annotated* since 1996]. Associate Historian, Florida Institute of Technology, 1970-71 [wrote history of Apollo/Saturn V Launch Operations at Kennedy Space Center]. Technical Instructor, Skylab Program at KSC, 1971-73. Presenter, International Astronautical Congress: Brussels, 1971 ["The Mobile Concept in Apollo/Saturn V Launch Operations"]; Oslo, 1995 ["The Terminator Missed a Chip!: Cyberethics"]. Honorary Professor of the University, 2004, Marie Curie-Sklodowska University [UMCS], Lublin, Poland. Lecturer, University of Texas at Dallas Center for Values in Medicine, Science and Technology, 2012-present. Speaker at MEDEL Conference, Kraków, Poland, 2018 - "The Constitution and the Independent Judiciary"; co-author, *Precedent in The Judicial Process: Judges' Perspective in Comparative Approach*, UMCS [Lublin, Poland] 2019] (published in English and Polish); "The Modern Memory Hole", *Athenaeum Review*, Fall 2019 (University of Texas at Dallas); "Cyberethics In The 21st Century: The Reign Of The Machines", *Mensa Bulletin*, January 2020; "Machine-Machine To Major Tom: Cyberethics", IAA/UT Conference on Space Traffic Management, Austin, TX, February 2020. ORCID ID: 0000-0003-4504-144X.



Daniel Lund III

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Phelps Dunbar LLP

365 Canal Street, Suite 2000

New Orleans, Louisiana 70130

Direct dial: 504-584-9325



Mr. Lund is a Partner in the New Orleans office of the law firm of Phelps Dunbar, L.L.P., and for his 35 years of practice has been engaged in general civil litigation, focusing primarily on construction industry and surety matters, products liability, telecommunications law, and zoning.

Dan received his B.A. degree in philosophy from the University of New Orleans, his J.D. degree from Tulane University, and an M.T.S. degree from Duke University. He serves on the Construction, Consumer, and Commercial Arbitration Panels of the American Arbitration Association and on the panel of mediators and arbitrators for Perry Dampf Dispute Solutions nationwide.

Mr. Lund is admitted to practice before all courts in Louisiana and the United States District Courts in Louisiana, as well as the United States District Court for the Northern District of Florida. He is a member of the American Bar Association Fidelity and Surety Law Committee, and is a member of the Louisiana State Bar Association.

At the start of 2023, Dan was honored to be named by Louisiana Super Lawyers to its 2023 list of “Top 50” attorneys across all practice areas in the state of Louisiana.



Jim Coleman, Esq. – attorney for ConnedTractor

Jim Coleman
Senior Business Counsel
Zachry Construction Corporation

Jim has been an in-house counsel to Zachry Construction Corporation and its affiliates for nine years, managing outside counsel in a variety of construction and design defect disputes and other contract issues in arbitrations and state court and federal court actions. He also supports Zachry's projects, drafting and reviewing contracts and providing legal guidance to Zachry's project teams.

Jim received his BS in engineering and a minor in economics from Virginia Tech in 1984. He spent eighteen years in construction management for large commercial contractors, including being a project manager for an expansion of the San Antonio Convention Center, a dorm for UT Arlington, an office building in Plano, Texas, a laboratory for the University of Maryland, and an apartment building in downtown Washington, DC.

In 2002, Jim decided to switch careers, going to law school full-time, receiving his J.D. from Washington & Lee in 2005. He spent nine years as a construction litigator with law firms in northern Virginia, representing owners, contractors and the occasional subcontractor in arbitrations and state and federal courts before going in-house with Zachry. He is a member of the Texas, New York and Virginia Bars.



Ranjeet Gadhoke – software expert of *ConnedTractor*

Ranjeet Gadhoke

Ranjeet.gadhoke@zachrycorp.com

Zachry Construction Company

14410 Wurzbach Parkway, Suite 120

San Antonio, TX 78216



Mr. Ranjeet Gadhoke serves as Vice President of Project Controls at Zachry Construction Corporation in San Antonio, Texas. Leveraging over two decades of professional experience in the heavy civil construction sector, he has assumed progressive roles including Field Engineer, Scheduler, Project Manager, and currently, Vice President.

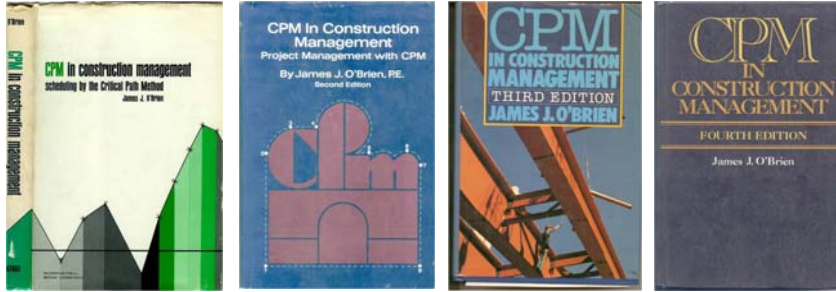
Holding a Master of Science degree in Civil Engineering and Construction Management from Northeastern University, Mr. Gadhoke launched his career by managing over \$500 million in infrastructure projects as part of Boston's \$15 billion Central Artery/Tunnel initiative. As Master Scheduler and Claims/Changes Manager, he successfully negotiated over \$80 million in complex claims and change orders.

After 4 years spearheading operations and providing planning/claims consulting services to firms in India, Mr. Gadhoke joined Zachry Construction in 2008 as Director of Project Controls. In this capacity, he has directed large-scale construction programs and led the Enterprise Resource Planning implementation. Most notably, Mr. Gadhoke established and scaled the newly formed Project Controls Department post-reorganization in 2008. Today, he leads the department in advising and controlling all Zachry projects with respect to scheduling, progress and production tracking, cost control, claims and changes, and risk mitigation.

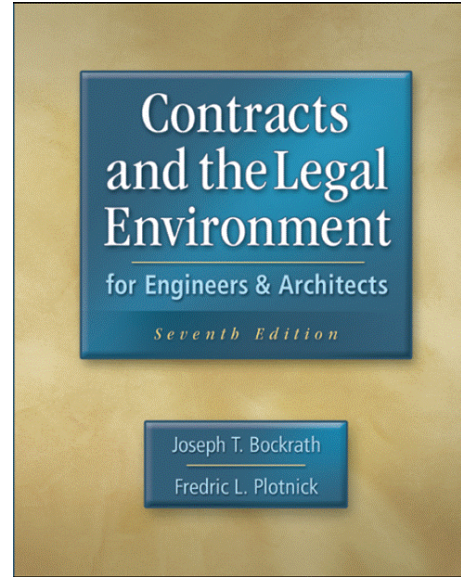


Adam Saur – *superintendent of ConnedTractor*

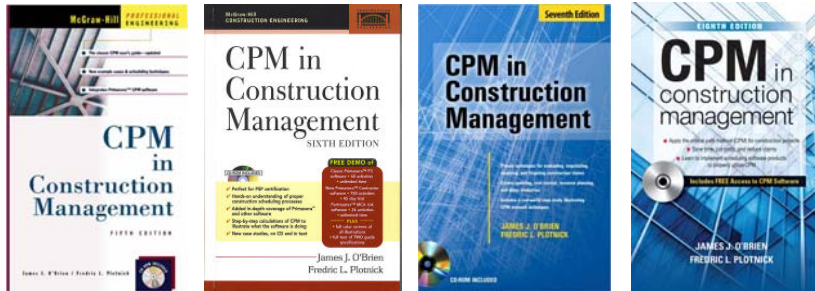
CONTRACTOR'S SCHEDULE ANALYSIS



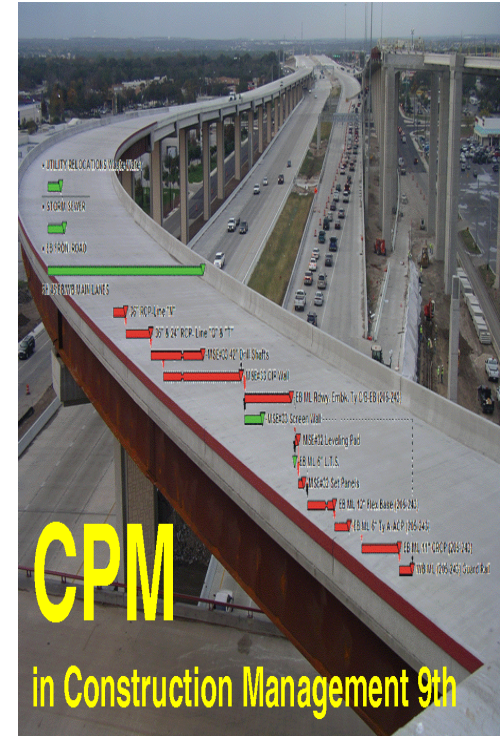
by James J. O'Brien, P.E., PMP



by Joseph T. Bockrath, and Fredric L. Plotnick



by James J. O'Brien, P.E., PMP, and Fredric L. Plotnick, Ph.D., Esq., P.E.





Our Project



- We are building a section of highway including several elevated structures
- The project is designed, funded and administered by TaxDOT
- The project is being built by ConnedTractor who signs the NoNegotiation Govt. Contract

- Specification provides contractor to complete all work by 10MAY22
- Spec requires contractor to prepare and utilize a CPM
- and to submit to TaxDOT a PDF of such schedule for review and approval
- Spec requires contractor to prepare claims for delay utilizing “latest version of P3”
- TaxDOT insists this means OPC and will defend right to L/D’s and claims with OPC
- What will Judge and (YOU the) Jury make of the competing computer output or opinions?



Today's Lesson Plan

Software is supposed to but does not model the real world

- Engineers, Schedulers and Contractors may build with a flawed model
- Can a Judge really determine “Truth” from “Experts” reviewing a flawed model?

Understand the difference between a disruption to activity and a delay to project.

- Understand the difference between the 1910 and 1956 Schedule algorithms
- Understand same input to different software may calculate different results

The law usually says one may specify actions or results – but not both

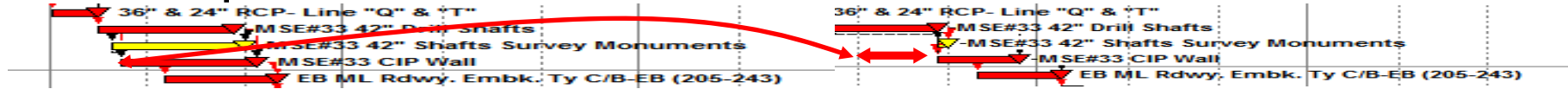
- The *Spearin* doctrine allows prescription or performance – but not both
- We will examine if *Spearin* applies to a mis-applied scheduling specification

Issues with Popular Software

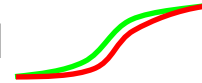
Baseline or Initial Calculated Schedule: 1910 Resource Allocation



- Interruptible v Continuous Performance of Duration



Updates to Baseline or Initial Schedule: 1956 CPM



- Performance of Work v Passage of Time for Lag Durations

Deltak Open Plan Lag = Days Elapsed v 30P (30% of OD)



Spider Team Lag = % Volume Performed v Time Elapsed



- Retained Logic v Progress Override v MOOS

based upon ADM or PDM

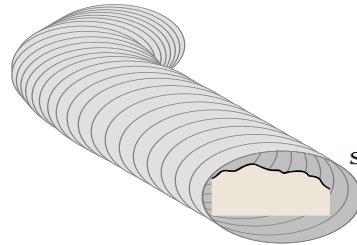


- Just-in-Time v Free Float



Do we have a Spearin Issue?

- MacKnight Flintic Stone Co. v. The Mayor, 160 N. Y. 72, 54 N. E. 661, 1899
- United States v. Spearin (248 U.S. 132), 1918



248 U.S. 132
39 S.Ct. 59
63 L.Ed. 166
UNITED STATES
v.
SPEARIN. SPEARIN v. UNITED STATES.
Nos. 44, 45.
Argued Nov. 14 and 15, 1918.
Decided Dec. 9, 1918.



Messrs. Frank W. Hackett, of Washington, D. C., and Charles E. Hughes, of New York City, for Spearin.
Mr. Assistant Attorney General Thompson, for the United States.
Mr. Justice BRANDEIS delivered the opinion of the Court.

Spearin brought this suit in the Court of Claims demanding a balance alleged to be due for work done under a contract to construct a dry dock and also damages for its annulment. Judgment was entered for him in the sum of \$141,180.86 (51 Ct. Cl. 155), and both parties appealed to this court. The government contends that Spearin is entitled to recover only \$7,907.98. Spearin claims the additional sum of \$63,658.70.

First. The decision to be made on the government's appeal depends upon whether or not it was entitled to annul the contract. The facts essential to a determination of the question are these:

Spearin contracted to build for \$757,800 a dry dock at the Brooklyn Navy Yard in accordance with plans and specifications which had been prepared by the government. The site selected by it was intersected by a 6-foot brick sewer; and it was necessary to divert and relocate a section thereof before the work of constructing the dry dock could begin. The plans and specifications provided that the contractor should do the work and prescribed the dimensions, material and location of the section to be substituted. All the prescribed requirements were fully complied with by Spearin; and the substituted section was accepted by the government as satisfactory. It was located about 37 to 50 feet from the proposed excavation for the dry dock; but a large part of the new section was within the area set aside as space within which the contractor's operations were to be carried on. Both before and after the diversion of the 6-foot sewer, it connected, within the Navy Yard but outside the space reserved for work on the dry dock, with a 7-foot sewer which emptied into Wallabout Basin.





Today's Problem

- We are building a section of highway. We can work with \$100m, including a five-high series of overpasses, a tolling plaza to collect fees from drivers at 70mph or higher, and a toll plaza administration building. Completion ON-TIME brings a \$4m bonus.
- Some small contract and design issues:
The Contract states a prime imperative (from the legislature funding project) to speed to meet deadline. Thus the rationale for the \$4m bonus. All understanding this "joint" desire, the contractor named ConnedTractor, accepts the promises of owner TaxDOT to "not interfere with ConnedTractor's performance of work."
- The Specification (Section 01.32.01, under Submittals) indicates Contractor shall utilize the "latest version of Primavera P3 or other software of its choosing" and to be provide to TaxDOT "an xer or other computer readable file." [Note P6 is an entirely different software and not "latest version" of P3. Oracle now claims OPC is an entirely different software "from the ground up" from P6.]
- The specification also requires any Claim to be submitted to "Owner's instance of OPC," "Owner to provide Contractor two seats on Owner's instance of OPC," "and that dates calculated on Owner's instance of OPC shall be accepted as correct for purposes of forensic analysis."
[Note again that OPC is also entirely different software than P6, and that each Owner's instance may calculate a different result than for other instances from same data, and that algorithm of OPC is either proprietary or possibly unknown to the marketing or salesforce of Oracle, much less to one of their "instance" subscribers.]



Today's Problem

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[Note again that OPC is also entirely different software than P6, and that each Owner's instance may calculate a different result than for other instances from same data, and that algorithm of OPC is either proprietary or possibly unknown to the marketing or salesforce of Oracle, much less to one of their "instance" subscribers.]
- The area is seismically sensitive, and a small but key feature will be the need to place a number of seismic monitors between Drilled Shafts and Cast-in-Place wall. The work to place such is minimal, maybe two days of labor total, but spread out over entire 30 days allocated for drilling shafts. Final placement decided on shaft by shaft basis. The CIP wall may be install starting maybe five days after the first of the shafts (and at least one monitor) are placed, with the last of the CIP wall to be placed five days after the last of the shafts and monitors. To show this in a CPM, the network logic involves using an algorithm that is supported in some but not all software. [P3, ASTA and others support this algorithm; P6 and Microsoft Project do not.]
- The project starts on December 2, 2019, and is moving along as planned when two events occur on 28sep20, each causing disruption to the project. [However we will learn while each causes a disruption to the work and project, only one causes delay to the project, as the work of one is on an activity on the CRITICAL PATH, while the other is to an activity having many weeks of float.]



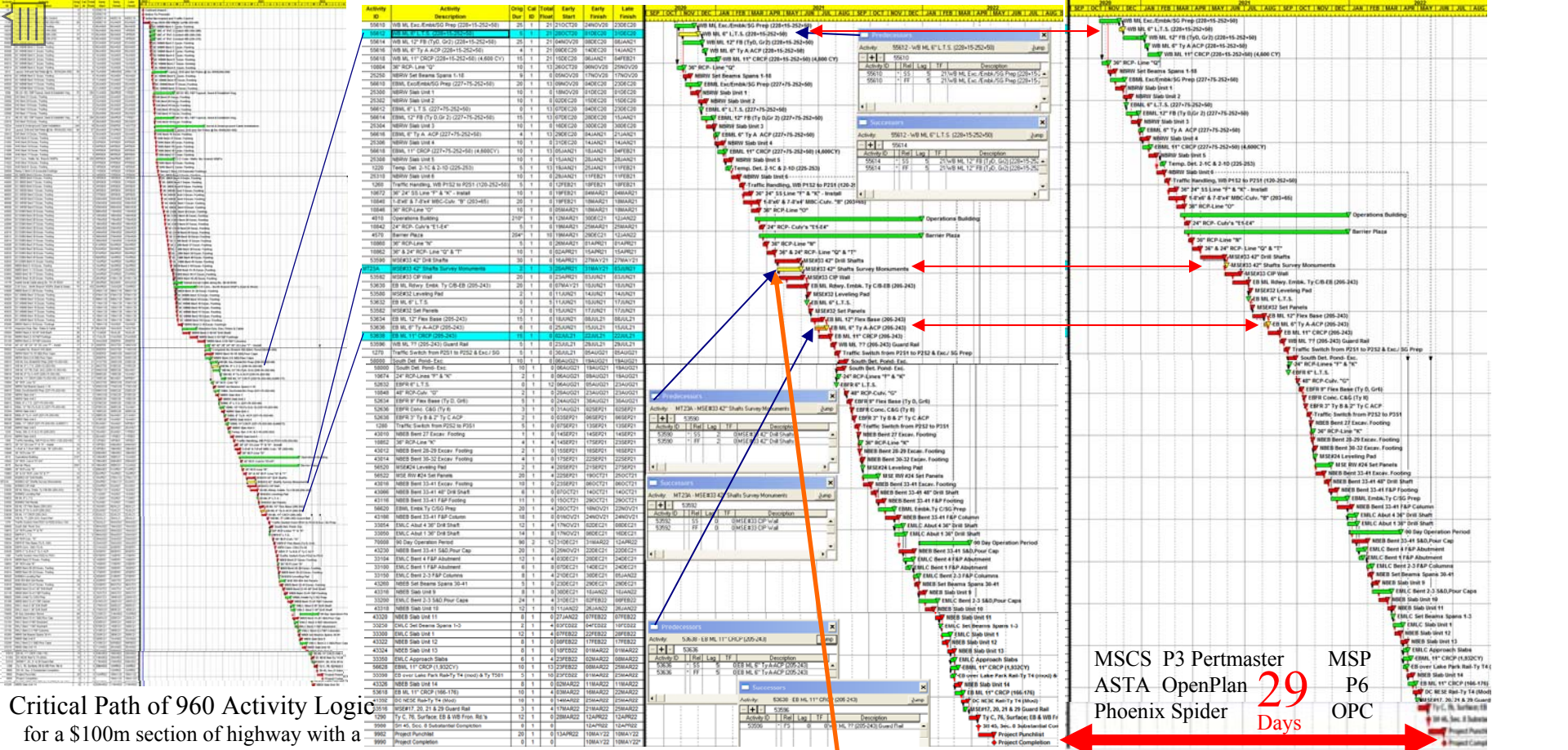
Today's Problem

- The first "causative event" of 28sep20 is that ConnedTractor discovers as it begins excavation to place "Line 'U'" of Sanitary Sewer ranging from 24" to 48" pipe that some of the pipe delivered is of the wrong size. ConnedTractor promptly orders replacement pipe but such takes five weeks to fabricate and deliver. Pipe must be installed in proper order and this brings this activity to a stop for five weeks.
- The second "causative event" is that the inspector for TaxDOT (whose nickname is 'here is a nickel, buy him a clue so he can do his job,' ergo "Inspector Clue So") believes ConnedTractor has misplaced one or more Columns and stops work on placing caps on the columns so to allow work to continue. After two weeks, TaxDOT's surveyors determine ConnedTractor had it correct the entire time, and that the error was the plans and specifications and ConnedTractor were measuring in meters while the inspector was measuring in yards.
- Inspector Clue So indicates no delay to ConnedTractor because "there was a LOT of other work upon which ConnedTractor could have worked during those two weeks."

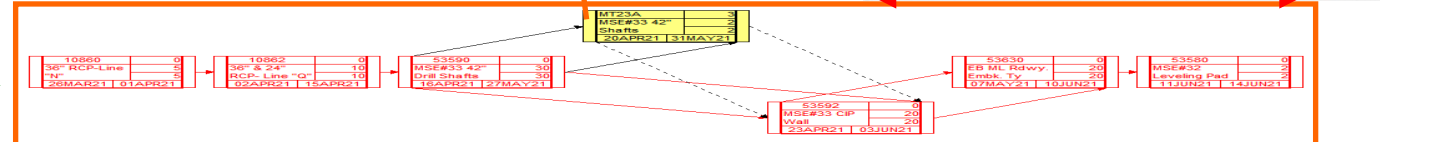


Today's Problem

- ConnedTractor immediately files a "delay claim" calculated in both ASTA and in P3 (to show replicability) and requests in advance acknowledgement so that ConnedTractor may spend extra to bring in extra crafts and large equipment so to recover the two weeks lost.
- TaxDOT responds that they are not responsible for a possible delay to project, nor cost to mitigate such, claiming the concurrent ConnedTractor issue of wrongfully delivered pipe, AND that new review shows that the Logic Network when run using either P6 or OPC or MSP reveals the initial schedule of ConnedTractor calculated to complete 29 days late, and that the PDF of the Initial Schedule submitted indicated an attempted fraud by ConnedTractor.
- ConnedTractor does bring in extra equipment and crews and eventually mitigates the delay and completes the project on time.
- ConnedTractor requests \$200,000 for acceleration and other mitigation efforts.
- TaxDOT claims a little False Claim violation, refuses to pay \$4m bonus and outstanding invoices.

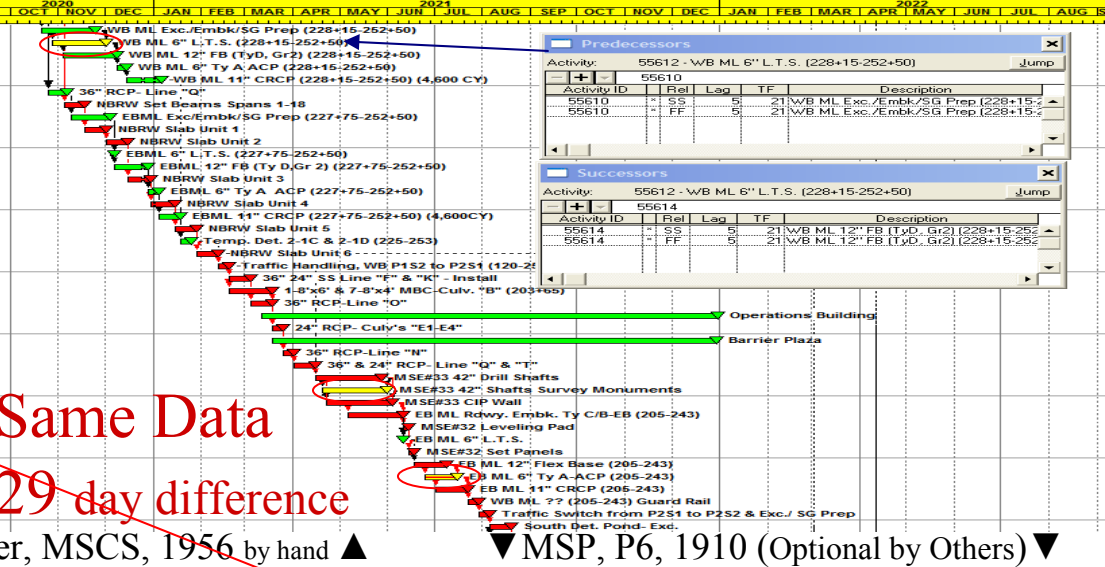


Critical Path of 960 Activity Logic for a \$100m section of highway with a five-high overpass merging traffic of a \$1b program with multiple actors \$400,000 bonus for early completion earned by EnProMac and FRED



Activity ID	Activity Description	Orig	Cal	Total	Early	Early	Late
					Start	Finish	Finish
55610	WB ML Exc./Embk/SG Prep (228+15-252+50)	25	1	21	21OCT20	24NOV20	23DEC20
55612	WB ML 6" L.T.S. (228+15-252+50)	1	1	21	28OCT20	01DEC20	31DEC20
55614	WB ML 12" FB (TyD, Gr2) (228+15-252+50)	25	21	04NOV20	08DEC20	08JAN21	
55616	WB ML 6" Ty A ACP (228+15-252+50)	4	1	21	09DEC20	14DEC20	14JAN21
55618	WB ML 11" CRCP (228+15-252+50) (4,600 CY)	15	21	15DEC20	06JAN21	06FEB21	
10804	36" RCP- Line "Q"	10	1	-16	26OCT20	06NOV20	25NOV20
25250	NBRW Set Beams Spans 1-18	9	-1	-29	05NOV20	17NOV20	17NOV20
55610	EBML Exc/Embk/SG Prep (227+75-252+50)	20	1	13	04NOV20	04NOV20	23DEC20
25300	NBRW Slab Unit 1	10	-1	-9	18NOV20	01DEC20	01DEC20
25302	NBRW Slab Unit 2	10	-1	-9	18NOV20	01DEC20	01DEC20
55612	EBML 6" L.T.S. (227+75-252+50)	4	1	13	15DEC20	20DEC20	30DEC20
55614	EBML 12" FB (Ty D,Gr 2) (227+75-252+50)	10	1	-16	26OCT20	06NOV20	25NOV20
25304	NBRW Slab Unit 3	10	-1	-9	18NOV20	01DEC20	01DEC20
55616	EBML 6" Ty A ACP (227+75-252+50)	4	1	13	15DEC20	20DEC20	30DEC20
25306	NBRW Slab Unit 4	10	-1	-9	18NOV20	01DEC20	01DEC20
55618	EBML 11" CRCP (227+75-252+50) (4,600CY)	15	1	-16	26OCT20	06NOV20	25NOV20
25308	NBRW Slab Unit 5	10	-1	-9	18NOV20	01DEC20	01DEC20
1220	Temp. Det. 2-1C & 2-1D (225-253)	5	1	-9	29JAN21	11FEB21	31DEC20
25310	NBRW Slab Unit 6	10	-1	-9	12FEB21	18FEB21	08JAN21
1280	Traffic Handling, WB P1S2 to P2S1 (120-252+50)	5	1	-9	12FEB21	18FEB21	08JAN21
10672	36" 24" SS Line "F" & "K" - Install	10	1	-9	19FEB21	04MAR21	22JAN21
10840	1.8"x6" & 7.8"x4" MBC-Culv. "B" (203+65)	20	1	-9	19FEB21	18MAR21	05FEB21
10846	36" RCP-Line "O"	10	1	-9	05MAR21	18MAR21	05FEB21
4010	Operations Building	210*	1	9	12MAR21	30DEC21	12JAN22
10842	24" RCP- Culv's "E1-E4"	5	1	-9	19MAR21	25MAR21	12FEB21
4570	Barrier Plaza	204*	1	10	19MAR21	25DEC21	12JAN22
10860	36" RCP-Line "N"	10	1	-9	02APR21	01APR21	18FEB21
10862	36" & 24" RCP- Line "Q" & "T"	15	1	-9	02APR21	01APR21	18FEB21
53590	MSE#33 42" Drill Shafts	30	1	-9	16APR21	27MAY21	16APR21
53592	MSE#33 42" Shafts Survey Monuments	30	1	-9	16APR21	27MAY21	16APR21
53592	MSE#33 CIP Wall	20	1	-9	23APR21	03JUN21	03JUN21
53630	EB ML Rdwy. Embk. Ty C/B-EB (205-243)	2	1	-9	07MAY21	10JUN21	07MAY21
53580	MSE#32 Leveling Pad	2	1	-9	11JUN21	14JUN21	14JUN21
53632	EB ML 6" L.T.S.	0	1	-9	11JUN21	10JUN21	17JUN21
53582	MSE#32 Set Panels	2	1	-9	15JUN21	17JUN21	17JUN21
53634	EB ML 12" Flex Base (205-243)	15	1	-9	11JUN21	08JUL21	08JUL21
53636	EB ML 6" Ty A ACP (205-243)	6	1	-9	25JUN21	15JUL21	15JUL21
53638	EB ML 11" CRCP (205-243)	15	1	-9	02JUL21	22JUL21	22JUL21
53596	WB ML ?? (205-243) Guard Rail	5	1	-9	23JUL21	29JUL21	29JUL21
1270	Traffic Switch from P2S1 to P2S2 & Exc./ SG	5	1	-9	30JUL21	05AUG21	05AUG21
58000	South Det. Pond- Exc.	10	1	-9	06AUG21	19AUG21	19AUG21

ES = latest EF (pred)
 EF = ES + DUR
 or latest EF (pred)
 ES = EF - DUR

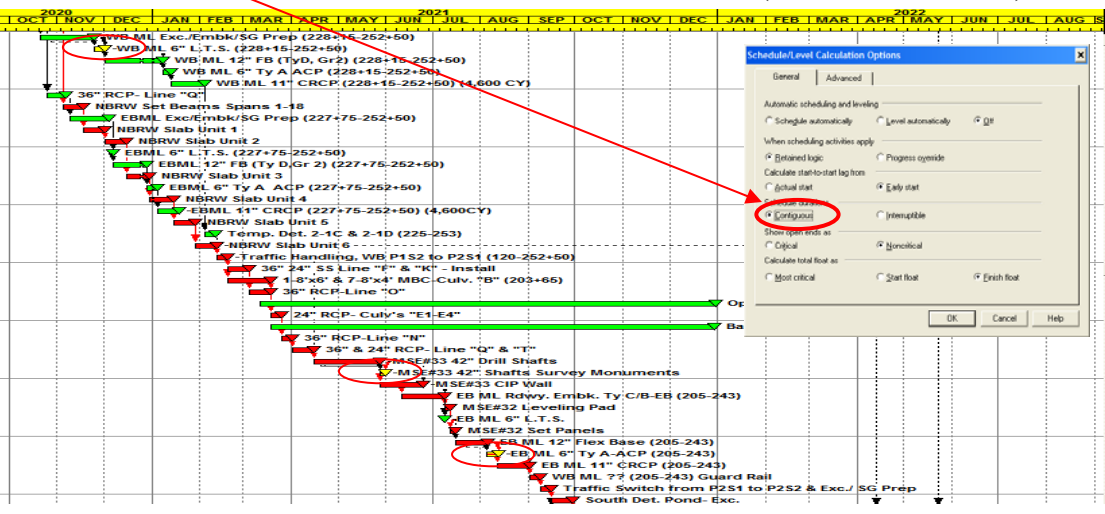


Predecessors				
Activity ID	Rel	Lag	TF	Description
55610	SS	5	21	WB ML Exc./Embk/SG Prep (228+15-252+50)
55610	FF	5	21	WB ML 6" L.T.S. (228+15-252+50)

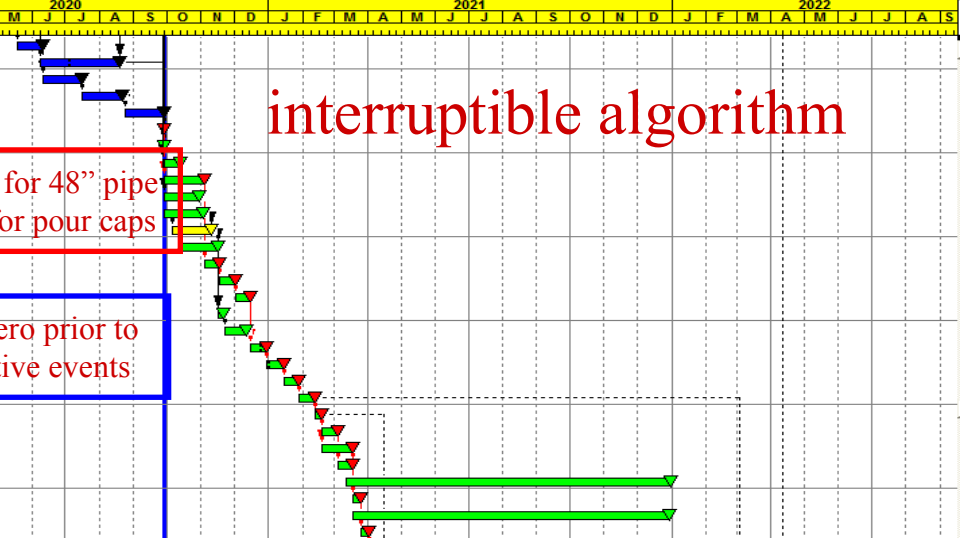
Successors				
Activity ID	Rel	Lag	TF	Description
55614	SS	5	21	WB ML 12" FB (TyD, Gr2) (228+15-252+50)
55614	FF	5	21	WB ML 12" FB (TyD, Gr2) (228+15-252+50)

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55618	WB ML 11" CRCP (228+15-252+50) (4,600 CY)	15	21	03FEB21	23OCT20	03FEB21	23OCT20
10804	36" RCP- Line "Q"	10	1	-16	26OCT20	06NOV20	15OCT20
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10862	36" & 24" RCP- Line "Q" & "T"	15	1	-9	02APR21	01APR21	18FEB21
53590	MSE#33 42" Drill Shafts	30	1	-9	16APR21	27MAY21	16APR21
53592	MSE#33 42" Shafts Survey Monuments	30	1	-9	16APR21	27MAY21	16APR21
53592	MSE#33 CIP Wall	20	1	-9	23APR21	03JUN21	03JUN21
53630	EB ML Rdwy. Embk. Ty C/B-EB (205-243)	2	1	-9	07MAY21	10JUN21	07MAY21
53580	MSE#32 Leveling Pad	2	1	-9	11JUN21	14JUN21	14JUN21
53632	EB ML 6" L.T.S.	0	1	-9	11JUN21	10JUN21	17JUN21
53582	MSE#32 Set Panels	2	1	-9	15JUN21	15JUN21	17JUN21
53634	EB ML 12" Flex Base (205-243)	15	1	-9	11JUN21	08JUL21	08JUL21
53636	EB ML 6" Ty A ACP (205-243)	6	1	-9	25JUN21	15JUL21	15JUL21
53638	EB ML 11" CRCP (205-243)	15	1	-9	02JUL21	22JUL21	22JUL21
53596	WB ML ?? (205-243) Guard Rail	5	1	-9	23JUL21	29JUL21	29JUL21
1270	Traffic Switch from P2S1 to P2S2 & Exc./ SG	5	1	-9	09SEP21	15SEP21	05AUG21
58000	South Det. Pond- Exc.	10	1	-9	16SEP21	29SEP21	19AUG21

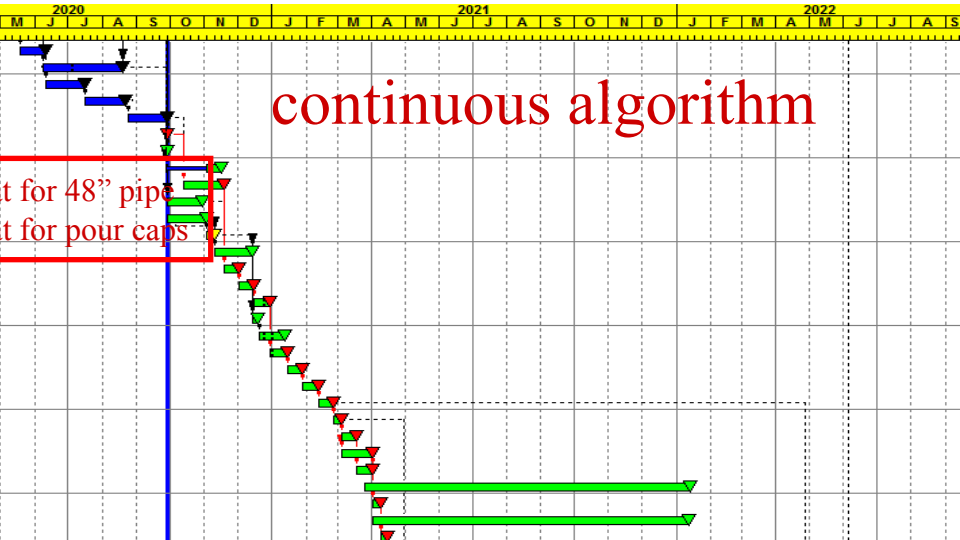
ES = latest EF (pred)
 EF = ES + DUR
 or latest EF (pred)
 ES = EF - DUR



Activity ID	Activity Description	Orig Dur	Cal ID	Total Float	Early Start	Early Finish	Late Finish
25100	NBRW Bent 2-18 Excav. Footings	17	1	0	19MAY20A	10JUN20A	10JUN20A
10178	Abandon Exis. Elec. Poles & Cable	70	2	0	09JUN20A	18AUG20A	18AUG20A
25054	NBRW Bent 2-18 54" Drill Shaft	26	1	0	11JUN20A	16JUL20A	16JUL20A
25104	NBRW Bent 2-18 F&P Footings	26	1	0	17JUL20A	21AUG20A	21AUG20A
25150	NBRW Bent 2-18 F&P Columns	26	1	0	24AUG20A	28SEP20A	28SEP20A
25155A	TaxDOT Erroneously Questions Column	0	1	0	29SEP20	28SEP20	28SEP20
10234A	ConnedTractor Wrong Sizes Pipe	0	1	0	29SEP20	28SEP20	11NOV20
10750	48" 42" 36" 24" SS Line "U" - Install	17	1	32	29SEP20A	12OCT20	25NOV20
25202	NBRW Bent 10-18 S&D, Pour Caps	24	1	0	29SEP20	04NOV20	04NOV20
25200	NBRW Bent 2-9 S&D, Pour Caps	24	1	0	29SEP20	30OCT20	04NOV20
55610	WB ML Exc./Embk/SG Prep (228+15-252+50)	25	1	37	29SEP20	02NOV20	23DEC20
55612	WB ML 6" L.T.S. (228+15-252+50)	5	1	37	06OCT20	09NOV20	31DEC20
55614	WB ML 12" FB (TyD, Gr2) (228+15-252+50)	25	1	37	13OCT20	16NOV20	08JAN21
25250	NBRW Set Beams Spans 1-18	9	1	0	05NOV20	17NOV20	17NOV20
25300	NBRW Slab Unit 1	10	1	0	18NOV20	01DEC20	01DEC20
25302	NBRW Slab Unit 2	10	1	0	02DEC20	15DEC20	15DEC20
55616	WB ML 6" Ty A ACP (228+15-252+50)	4	1	0	15NOV20	06NOV20	14JAN21
55618	WB ML 11" CRCP (228+15-252+50) (4,600 CY)	15	1	37	23NOV20	11DEC20	04FEB21
25304	NBRW Slab Unit 3	10	1	0	16DEC20	30DEC20	30DEC20
25306	NBRW Slab Unit 4	10	1	0	31DEC20	14JAN21	14JAN21
25308	NBRW Slab Unit 5	10	1	0	15JAN21	28JAN21	28JAN21
25310	NBRW Slab Unit 6	10	1	0	29JAN21	11FEB21	11FEB21
1260	Traffic Handling, WB P1S2 to P2S1 (120-252+50)	5	1	0	12FEB21	18FEB21	18FEB21
10672	36" 24" SS Line "F" & "K" - Install	10	1	0	19FEB21	04MAR21	04MAR21
10840	1-8"x6" & 7-8"x4" MBC-Culv. "B" (203+65)	20	1	0	19FEB21	18MAR21	18MAR21
10846	36" RCP-Line "O"	10	1	0	05MAR21	18MAR21	18MAR21
4010	Operations Building	210*	1	9	12MAR21	30DEC21	12JAN22
10842	24" RCP- Culv's "E1-E4"	5	1	0	19MAR21	25MAR21	25MAR21
4570	Barrier Plaza	204*	1	10	19MAR21	29DEC21	12JAN22
10860	36" RCP-Line "N"	5	1	0	26MAR21	01APR21	01APR21



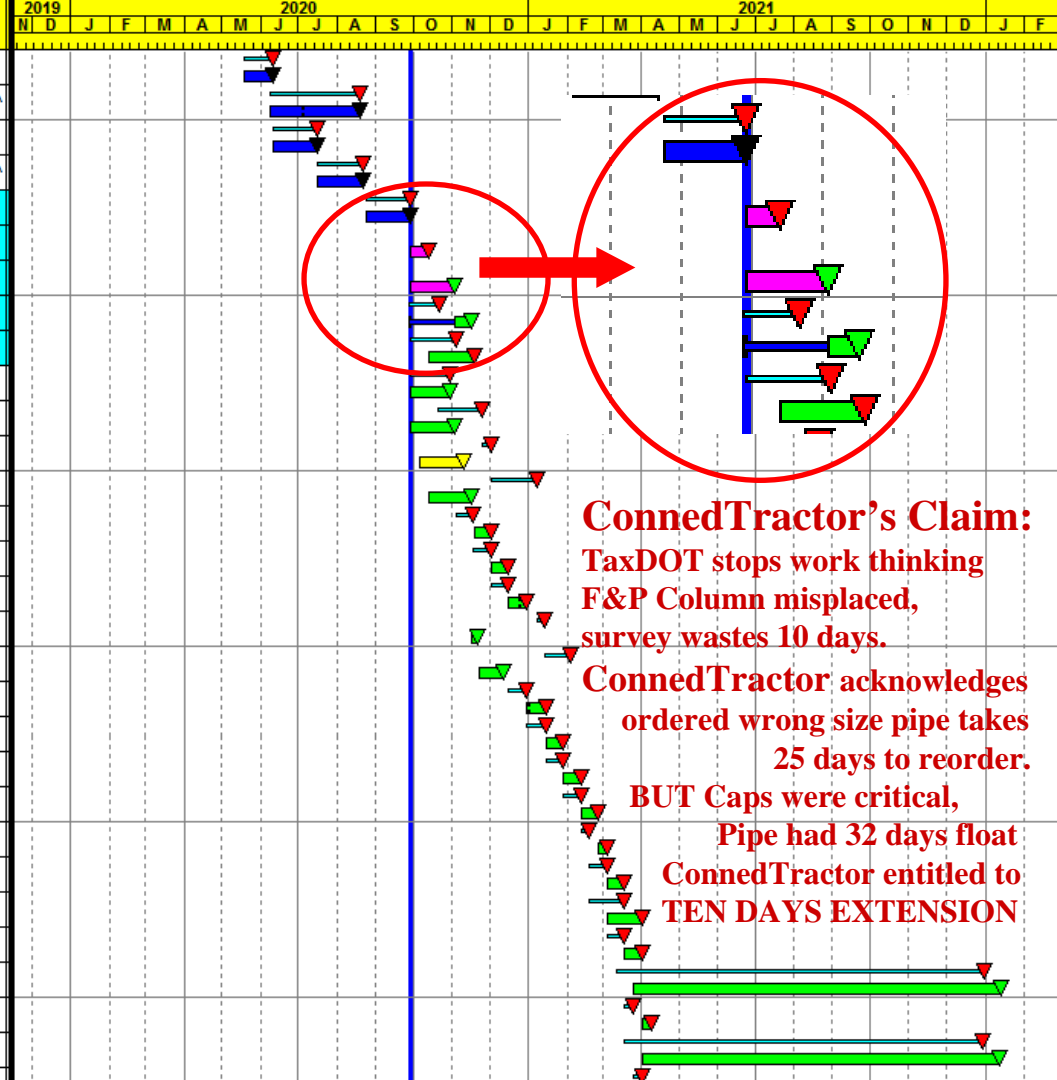
interruptible algorithm



continuous algorithm

Activity ID	Activity Description	Orig Dur	Cal ID	Total Float	Early Start	Early Finish	Late Finish
25100	NBRW Bent 2-18 Excav. Footings	17	1	0	19MAY20A	10JUN20A	10JUN20A
10178	Abandon Exis. Elec. Poles & Cable	70	2	0	09JUN20A	18AUG20A	18AUG20A
25054	NBRW Bent 2-18 54" Drill Shaft	26	1	0	11JUN20A	16JUL20A	16JUL20A
25104	NBRW Bent 2-18 F&P Footings	26	1	0	17JUL20A	21AUG20A	21AUG20A
25150	NBRW Bent 2-18 F&P Columns	26	1	0	24AUG20A	28SEP20A	28SEP20A
25155A	TaxDOT Erroneously Questions Column	0	1	-39	29SEP20	28SEP20	04AUG20
10234A	ConnedTractor Wrong Sizes Pipe	0	1	-39	29SEP20	28SEP20	27AUG20
10750	48" 42" 36" 24" SS Line "U" - Install	17	1	-22	29SEP20A	16NOV20	15OCT20
25202	NBRW Bent 10-18 S&D, Pour Caps	24	1	-39	29SEP20	18NOV20	24SEP20
25200	NBRW Bent 2-9 S&D, Pour Caps	24	1	-39	29SEP20	30OCT20	24SEP20
55610	WB ML Exc./Embk/SG Prep (228+15-252+50)	25	1	-12	29SEP20	02NOV20	15OCT20
55612	WB ML 6" L.T.S. (228+15-252+50)	5	1	-12	03NOV20	09NOV20	22OCT20
55614	WB ML 12" FB (TyD, Gr2) (228+15-252+50)	25	1	-12	10NOV20	14DEC20	26NOV20
25250	NBRW Set Beams Spans 1-18	9	1	-39	19NOV20	01DEC20	07OCT20
25300	NBRW Slab Unit 1	10	1	-39	02DEC20	15DEC20	21OCT20
25302	NBRW Slab Unit 2	10	1	-39	16DEC20	30DEC20	04NOV20
55616	WB ML 6" Ty A ACP (228+15-252+50)	4	1	-12	15DEC20	18DEC20	02DEC20
55618	WB ML 11" CRCP (228+15-252+50) (4,600 CY)	15	1	-12	21DEC20	12JAN21	23DEC20
25304	NBRW Slab Unit 3	10	1	-39	31DEC20	14JAN21	18NOV20
25306	NBRW Slab Unit 4	10	1	-39	15JAN21	28JAN21	02DEC20
25308	NBRW Slab Unit 5	10	1	-39	29JAN21	11FEB21	16DEC20
25310	NBRW Slab Unit 6	10	1	-39	12FEB21	25FEB21	31DEC20
1260	Traffic Handling, WB P1S2 to P2S1 (120-252+50)	5	1	-39	26FEB21	04MAR21	08JAN21
10672	36" 24" SS Line "F" & "K" - Install	10	1	-39	05MAR21	18MAR21	22JAN21
10840	1-8"x6" & 7-8"x4" MBC-Culv. "B" (203+65)	20	1	-39	05MAR21	01APR21	05FEB21
10846	36" RCP-Line "O"	10	1	-39	19MAR21	01APR21	05FEB21
4010	Operations Building	210*	1	-1	26MAR21	13JAN22	12JAN22
10842	24" RCP- Culv's "E1-E4"	5	1	-39	02APR21	08APR21	12FEB21
4570	Barrier Plaza	204*	1	0	02APR21	12JAN22	12JAN22
10860	36" RCP-Line "N"	5	1	-39	09APR21	15APR21	19FEB21

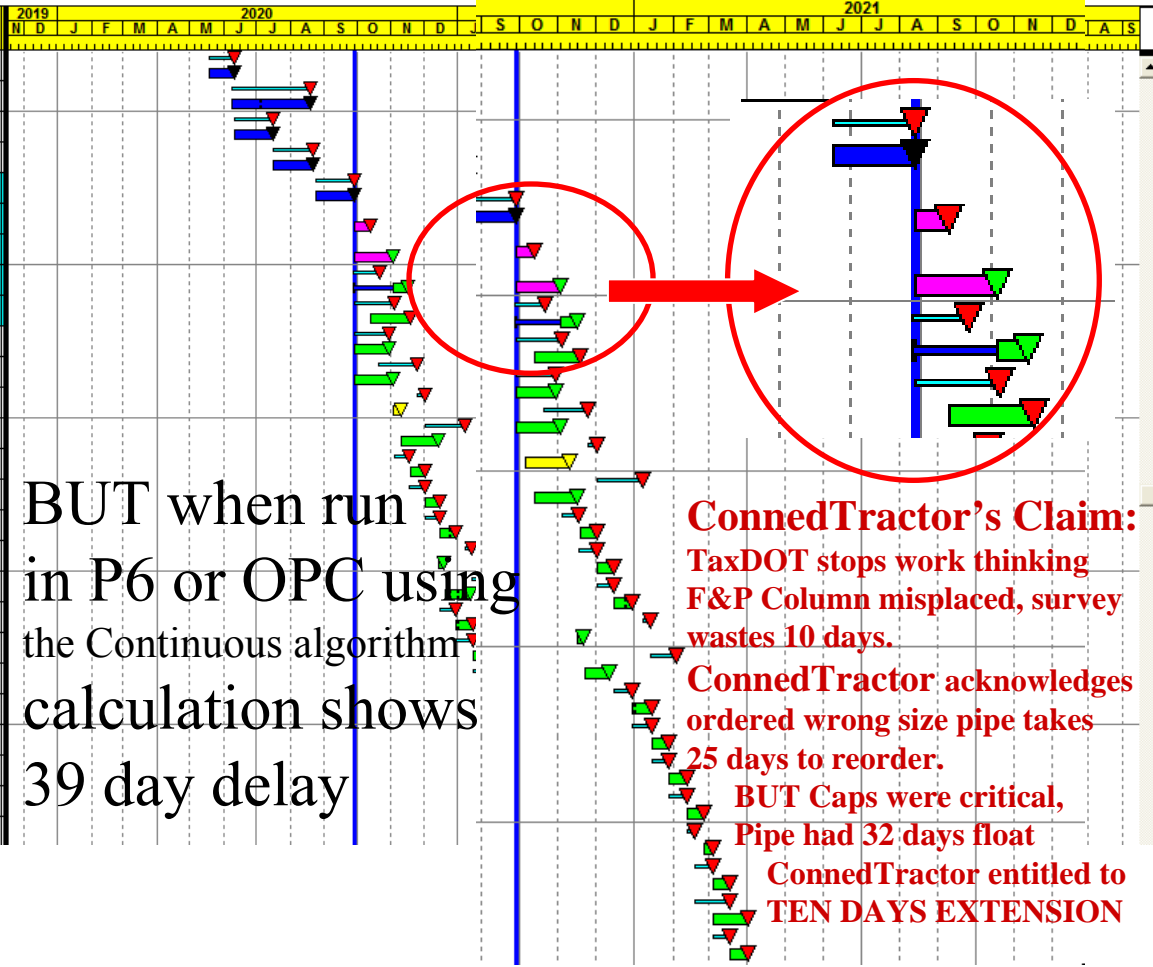
Activity ID	Activity Description	Orig Dur	Cal ID	Total Float	Early Start	Early Finish	Late Finish
25000	NBRW Bent 2-18 Excav. Footings	17	1		19MAY20A	10JUN20A	10JUN20A
10178	Abandon Exis. Elec. Poles & Cable	70	2		09JUN20A	18AUG20A	18AUG20A
25054	NBRW Bent 2-18 54" Drill Shaft	26	1		11JUN20A	16JUL20A	16JUL20A
25104	NBRW Bent 2-18 F&P Footings	26	1		17JUL20A	21AUG20A	21AUG20A
25150	NBRW Bent 2-18 F&P Columns	26	1		24AUG20A	28SEP20A	28SEP20A
25155A	TaxDOT Erroneously Questions Column	10	1	-10	29SEP20	12OCT20	28SEP20
10234A	ConnedTractor Wrong Sizes Pipe	25	1	7	29SEP20	02NOV20	11NOV20
10750	48" 42" 36" 24" SS Line "U" - Install	18	1	7	28SEP20A	16NOV20	25NOV20
25202	NBRW Bent 10-18 S&D, Pour Caps	27	1	-10	13OCT20	18NOV20	04NOV20
25200	NBRW Bent 2-9 S&D, Pour Caps	24	1	3	29SEP20	30OCT20	04NOV20
55610	WB ML Exc./Embk/SG Prep (228+15-252+50)	25	1	37	29SEP20	02NOV20	23DEC20
55612	WB ML 6" L.T.S. (228+15-252+50)	5	1	37	06OCT20	09NOV20	31DEC20
55614	WB ML 12" FB (TyD, Gr2) (228+15-252+50)	25	1	37	13OCT20	16NOV20	08JAN21
25250	NBRW Set Beams Spans 1-18	9	1	-10	19NOV20	01DEC20	17NOV20
25300	NBRW Slab Unit 1	10	1	-10	02DEC20	15DEC20	01DEC20
25302	NBRW Slab Unit 2	10	1	-10	16DEC20	30DEC20	15DEC20
55616	WB ML 6" Ty A ACP (228+15-252+50)	4	1	37	17NOV20	20NOV20	14JAN21
55618	WB ML 11" CRCP (228+15-252+50) (4,600 CY)	15	1	37	23NOV20	11DEC20	04FEB21
25304	NBRW Slab Unit 3	10	1	-10	31DEC20	14JAN21	30DEC20
25306	NBRW Slab Unit 4	10	1	-10	15JAN21	28JAN21	14JAN21
25308	NBRW Slab Unit 5	10	1	-10	29JAN21	11FEB21	28JAN21
25310	NBRW Slab Unit 6	10	1	-10	12FEB21	25FEB21	11FEB21
1260	Traffic Handling, WB P1S2 to P2S1 (120-252+50)	5	1	-10	26FEB21	04MAR21	18FEB21
10672	36" 24" SS Line "F" & "K" - Install	10	1	-10	05MAR21	18MAR21	04MAR21
10840	1-8"x6" & 7-8"x4" MBC-Culv. "B" (203+65)	20	1	-10	05MAR21	01APR21	18MAR21
10846	36" RCP-Line "O"	10	1	-10	19MAR21	01APR21	18MAR21
4010	Operations Building	210*	1	-1	26MAR21	13JAN22	12JAN22
10842	24" RCP- Culv's "E1-E4"	5	1	-10	02APR21	08APR21	25MAR21
4570	Barrier Plaza	204*	1	0	02APR21	12JAN22	12JAN22
10860	36" RCP Line "N"	5	1	-10	04APR21	15APR21	01APR21



ConnedTractor's Claim:
TaxDOT stops work thinking
F&P Column misplaced,
survey wastes 10 days.

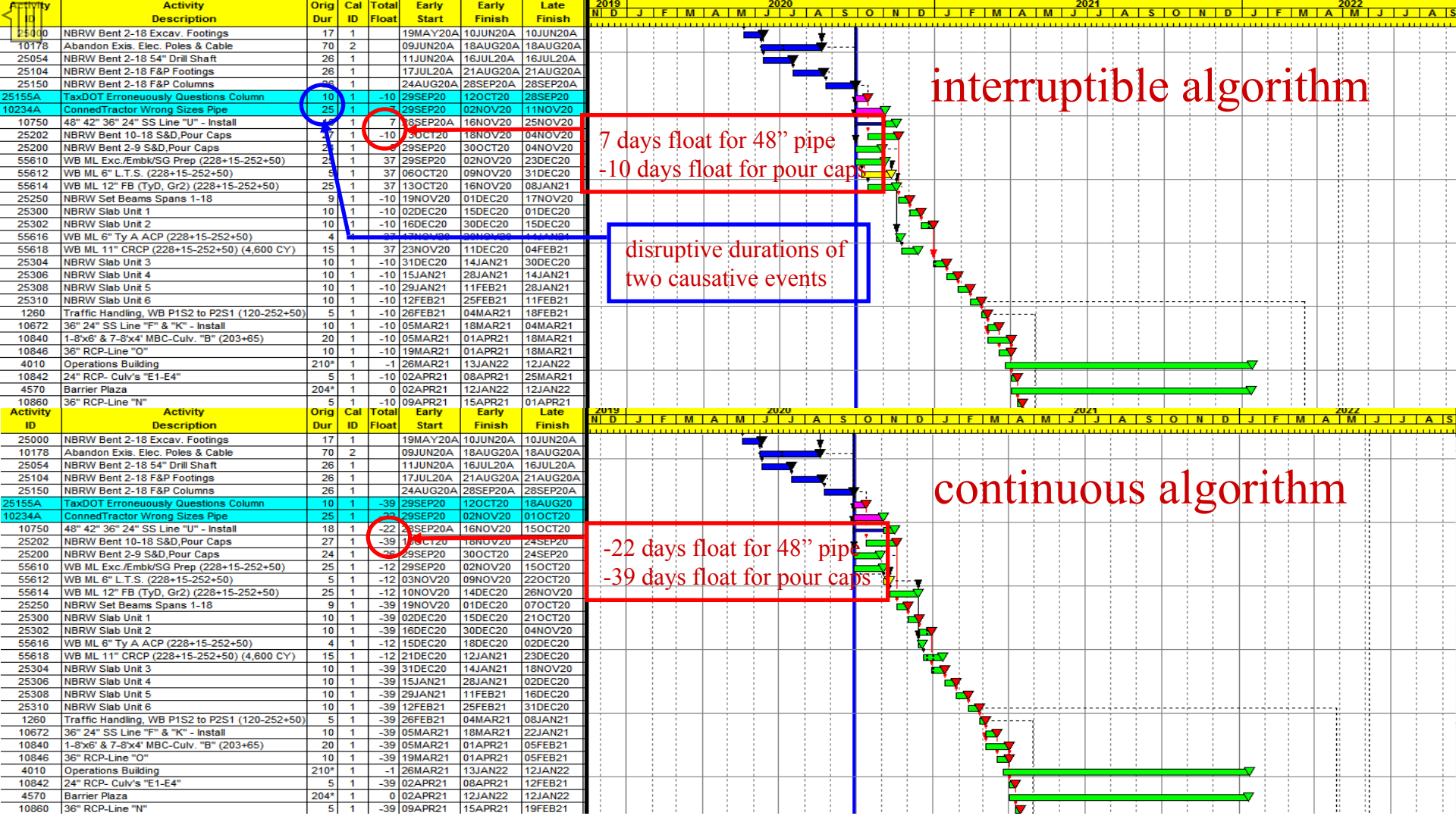
ConnedTractor acknowledges
ordered wrong size pipe takes
25 days to reorder,
BUT Caps were critical,
Pipe had 32 days float
**ConnedTractor entitled to
TEN DAYS EXTENSION**

Activity ID	Activity Description	Orig Dur	Cal ID	Total Float	Early Start	Early Finish	Late Finish
25000	NBRW Bent 2-18 Excav. Footings	17	1		19MAY20A	10JUN20A	10JUN20A
10178	Abandon Exis. Elec. Poles & Cable	70	2		09JUN20A	18AUG20A	18AUG20A
25054	NBRW Bent 2-18 54" Drill Shaft	26	1		11JUN20A	16JUL20A	16JUL20A
25104	NBRW Bent 2-18 F&P Footings	26	1		17JUL20A	21AUG20A	21AUG20A
25150	NBRW Bent 2-18 F&P Columns	26	1		24AUG20A	28SEP20A	28SEP20A
25155A	TaxDOT Erroneously Questions Column	10	1	-39	29SEP20	12OCT20	18AUG20
10234A	ConnedTractor Wrong Sizes Pipe	25	1	-22	29SEP20	02NOV20	01OCT20
10750	48" 42" 36" 24" SS Line "U" - Install	18	1	-22	28SEP20A	16NOV20	15OCT20
25202	NBRW Bent 10-18 S&D,Pour Caps	27	1	-39	11OCT20	18NOV20	24SEP20
25200	NBRW Bent 2-9 S&D,Pour Caps	24	1	-26	29SEP20	30OCT20	24SEP20
55610	WB ML Exc./Embk/SG Prep (228+15-252+50)	25	1	-12	29SEP20	02NOV20	15OCT20
55612	WB ML 6" L.T.S. (228+15-252+50)	5	1	-12	03NOV20	09NOV20	22OCT20
55614	WB ML 12" FB (TyD, Gr2) (228+15-252+50)	25	1	-12	10NOV20	14DEC20	26NOV20
25250	NBRW Set Beams Spans 1-18	9	1	-39	19NOV20	01DEC20	07OCT20
25300	NBRW Slab Unit 1	10	1	-39	02DEC20	15DEC20	21OCT20
25302	NBRW Slab Unit 2	10	1	-39	16DEC20	30DEC20	04NOV20
55616	WB ML 6" Ty A ACP (228+15-252+50)	4	1	-12	5DEC20	18DEC20	02DEC20
55618	WB ML 11" CRCP (228+15-252+50) (4,600 CY)	15	1	-12	1DEC20	12JAN21	23DEC20
25304	NBRW Slab Unit 3	10	1	-39	31DEC20	14JAN21	18NOV20
25306	NBRW Slab Unit 4	10	1	-39	5JAN21	28JAN21	02DEC20
25308	NBRW Slab Unit 5	10	1	-39	29JAN21	11FEB21	16DEC20
25310	NBRW Slab Unit 6	10	1	-39	2FEB21	25FEB21	31DEC20
1260	Traffic Handling, WB P1S2 to P2S1 (120-252+50)	5	1	-39	6FEB21	04MAR21	08JAN21
10672	36" 24" SS Line "F" & "K" - Install	10	1	-39	5MAR21	18MAR21	22JAN21
10840	1-8'x6' & 7-8'x4' MBC-Culv. "B" (203+65)	20	1	-39	5MAR21	01APR21	05FEB21
10846	36" RCP-Line "O"	10	1	-39	19MAR21	01APR21	05FEB21

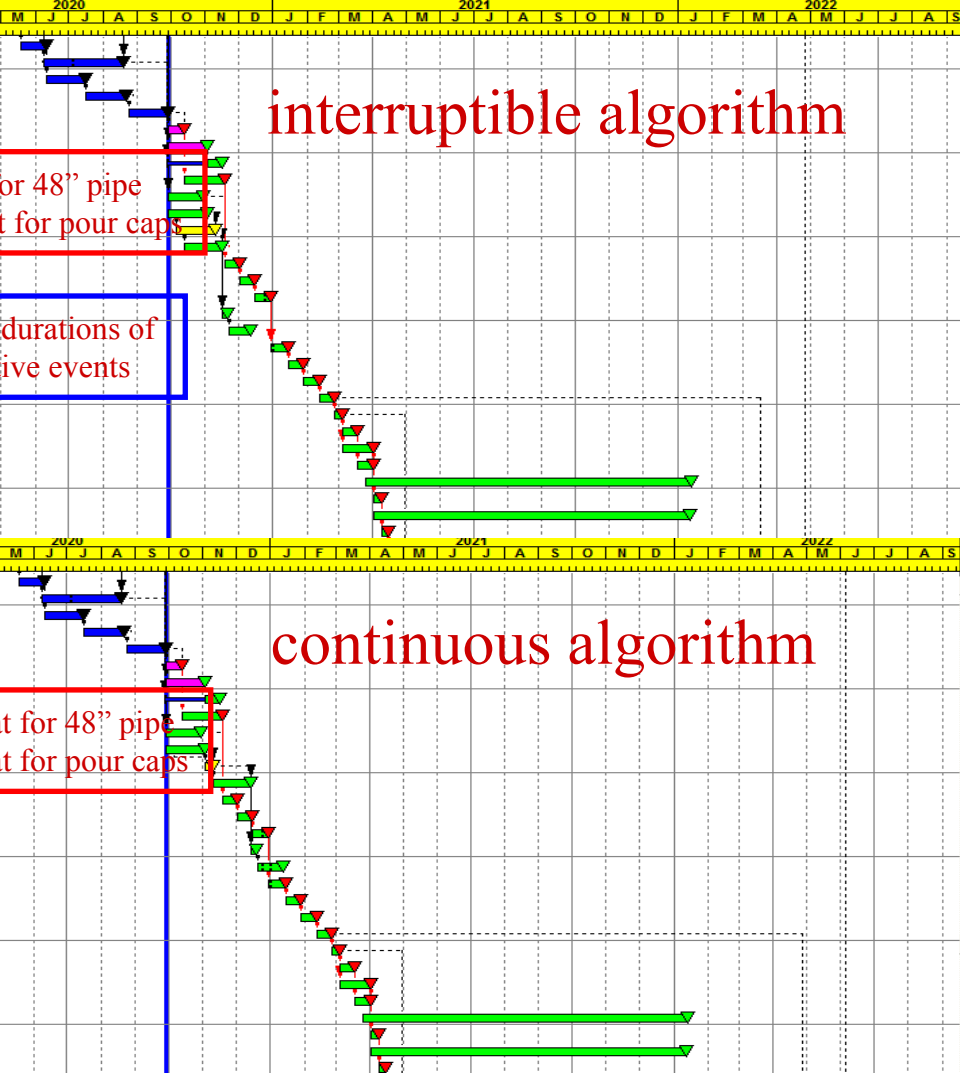


BUT when run in P6 or OPC using the Continuous algorithm, calculation shows 39 day delay

ConnedTractor's Claim:
 TaxDOT stops work thinking F&P Column misplaced, survey wastes 10 days.
 ConnedTractor acknowledges ordered wrong size pipe takes 25 days to reorder.
 BUT Caps were critical, Pipe had 32 days float
 ConnedTractor entitled to TEN DAYS EXTENSION



Activity ID	Activity Description	Orig Dur	Cal ID	Total Float	Early Start	Early Finish	Late Finish
25100	NBRW Bent 2-18 Excav. Footings	17	1		19MAY20A	10JUN20A	10JUN20A
10178	Abandon Exis. Elec. Poles & Cable	70	2		09JUN20A	18AUG20A	18AUG20A
25054	NBRW Bent 2-18 54" Drill Shaft	26	1		11JUN20A	16JUL20A	16JUL20A
25104	NBRW Bent 2-18 F&P Footings	26	1		17JUL20A	21AUG20A	21AUG20A
25150	NBRW Bent 2-18 F&P Columns	26	1		24AUG20A	28SEP20A	28SEP20A
25155A	TaxDOT Erroneously Questions Column	10	1	-10	29SEP20	12OCT20	28SEP20
10234A	ConnedTractor Wrong Sizes Pipe	25	1	-10	29SEP20	02NOV20	11NOV20
10750	48" 42" 36" 24" SS Line "U" - Install	17	1	7	03OCT20A	16NOV20	25NOV20
25202	NBRW Bent 10-18 S&D, Pour Caps	27	1	-10	30OCT20	18NOV20	04NOV20
25200	NBRW Bent 2-9 S&D, Pour Caps	27	1		29SEP20	30OCT20	04NOV20
55610	WB ML Exc./Embk/SG Prep (228+15-252+50)	25	1	37	29SEP20	02NOV20	23DEC20
55612	WB ML 6" L.T.S. (228+15-252+50)	5	1	37	06OCT20	09NOV20	31DEC20
55614	WB ML 12" FB (TyD, Gr2) (228+15-252+50)	25	1	37	13OCT20	16NOV20	08JAN21
25250	NBRW Set Beams Spans 1-18	9	1	-10	19NOV20	01DEC20	17NOV20
25300	NBRW Slab Unit 1	10	1	-10	02DEC20	15DEC20	01DEC20
25302	NBRW Slab Unit 2	10	1	-10	16DEC20	30DEC20	15DEC20
55616	WB ML 6" Ty A ACP (228+15-252+50)	4	1	-39	15NOV20	09NOV20	14JAN21
55618	WB ML 11" CRCP (228+15-252+50) (4,600 CY)	15	1	37	23NOV20	11DEC20	04FEB21
25304	NBRW Slab Unit 3	10	1	-10	31DEC20	14JAN21	30DEC20
25306	NBRW Slab Unit 4	10	1	-10	15JAN21	28JAN21	14JAN21
25308	NBRW Slab Unit 5	10	1	-10	29JAN21	11FEB21	28JAN21
25310	NBRW Slab Unit 6	10	1	-10	12FEB21	25FEB21	11FEB21
1260	Traffic Handling, WB P1S2 to P2S1 (120-252+50)	5	1	-10	26FEB21	04MAR21	18FEB21
10672	36" 24" SS Line "F" & "K" - Install	10	1	-10	05MAR21	18MAR21	04MAR21
10840	1-8x6" & 7-8x4" MBC-Culv. "B" (203+65)	20	1	-10	05MAR21	01APR21	18MAR21
10846	36" RCP-Line "O"	10	1	-10	19MAR21	01APR21	18MAR21
4010	Operations Building	210*	1	-1	26MAR21	13JAN22	12JAN22
10842	24" RCP- Culv/s "E1-E4"	5	1	-10	02APR21	08APR21	25MAR21
4570	Barrier Plaza	204*	1	0	02APR21	12JAN22	12JAN22
10860	36" RCP-Line "N"	5	1	-10	09APR21	15APR21	01APR21



Activity ID	Activity Description	Orig Dur	Cal ID	Total Float	Early Start	Early Finish	Late Finish
25000	NBRW Bent 2-18 Excav. Footings	17	1		19MAY20A	10JUN20A	10JUN20A
10178	Abandon Exis. Elec. Poles & Cable	70	2		09JUN20A	18AUG20A	18AUG20A
25054	NBRW Bent 2-18 54" Drill Shaft	26	1		11JUN20A	16JUL20A	16JUL20A
25104	NBRW Bent 2-18 F&P Footings	26	1		17JUL20A	21AUG20A	21AUG20A
25150	NBRW Bent 2-18 F&P Columns	26	1		24AUG20A	28SEP20A	28SEP20A
25155A	TaxDOT Erroneously Questions Column	10	1	-39	29SEP20	12OCT20	18AUG20
10234A	ConnedTractor Wrong Sizes Pipe	25	1	-22	29SEP20	02NOV20	01OCT20
10750	48" 42" 36" 24" SS Line "U" - Install	18	1	-22	03OCT20A	16NOV20	15OCT20
25202	NBRW Bent 10-18 S&D, Pour Caps	27	1	-10	30OCT20	18NOV20	24SEP20
25200	NBRW Bent 2-9 S&D, Pour Caps	27	1	-26	29SEP20	30OCT20	24SEP20
55610	WB ML Exc./Embk/SG Prep (228+15-252+50)	25	1	-12	29SEP20	02NOV20	15OCT20
55612	WB ML 6" L.T.S. (228+15-252+50)	5	1	-12	03NOV20	09NOV20	22OCT20
55614	WB ML 12" FB (TyD, Gr2) (228+15-252+50)	25	1	-12	10NOV20	14DEC20	26NOV20
25250	NBRW Set Beams Spans 1-18	9	1	-39	19NOV20	01DEC20	07OCT20
25300	NBRW Slab Unit 1	10	1	-39	02DEC20	15DEC20	21OCT20
25302	NBRW Slab Unit 2	10	1	-39	16DEC20	30DEC20	04NOV20
55616	WB ML 6" Ty A ACP (228+15-252+50)	4	1	-12	15DEC20	18DEC20	02DEC20
55618	WB ML 11" CRCP (228+15-252+50) (4,600 CY)	15	1	-12	21DEC20	12JAN21	23DEC20
25304	NBRW Slab Unit 3	10	1	-39	31DEC20	14JAN21	18NOV20
25306	NBRW Slab Unit 4	10	1	-39	15JAN21	28JAN21	02DEC20
25308	NBRW Slab Unit 5	10	1	-39	29JAN21	11FEB21	16DEC20
25310	NBRW Slab Unit 6	10	1	-39	12FEB21	25FEB21	31DEC20
1260	Traffic Handling, WB P1S2 to P2S1 (120-252+50)	5	1	-39	26FEB21	04MAR21	08JAN21
10672	36" 24" SS Line "F" & "K" - Install	10	1	-39	05MAR21	18MAR21	22JAN21
10840	1-8x6" & 7-8x4" MBC-Culv. "B" (203+65)	20	1	-39	05MAR21	01APR21	05FEB21
10846	36" RCP-Line "O"	10	1	-39	19MAR21	01APR21	05FEB21
4010	Operations Building	210*	1	-1	26MAR21	13JAN22	12JAN22
10842	24" RCP- Culv/s "E1-E4"	5	1	-39	02APR21	08APR21	12FEB21
4570	Barrier Plaza	204*	1	0	02APR21	12JAN22	12JAN22
10860	36" RCP-Line "N"	5	1	-39	09APR21	15APR21	19FEB21



Direct Examination

Testimony for the Contractor





Fact Witness

- ConnedTractor's preparation of Logic Network and choice of software
- **Ranjeet Gadhoke is our Fact Witness**
- Preparation of Logic Network is by Super and Team
- Choice of software is usually a Corporate Decision
- My experience with a variety of softwares over the years
- P6 v OPC – support today and tomorrow
- OPC v ASTA – review of features and costs



Fact Witness

- ConnedTractor's choice of GOD to finish on time and win \$400,000 is:
- **Adam Saur is our Fact Witness**
- Preparation of Logic Network is by Super and Team and Scheduler
- Job going well until 28sep20 – some normal issues – all resolved
- Excavation for 42" Sanitary Sewer but discovered 40" pipe delivered
- Inspector Clue So suddenly believes our column in wrong location



Cross-Examination





Re-Direct Examination





Closing Arguments





Closing for Plaintiff

- We will assume the FACTS provided above have been introduced.
- Now we will consider the arguments of counsel:
- **JIM Coleman for ConnedTractor:**
 - Simple Case: Concurrent Disruption is not Concurrent Delay
 - Sewer work had 32 days float and even after 25 days delay had 7
 - Column cap work was critical - 10 day delay needs 10 days remediation
 - All other talk just to confuse you



Closing for Defendant

- **Dan Lund for TaxDOT:**
 - Simple Case: We have a Contract
 - Claims for time related delay must be performed on our instance of OPC
 - OPC review of submitted CPM indicate contractor cannot finish on time
 - Contractor needed to work OT to complete on time
- Delays of 25 days to Sewer and 10 days to Column Cap were concurrent

Rebuttal

- JIM Coleman for ConnedTractor:
- **Rebuttal**
- “it was worth \$4m to the Legislature to have finished ON-TIME”
- “it was finished ON-TIME despite active interference of TaxDOT’s Inspector Clue So”
- “ConnedTractor is entitled to \$180,000 to mitigate TaxDOT’s actions”



Decision Time





Questions?

- 
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