

July 26, 2010

Karen P. Gorman, Esq.
Deputy Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M. Street, NW, Suite 300
Washington, DC 20036-4505
Re: OSC File No. DI-09-0965

Dear Ms. Gorman:

Thank you for your package of materials which I received on July 16, 2010. The package includes your covering transmittal letter of July 15, 2010; U.S. Department of Transportation (USDOT), Secretary Ray LaHood's letter of April 12, 2010; and U.S. Department of Transportation, Office of Inspector General's (OIG) Report dated January 8, 2010. All of the time extensions granted at OIG's Request to collect additional data and conduct supplemental interviews to insure that their Investigation was responsive to each of my Whistleblower Complaint Allegations was worth every frustrating extra month. With the correction of one minor misunderstanding, I join Secretary LaHood in accepting OIG Findings which substantiated by a preponderance of evidence the Allegations of my Whistleblower Complaint.

The misunderstanding was OIG's alleged allegation that I requested my "supervisory" to conduct an additional Civil Rights Investigation or Compliance Review. Please be advised that **I did not request my GS-15-360 Manager to conduct either a Civil Rights Investigation or Compliance Review**. I simply requested her to "promptly" formally escalate our finding to the appropriate accountable and responsible Managers, the FHWA Division Administrator. That referral would have caused that Administrator to accept our Findings and take those reasonable additional corrective actions necessary which would have included either a specifically focused Civil Rights Investigation or Full Compliance Review. In the rare case of Apparent Violations of a Federal-aid Contract Civil Rights Assurances, USDOT Regulation at 49 C.F.R. 21.11(c) which are supportive of United States Department of Justice Regulations, requires "prompt" action to quickly resolve any misunderstandings and to establish a corrective action timetables so that these matters do not linger and fester into more serious violations. The reality is that Manager already had first hand documentation with supported collateral evidence that clearly ascertained fundamental and offensive Apparent Violations of Federal-aid Contract Civil Rights Assurances; the non-existence of required Formal Civil Rights Programs; the lack of

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staffing, data collection systems and reporting processes fundamentally needed to comply with Civil Rights Program Accountability and Responsibility; Violations of Federal Regulation and Laws; and Violation of the Public's Trust that FHWA will guarantee fundamental fairness, accessibility, equity and justice in the operation of all FHWA Federal-aid Contracts and Operating Programs. I agree with the Findings of OIG that my Manager did not have the authority to go any further than the conducting of FHWA's Civil Rights Baseline Assessment.

I believe that the refusal of my Manager to take appropriate "prompt" action was not based on FHWA Regulations or seriousness of our Findings, the refusal to escalate was in full support of a FHWA Management's paradigm that sets organizational and individual behaviors in support of protection FHWA "Partnering Culture". The "Partnering Culture" acts to insulate State Highway Agencies and Prime Contractors from the identification and resolution of Civil Rights Federal Aid Contract Issues. Listed below are two additional examples of FHWA's Civil Rights protective "Partnering Culture":

1. Contractor Compliance (External and Internal Programs):

- A.) State Highway Agencies submit to their FHWA Division their Annual Contractor Compliance Plans for Approval. FHWA has accepted Plans that have no or few State Highway Agency Contract Compliance staff members; no Civil Rights monitoring of Contractor Reports; no plans to conduct Compliance Reviews; and if a few required Compliance Review Reports do come forward, a quick review many times show a pattern of Reviews of the same Contractor over and over again because it's easy and no problems will be found. No or few Contractor Compliance Reviews means that Prime Construction Contractors and Local Public Agencies have no Civil Rights Problems, no Equal Employment Opportunity Problems, no Affirmative Action Problems, and no Equal Access Problems.
- B.) The same is true for State Highway Agency's Internal Annual Review of their Affirmative Action Program. EEO Category Analysis and not Job Classifications Analysis hide all types of problems and issues. All of these things acts to protect the "Partnering Culture" for another year at the expense of the guarantee of fundamental fairness, accessibility, equity and justice in the operation of the State's FHWA Federal-aid Projects, Subcontracts, Job Sites and even in the State Highway Agencies internal workforce.

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2. **Collateral Civil Rights Manager/Specialist:** Half of all FHWA Division Civil Rights Manager/Specialist are Collaterally Assigned with many of them having other full time Division Responsibilities. These Collaterally Assigned Civil Rights FHWA Division Leaders have full technical responsibility to ensure Statewide Title VI Program Compliance and the responsibility to ensure non-discrimination in each FHWA's Federal-aid Program Area. FHWA Division Administrators have regularly hired, transferred and promoted in these positions individuals with no fundamental knowledge of Civil Rights; no technical understanding of Civil Rights, Equal Employment Opportunity or Affirmative Action; no knowledge of Title VI Reporting Requirement; no technical comprehension of adverse impact or discrimination; no grasp as to how to monitor and determine the effectiveness of each of the Required Civil Rights Programs. I respectfully suggest that these individuals are not equipped to do anything but to support of FHWA's protective "Partnering Culture". They maybe one major reason for the 2007 FHWA Civil Rights Baseline Assessment Finding that 74% of the States Reviewed were in fundamental violation of their Federal-aid Contract Assurances.

Note: Please also understand that our Collateral Civil Rights Managers/Specialist were positioned to technically review and report on the bona fide acceptance of the correct actions taken by State Highway Agencies to satisfy the correction of their 2007 and 2008 Civil Rights Violations which were report to and accepted by OGI.

The above protective "Partnering Culture" has also created an internal FHWA workplace environment which encourages chilling effects on any one who attempted to address Federal-aid Recipient Civil Rights Issues. It would be easy to think of the matters as simple individual actions or inactions and only isolated examples Civil Right Program insensitivity or inattentiveness. But they are not they are flags that represent a much bigger problem. The failure of a Federal Granting Agency, as an Organizational, to value and protect the Public's Trust in their delivery of guaranteed fundamental fairness, accessibility, equity and justice in the operation of all FHWA Federal-aid Contracts and Project Activities. It's time that FHWA to put aside their protective "Partnering Culture" paradigm and accept the reality that they are a Federal Granting Agency which requires a higher level of legal and organizational Federal Responsibilities. I respectfully suggest that any solution of the matters of my Complaint must include a serious discussion with FHWA regarding their willingness to accept change and become Civil Rights Regulator. That change would effectively address the problems highlighted in this letter. If truly internalized it would move FHWA's current supportive and protective "Partnering Culture" Civil Rights Training and Technical Assistance Strategies to a new

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Compliance with Federal-aid Contract Provisions Civil Rights Training and Technical Assistance Based Strategy.

With the USDOT full acceptance OIG's Findings which fully supported my Whistleblower Complaint Allegations and the extra time your Office needed to review USDOT Response for technical responsiveness and the legal sufficiency, I am confident there is a sound resolution to all of my above Organizational Concerns and my summarized Allegations as listed below:

A. FHWA Contract False Claims Act (FCA) Violations -

- 1.) Failure to provide required Certification in each Contract Bid Package;
- 2.) False Certifications;
- 3.) False Swearing and resulting Perjury in signing and forwarding False Bid Package Assurances;
- 4.) Theft by submitting of False Statements and Representations to obtain Federal-aid Funds;
- 5.) Competitive Bidding Violations by not requiring standard Bid Conditions;
- 6.) Conspiracy (FWHA-Internal/State-External) to Defraud the United States.

B. Title VI of the Civil Rights Act of 1964 Violations -

- 1.) Failure to commit to, sign and forward each of the 10 Federal Aid Contract Title VI Assurances;
- 2.) False Certification of Title VI Assurances that upon award of a Federal-aid Contract, that the Recipient would implement required 10 Civil Rights Programs with appropriate staff and resources with major special emphasis

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on Title VI of the Civil Rights Act of 1964; the Americans with Disability Act of 1990; and Construction Compliance and Local Public Agency Reviews Compliance Reviews.

- 3.) The continuing to Federally Funds with Recipient State Highway Agencies who have had fundamental Civil Rights Federal-aid Contract Violations for over two years.

C.) **Federal Employee Ethics Violations**

One might say that these are only paper or administrative Civil Right problems but FHWA's election not to guarantee fundamental fairness, accessibility, equity and justice in the operation of their FHWA Federal-aid Contracts has acted to institutionalized undue hardships, difficulties and burden on the following groups:

- 1.) **Individuals with Physical Disabilities including Disabled Veterans** based on the failure to enforce the Americans with Disability Act.
- 2.) **Project Construction Site Workers** based on the failure to conduct required On-Site Contract Compliance Reviews with special emphasis on –
 - a.) Hispanic Worker job placements, benefits and pay;
 - b.) Failure to hire Black Workers at rates reflective of availability and utilization patterns.
- 3.) **Disadvantaged Business Enterprise (DBE)** based on the failure to conduct On-Site DBE Verifications and Contract Compliance Reviews with special emphasis on:
 - a.) Failure to support "Prompt Pay" requirements.
 - b.) Failure to revise participation of DBE Firms when "Change Orders" are Approved.
 - c.) Failure to award contracts to ready, willing and able Black Contracting Firms.

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- 4.) **Low Income and Minority Communities** based on the failure to collect analyze and report adverse impacts as they affect Environmental Justice and Title VI of the Civil Rights Act of 1964 requirements.
- 5.) **Native American Tribe and Indians Reservation** based on the election of FHWA not to be involved the protection of Federal Treaty Rights and the referral of those matters to the individual State Highway Agencies to protect those Federal Rights. The further election FHWA not to hire recognized Tribal Member into FHWA's Indian Reservation Roads Program.
- 6.) **State Highway Agency Employees and Applicants for Employment** base on the election to continue to accept State Highway Agency Affirmative Action Plans that allow presentations by EE0-4 Category thereby eliminating a realistic analysis of their workforce patterns by the required Job Classification and Work Units. The current condition creates serious questions about their ability to conduct Utilization Analysis Studies and the setting of Job Classification hiring and promotional goals as well as studies to insure non-discrimination.

I know that USDOT has spent a lot of time and hard work in understanding, documenting and fixing the matters of my Whistleblower Complaint. I understand that their studies have included the realization that each false report, false statement, misrepresentation and acts of conspiracy in the covering-up of those wrongful acts to obtain FHWA Federal-aid Funds carries individual fines for each stand alone violation in the range of \$5,500 to \$11,000 per violation. I further understand that the willful intents of forward signed fraudulent Certificates/Assurances to obtain Federal Funds and the actions of Responsible FHWA Division Administrators who knew or should have known about these fraudulent Certificates/Assurances and acted to cover them up in order to obtain the release of Federal-aid Funds, opens the window of liability to cover a full 10 year period of time and along with treble damages. I finally understand that those total liabilities have a direct impact on the settlement of my Whistleblower Complaint and that these matters are confidential. But no one has informed me on the details of the Proposed Settlement other than that FHWA is continuing make progress in brining the remaining 10 State Highway Agencies into compliance and their continuing efforts to get one State Highway Agency to sign and forwarded their required basic Federal-aid Contract Assurance of Title VI Compliance.

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It is my understanding that the Final Confidential Settlement will also include False Claim Act Punitive Damages and appropriate corrective actions that will address the following matters:

1. Corrective Action to remove of the several Disciplinary Action taken against me and other who have support my attempts to address these matters;
2. Payment with interest for my Suspension From Work Without with interest from Federal Service;
3. Reinstatement of the promotion my which incorporated discriminatory conditions which not allow me to enjoy that salary increase and resulting loss of that job position, with back pay and interest;
4. Pay for all travel expenses that have been withheld while other on like assignment were paid for their full travel expenses;
5. Payment for sick and annual leave that I was forced to take while other were allowed to work-off site because of office construction;
6. Reasonable Cash Award for my Secretary U.S. Department of Transportation Outstanding Achievement Award which was not honored by my FHWA Unit.
7. An apology from FHWA Management for the remove of the entire Federal Investigation Active Case Fine and Supporting Evidence from my workstation in order to stop my advancing of a Civil Rights Finding that over 300 FHWA Federal-aid Project Site Employees and Small Business had been discriminated against regarding their Working Conditions, Wages, Benefits and Pensions. The remove of the Case File resulted in the loss of all "make-whole remedies" and the violations of Worker and DBE Firms Constitutional Rights to Due Process as was reported in the Findings of a Federal District Court Judge.
8. A Formal FHWA Apology at the next National Civil Rights Conference and financial consideration for the damage done to me Personally and my National Professionally Representation as a direct result of FHWA's "**RAT** Presentation". That formal presentation was focused on the Findings of the 2007 and 2008 FHWA Civil Rights Baseline Assessment and the calling out as of the Whistleblower Complaint as an Organizational disgrace and dishonor as well as shame on the Whistleblower. The

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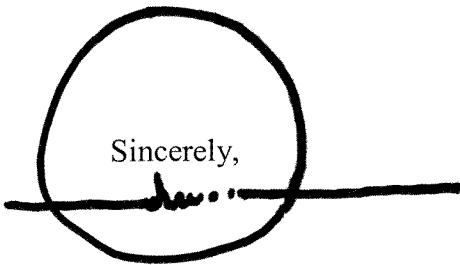
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“**RAT** Presentation” was delivered by a FHWA Director at an Annual Regional Civil Right. The full Conference Room was attended by over 300 State Civil Rights

9. Manager, State Civil Rights Staffs, FHWA Civil Rights Managers, FHWA Managers, FHWA Civil Rights Specialist, and invited guests. Although it was a Regional Conference, it was attended by Civil Right Community Representative from across the United States.

I now look forward to the Final Confidential Settlement of my Whistleblower Complaint and my seeking of a new career.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Running Deer Silva", is written over a large, hand-drawn circle. A horizontal line extends from the right side of the circle across the page.

Peter Running Deer Silva