

# Montana Transportation Commission

July 31, 2014 Meeting  
Helena, Montana

## IN ATTENDANCE

Kevin Howlett, Transportation Commissioner, Chairman  
Rick Griffith, Transportation Commissioner  
Barb Skelton, Transportation Commissioner  
Carol Lambert, Transportation Commissioner  
John Cobb, Transportation Commissioner  
Mike Tooley, Director MDT  
Pat Wise, Deputy Director MDT  
Dwane Kailey, MDT Engineering  
Tim Reardon, MDT  
Lynn Zanto, MDT  
Kevin Christenson, MDT  
Lori Ryan, MDT  
Patti McCubbins, MDT  
Megan Handel, MDT  
Kevin McLaury, FHWA  
Paul Harker, FHWA  
Chris Riley - FHWA

*Please note:* the complete recorded minutes are available for review on the commission's website at [http://www.mdt.mt.gov/pubinvolve/trans\\_comm/meetings.shtml](http://www.mdt.mt.gov/pubinvolve/trans_comm/meetings.shtml). You may request a compact disc (containing the audio files, agenda, and minutes) from the transportation secretary Lori Ryan at (406) 444-7200 or [lrayn@mt.gov](mailto:lrayn@mt.gov). Alternative accessible formats of this document will be provided upon request. For additional information, please call (406) 444-7200. The TTY number is (406) 444-7696 or 1-800-335-7592.

## **OPENING – Commissioner Kevin Howlett**

Commissioner Howlett called the meeting to order. After the pledge of allegiance, Commissioner Howlett offered the invocation.

Commissioner Howlett thanked Commissioner Cobb for hosting the Commission. We had a great tour of your District. It was an exhausting two days that include a lot of windshield time. He thanked Director Tooley and staff for taking time to show us the District and various projects. There are some unique challenges in your District and hopefully we can find a way to work through them particularly the dispute in Browning. We need to figure out a way to get that project done. I have suggested to Director Tooley that we make a trip up to Browning to try and bring the parties together. Our concern is not the jurisdictional political issues but we really need to get that road done for the safety of the children at the High School as well as the traveling public. He asked Director Tooley to initiate those potential meetings. He invited other Commissioners to participate.

## **Agenda Item 1: Construction Project on State Highway System Main Street Traffic Signal, Bozeman**

Lynn Zanto presented the Construction Project on State Highway System, Main Street Traffic Signal, Bozeman, to the Commission. Town Pump, a convenience store and gas station located on East Main Street in Bozeman, is proposing to add a traffic control signal at the intersection of East Main Street (N-50) and Broadway Avenue. A new traffic signal will be necessary to address increased traffic generated by proposed modifications to the existing site (a new building and additional fuel pumps).

The City of Bozeman has given preliminary approval for improvements at this location. Additionally, MDT headquarters and Butte District staff have reviewed and concur with the recommended improvements.

Town Pump will provide 100 percent of project funding and will be required to complete MDT's design review and approval process (to ensure that all work complies with MDT design standards).

*Summary.* Town Pump, a convenience store and gas station located on East Main Street in Bozeman, is proposing modifications to the state Highway System to accommodate additional traffic generated by future improvements at their existing site. Specifically, Town Pump is proposing installation of a new traffic control signal at the intersection of East Main Street (N-50) and Broadway Avenue in Bozeman.

MDT staff recommends that the Commission approve Town Pump's proposed improvements to East Main Street, pending concurrence of MDT's Chief Engineer.

Commissioner Griffith moved to approve the Construction Project on State Highway System, Main Street Traffic Signal in Bozeman. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Agenda Item No. 2: Bridge Program Projects Bridge Deck, Rehabilitation and Replacement Projects**

Lynn Zanto presented the Bridge Program Projects, Bridge Deck, Rehabilitation and Replacement Projects to the Commission. MDT's Bridge Bureau reviews bridge conditions statewide and provides recommendations for construction projects to be added to the Bridge Program. At this time, the Bridge Bureau recommends adding the following projects to the program:

### **Bridge Deck Projects**

MT-43 Bridge Decks: This is a bridge preservation project involving deck repair, deck replacement and structure rehabilitation on five bridges between RP 25 and RP 76 on MT-43 (P-46) in Silver Bow and Beaverhead Counties. Three of the bridges span the Big Hole River: in Wisdom, 7 miles NW of Wise River, and 3 miles west of Divide. Another bridge crosses Smart Creek (near the Town of Wise River) and the final bridge crosses the Wise River (also near the Town of Wise River). The total estimated project cost (for all bridge deck projects) is approximately \$3,098,000.

Br Pres Yellowstone Gardiner: This is a deck rehabilitation (or replacement) project for a bridge on US-89 (N-11) that spans the Yellowstone River in Gardiner. The total estimated cost is approximately \$3,162,000.

Br Pres Flathead Cr – N Wilsall: This is a deck replacement project for a bridge on US-89 (P-59) that crosses Flathead Creek - 1 mile north of Wilsall. The total estimated cost is approximately \$1,378,000.

### **Bridge Rehabilitation Project**

I-90 Yellowstone R Livingston: This project involves minor deck, joint, and bearing work and may include some leveling of bridge approaches. The structures (2) are located on I-90 and cross the Yellowstone River at

Livingston. The total estimated cost (for all rehabilitation work) is approximately \$1,062,000.

### **Bridge Replacement Projects**

Coral Cr – 11 M NE Circle: This is a bridge replacement project for a structure on MT-200 (P-51) that spans Coral Creek - 11 miles NE of Circle. The existing timber bridge is very old and considered structurally deficient. Thus, replacement is the only viable alternative. The total estimated project cost is approximately \$1,239,000.

Beaver Cr – Wibaux, 1M S Wibaux: This project will replace two bridges that cross Beaver Creek on MT-7 (P-27). One structure is on the NE edge of Wibaux and the other is located a mile south of Wibaux. While both bridges will be evaluated as rehabilitation candidates, it is anticipated that replacement will be the appropriate option. The total estimated project cost (for both structures) is approximately \$5,438,000.

*Summary*: MDT is requesting Commission approval for three (3) bridge deck projects, one (1) bridge rehabilitation project, and two (2) bridge replacement projects. The total estimated cost for all projects is approximately \$15,377,000. MDT's Bridge Program will fund these projects with Surface Transportation Program (STPB) and National Highway System (NHPB) funds specifically reserved for bridge work.

The proposed projects are consistent with the goals and objectives identified in the Performance Programming (P3) Process – as well as the policy direction established in TRANPLAN-21. Specifically, roadway system performance and traveler safety will be enhanced with the addition of these projects to the program.

Staff recommends that the Commission approve the addition of these projects to the Bridge Program.

Commissioner Cobb asked if Beaver Creek was for rehabilitation not replacement cost. Lynn Zanto said it will be evaluated for rehabilitation rather than replacement. Commissioner Howlett asked about the sequencing of the bridge projects. We have projects going on all over the state, are they all going to happen at once or are they sequenced? Lynn Zanto said because of the scale and scope they probably won't all be in the same year. Dwane Kailey said we have a multitude of in-state companies as well as out-of-state. We keep a very close eye on the type of work we're doing and try to split the work up. There are certain companies that only do certain types of work, i.e., Hydro Demolition. It is very unique type of work and predominantly comes from contractors out-of-state. So we keep an eye, not only on the multitude of bridges we're doing in a year, but also the type of work that we're doing and try very hard not to overwhelm our contractors. Commissioner Howlett asked about the time frame. Dwane Kailey said we are nominating projects for the tail-end of the TCP, so more likely in 2018-2019.

Commissioner Griffith moved to approve the Bridge Program Projects, Bridge Deck, Rehabilitation and Replacement Projects. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 3: Enhancement Projects on MDT Right of Way**

Lynn Zanto presented the Enhancement Projects on MDT Right of Way to the Commission. The Transportation Commission approves Community Transportation Enhancement Program (CTEP) projects that are located on or adjacent to state-

designated streets and roads. CTEP projects are funded with the enhancement set-aside of the Surface Transportation Program, which is allocated by population to Montana's local and tribal governments. Communities select projects to fund with their allocations and provide the required non-federal match. The program is based on an agreement between MDT and Montana local and tribal governments.

MDT is asking the Commission to approve the CTEP projects listed in Attachment A. These projects meet the criteria set forth for CTEP-funded projects. Additionally, each sponsoring entity has indicated that at the time of application they had sufficient funds on account to adequately fund the entirety of the estimated costs associated with their projects.

*Summary:* MDT is requesting Commission approval for the 15 CTEP projects listed on Attachment A with a total estimated cost of \$2,698,000. Portions of these projects are on or adjacent to state-designated streets and roads. The state will perform a final review of the projects to ensure substantial compliance with project plans, specifications, and estimates.

The proposed projects have been prioritized through the respective local government processes and are consistent with the policy direction established in TRANPLAN-21. Specifically, traveler safety and bike/ped features will be enhanced with the addition of these projects to the CTEP program.

Staff recommends that the Commission approve the addition of the CTEP projects listed on Attachment A to the program.

Commissioner Howlett said he was a little bit confused in looking through this list. The pedestrian/bike path east of Hot Spring estimated cost is \$479,000 but then when you look at the estimated cost detail it is \$42,000. I'm trying to figure out what the cost really is. Lynn Zanto checked her master CTEP list and said the estimated cost is \$479,000. Dwane Kailey said we are asking for approval for these projects to start. With CTEP all we are allowed to do is initiate the initial phase so the \$42,000 figure is the cost of the preliminary engineering portion. The cost you're seeing on the first page is the ultimate cost for construction. So right now you are approving the PE Design Phase of the projects. Lynn Zanto said the \$42,000 cost was for the Thompson Falls project.

Commissioner Howlett said the pedestrian crossing project in Arlee is important; please don't wait two years to put that in. That needs get done expeditiously hopefully before school starts. That is a significant safety risk to those children crossing the road so I would appreciate you trying to expedite that project if at all possible. Dwane Kailey said the funding runs out next year on these CTEP project so we have to have it obligated and moving forward before September 2015. So we will be expediting these projects.

Commissioner Griffith moved to approve the Enhancement Projects on MDT Right of Way. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

#### **Agenda Item No. 4: National Highway System Projects**

Lynn Zanto presented the National Highway System Projects to the Commission. This is where the Arlee Pedestrian Crossing is. The National Highway System (NH) Program finances highway projects to rehabilitate, restore, resurface, and reconstruct non-Interstate routes on the National Highway System. Montana's Transportation Commission allocates NH funds to MDT districts based on system performance. In

response to emerging operational and safety needs, Districts 1 (Missoula) and 4 (Glendive) are advancing the following projects:

### **Arlee Ped Xings**

The Missoula District is proposing to install two rectangular rapid flashing (RRFB) beacons on the northbound portion of US-93 in Arlee. These beacons will help facilitate safer pedestrian crossing of US-93 (NB) where it intersects Morigeau Street and Houle Street in Arlee. The total estimated project cost is approximately \$127,000.

### **MT 200S – Glendive**

The Glendive District is proposing to upgrade 2.6 miles of guardrail on MT-200S (N-57) in Glendive. The project will replace existing cable rail and w-beam rail with box beam from RP 323.3 to RP 325.9. The project will also explore the potential of reducing the amount of guardrail needed by slope flattening within the existing right-of-way. The total estimated project cost is approximately \$455,000.

*Summary:* MDT is asking the Commission to approve two National Highway System projects – a pedestrian crossing improvement project on US-93 in Arlee (in the Missoula District) and a guardrail improvement project on MT-200S in Glendive (Glendive District).

The proposed projects are consistent with the goals and objectives identified in the Performance Programming (P3) Process – as well as the policy direction established in TRANPLAN-21. Specifically, traveler safety and bike/ped opportunities will be enhanced with the addition of these projects to the NH program.

The total estimated cost for both projects is approximately \$582,000, with \$127,000 originating from the Missoula District NH program and \$455,000 from the Glendive District NH program.

Staff recommends that the Commission approve the addition of these projects to the program.

Commissioner Griffith moved to approve the National Highway System Projects. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Agenda Item No. 5: Speed Limit Recommendation MT 86 – Bridge Canyon**

Dwane Kailey presented the Speed Limit Recommendation for MT 86 – Bridge Canyon to the Commission. We were requested by Gallatin County Commissioners to look at the speeds starting near Bridger Canyon and proceeding up towards Bracket Creek Road. We have reviewed the terrain, the geometrics of the roads, the traveling speeds and the accident history on this route. At this time we are recommending a speed zone of 45 mph beginning at station 32+00 on Project WPSO 370 and continuing an approximate distance of 3.35 miles. Then transitioning to 60 mph at milepost 5.64 continuing to milepost 8.32 an approximate distance of 2.68 miles. Then a speed zone of 60 mph beginning at mile post 15.64 continuing north an approximate distance of 13.51 miles. We have given this to Gallatin County officials and they concur. Staff recommends approval.

If you look at the map you will see there are existing established speed zones in there but there are gaps. We also handed out a color graph that shows the citation data for this route over the timeframe of January 2011 through December 2013.

Commissioner Howlett said looking at your graph for citations, if we put another speed limit in place I anticipate the red will be more prevalent with potential for more violations. Dwane Kailey said potentially yes. Commissioner Howlett said as long as the locals know about this. There's a lot of citations being issued.

Commissioner Griffith moved to approve the Speed Limit Recommendation for MT 96 – Bridge Canyon. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Commissioner Griffith said yesterday we ran into a couple of spots where a speed zone looked like it needed to be implemented. One is at Armington Junction. Do you have anything in the process to do a speed study there? Dwane Kailey said I'm not aware of one but I'll check with staff. Commissioner Griffith said even a temporary speed zone is warranted pending a speed study. Maybe by the next meeting you could check with the District and look at that. It was a zoo yesterday. I don't think it was even 10:00 a.m. but there was issues with it. It was a zoo. I'd appreciate if you could look at it and report back. Dwane Kailey said he would do that.

Commissioner Howlett said he invited the staff to make recommendations to be forwarded to the Commission. I don't believe we have to wait until there is another tragedy there. We looked at it; it's a very busy intersection. There's some personal accounts within the Commission of tragedies that have happened there. I would anticipate they will be submitting something but he also asked Dwane to follow up to do what we can to avert something happening in the future.

### ***Agenda Item No. 6: Certificates of Completion April & May, 2014***

Dwane Kailey presented the Certificates of Completion for April & May, 2014 to the Commission. We've included a spreadsheet showing the same projects with the initial DBE Goal and Award, the committed DBE participation and then the final payment participation percentage. We had been asked by Commissioner Cobb to include information about the change in some of the projects. If you look at the spreadsheet it shows the bid amount and then final amount. At times those numbers can be fairly different. If you look at Lone Pine NE, you will see the bid amount was \$11.1 million and the final amount was \$13.2 million. I handed out an example of a potential report that we can provide you as part of the Certificates of Completion. If you look at Lone Pine, it will show you the actual bid amount on the right hand side, the approved change order amount and the approved contract amount. On the left hand side it shows how much was actually paid to the contractor. You will see differences in those two columns just because quantities change slightly here and there. It gives you a little better story of how we went from \$11million to \$13 million. It doesn't include all the detail from the change order but it does let you know there were change orders issued on those projects. If you'd like this report included in your packet, we'd be more than happy to include it.

Commissioner Cobb said he didn't think the Commission needed the report all the time. I just asked about where there were differences and he explained it to me and that was fine. Commissioner Howlett asked about the \$2 million change orders. Dwane Kailey said we had some soil issues on Lone Pine. I believe there was soft soils that we had to sub-ex and then replace with special borrow. Commissioner Howlett did not think the report was necessary every time but if a Commissioner questions something, then it would be appropriate. It's a good report.

Commissioner Griffith moved to approve the Certificates of Completion for April & May, 2014. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 7: Project Change Orders April & May, 2014**

Dwane Kailey presented the Project Change Orders for April & May, 2014 to the Commission. You will see a unique report on the very first project – the Custer Interchange in Helena. When we bid that project we had a fair amount of small items that we didn't have bid items for so we set up a fairly large miscellaneous work bid item knowing we were going to capture this work. Typically we like to capture that miscellaneous work with a change order and document that at the end of the project. As this was fairly substantial and covered a large number of different items, we wanted to provide you with the detail. Staff recommends approval of the change orders as presented.

Commissioner Howlett asked about the item with the name change that is a total of \$324,000. Dwane Kailey said that was correct. Commissioner Howlett asked if the \$324,000 was for something you didn't incorporate into the estimate. Dwane Kailey said we anticipated a little over \$250,000 for this type of work, so it is a little larger than we anticipated but we did anticipate this work taking place in the contract. Commissioner Howlett said if you anticipated \$250,000 why are we at \$324,000. Dwane Kailey said that is why we write the change orders to incorporate that into the contract. Again this work was anticipated but was little larger than we anticipated. So it was in the contract, it just went to a little bit higher value than anticipated. Commissioner Howlett said the contract stipulates changes orders to the tone of about \$250,000. Dwane Kailey said the miscellaneous work had a value of \$250,000. We anticipated this work and it was bid in the contract. The change order documents the exact work.

Commissioner Griffith asked about Gallatin Canyon. I understand sub-excavation but typically blasting and utility relocation should be done with change orders. Dwane Kailey said we have had some challenges on that project in blasting. We had to excavate a little more material than we anticipated plus I'm not sure we actually anticipated blasting some of that material so we did have to document it in a change order. Commissioner Griffith said isn't it true that once you scuff the surface, it's the contractor's responsibility versus the department's responsibility even if he has to blast it. Dwane Kailey said we try to give the contractor a reasonable expectation of what the material will be out there and if it differs, if the site conditions differ than what we anticipated or if the quantities drastically change, then I believe we owe the contractor additional compensation or we negotiate additional compensation for that work. Commissioner Griffith said he was not happy with the million dollar change order on that project but I understand what you're saying.

Commissioner Skelton moved to approve the Project Change Orders for April & May, 2014. Commissioner Cobb seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 8: Liquidated Damages**

Dwane Kailey presented the Liquidated Damages to the Commission. We have two projects for your review. The first one is North of Billings North. The contractor was Riverside Contracting out of Missoula. They had eight days of liquidated damages for a total amount of \$36,184.00. The second project is 2003 Planning Guardrails in Ravalli County. The contractor was H&L Construction, Inc. They had nine days of liquidated damages for a total amount of \$11,259.00. Neither contractor is disputing the liquidated damages. Again the Commission need do nothing unless they wish to adjust those amounts. Staff's recommendation is to leave them as is.

No action needed.

### **Agenda Item No. 9: Letting List – 2015 Proposed Letting Dates**

Dwane Kailey presented the Proposed Letting List and Proposed Letting Dates to the Commission. The Letting Dates were included in the hand out you received prior to the meeting. The Letting Lists are for August, September, October, November and December. August is going out the door very soon and is set in stone. September's is essentially set in stone. We believe we have enough money to make it through the end of the year. October is a different story as well as November and December. In October the projects listed, as well as the last two projects on the November Letting List, are 2014 projects that we are looking at for potential Redistribution Funds. Towards the end of August we should be notified by FHWA that we will be getting Redistribution Funds. We will pick projects off this list for those funds. November and December is dependent on a federal bill. As shown in your Letting List, these are projects the Commission has already approved for 2015. We are proposing to go forward with those if we get funds. Staff recommends approval of the Letting List as submitted.

Lynn Zanto explained Redistribution Funds. Every state has an obligation to obligate all the funds up to the level provided to them through FHWA. Not every states totally obligates all of their funds. So in August those funds are redistributed to states that met their full obligation. We've always obligated all our funding so we always get about \$5-12 million of additional obligation authority that we put towards a project that has been in the TCP. If you recall we put a TCP together where we intentionally over obligated and not all projects make it in for whatever reasons. Dwane is saying we've fully obligated all our funds through October. So for the most part we have no more obligation authority. We will get a little bit more funding pretty soon and then we put projects on the list. The other piece is the federal funding is still up in the air; we don't know about 2015. Hopefully today the House will take action but if not then we don't have obligation authority for 2015 projects. Commissioner Howlett asked about the projects that would be funded with additional money. If you don't get enough to fund, do those projects move to the top of the list for the next fiscal year of funding. They're already approved. Lynn Zanto said yes, as we put the TCP together, the respective District Administrators will place them in the list.

Commissioner Lambert said if we only get so much funding and we have a list of projects that we've already approved, how do you decide which projects move forward and get paid and which projects don't? Who makes that decision? Dwane Kailey said we've meet with Director and the District Administrators to go over the list. We prioritize projects that are important to the agency – all of them are very valid projects but we look at the ones that are important to the agency and that we have funding for. For example, safety is always a high priority to this agency. There are several safety projects in there. If that's all the money we get the new money may just fund those. If we get a little more, then we'll look to some high priority reconstruct projects that are in there now. It really depends on the dollars we get and how we can best leverage those dollars. We are not pre-decisional, we have to wait



until we get the Redistribution money but we're going to stick to this list and use the dollars as best we can.

Commissioner Skelton asked about the bridge item in Agenda Item 2. On the bridge placement at Circle the list says it is considered structurally deficient. If we don't let that project until 2018, is that a safety risk? Dwane Kailey said structurally deficient means there are issues with the bridge and, if we have significant safety issues, we will either put a load limit on that structure and/or close it. So no, just because it is structurally deficient does not mean it is about to fall down or that it is a safety risk to the traveling public. It just means that it has deficiencies and it's our mechanism of notifying us that we need to go in and make some major rehabilitation or reconstruction of that structure.

Commissioner Howlett said we don't want to be closing bridges. We dealt with that on this trip. If we start imposing load limits then we're looking at school buses and fire trucks and other things. If there is a safety issue, it ought to get a higher priority than being put in a schedule that might be four or five years out. Dwane Kailey said the only reason he was bringing up the load limits or the closure of a structure is that is our mechanism if it deteriorates to that point. This is no different than a roadway and the fact that we're starting to see deterioration on the bridge and we're nominating it for reconstruction. Is there concern that we're going to close it tomorrow? No. We are nominating it and in a process to get it fixed before we have to go to load restriction and/or closure.

Commissioner Skelton said her concern is that we know that the oil fields and their equipment in the Bakken it is receiving a lot more loads than in the past. Will that deteriorate the bridge quicker? We don't want a bridge crash in Circle, Montana. Dwane Kailey said you are asking some very good questions and you're right on. The additional loading from the Bakken and the truck traffic is having an effect on our system. When we inspect the bridges every two years we monitor and look back at the previous inspections. Again we try and nominate those structures in such a way that we will get them replaced prior to having major issues such as load restrictions or failure. I'm confident that we're nominating these in time to get them replaced prior to anything major happening. The only ones we struggle with are the wood structures because they are very difficult to assess and they can deteriorate somewhat overnight. By getting it into the system, we are going to get it designed and get it replaced before it has major issues.

Commissioner Skelton asked about inspecting them every two years. Dwane said we inspect them every two years unless we see issues and then we put them on a quicker inspection schedule of 12 months. Commissioner Skelton asked who inspected them. Dwane said it is coordinated out of the Helena Headquarters. Our Bridge Bureau runs that program, however, the inspectors are typically out in the Districts under the District Administrator. It is all coordinated out of Helena, the data base is in Helena and it's checked and verified in Helena but all the inspection activities are typically in the district with oversight by Helena. Commissioner Skelton asked if they could assume the bridge was inspected in 2014. Dwane said yes. We are actually looking at a new innovative product called "bridge in a backpack". It is a new feature we may use on this structure. It is a very unique product. We want to evaluate it. That product with several others I think will be a great tool box for replacing these types of structures and make us more innovative and more competitive with our contractors. We may look at using this on this structure. Commissioner Howlett asked Dwane if there were more periodic inspections that the Commission be apprised of any conditions that may change in that bridge.

Commissioner Griffith moved to approve the Letting Lists. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Directors Discussion & Follow-up**

### *Federal Funding*

Director Tooley said we're all interested in funding and as you know we pay attention to it daily. I have no updates past what we talked about yesterday in Browning. The House passed a bill and sent it to the Senate and the Senate attempted to attach four amendments to it one of which made it through the process and they sent it back to the House. The House has promised to strip off any amendments and send it right back to the Senate. That pretty much needs to happen today. Lynn is checking every five minutes to see what's happening. If the House does send it back over to the Senate they would ideally accept it and send it on to the President and we'll have a stop-gap funding measure by the end of the day. If not I anticipate that members of Congress will start heading home as early as tomorrow morning for Recess and Federal Highways on August 1<sup>st</sup> will be forced to start cash management which we have a Contingency Plan for. The real effect comes with bid lettings. We're going to have to change how we look at bid lettings until we know we have money. We can continue to finish off this construction season but 2015 construction is on hold until we know we have money. That's where we're at and I'm going to keep watching through this whole meeting and hopefully by the end of the meeting we'll have some word on where the House is going.

### *DBE*

Staff has prepared a number of handouts. The Commission has a concern about the fact that there are a few DBE's who are bidding and receiving prime contracts and that is the total our DBE participation. These reports will show the bid sheets and award time that there is money going to DBE's down the line. Although there are a couple of very successful DBE's now bidding as primes, even if you took them out, we would still be meeting goal with the rest of the DBE work being done. So while I think we should celebrate the fact that a couple of DBE's have succeeded to the point where they are bidding as primes, the overall goal is being met even if you subtract the amount of money those firms are winning as prime contractors. Lynn Zanto said this report goes through the June letting so it's very current. Director Tooley said he was satisfied that there are DBE firms getting work beyond what we previously understood.

Commissioner Cobb asked when we started saying you didn't have to meet a DBE goal. Is that recent? Director Tooley said it happened within the past few months. Commissioner Cobb said as we go forward it will be interesting to see if they are dropping the subcontractors. Are they having less and less chance to work? Director Tooley said this report looks back and we all have the same interest going forward – we do want to see the DBE firms succeed. Commissioner Cobb said he appreciated the information. Are the DBE contractors even putting in bids? You talked to the subcontractors, are they even talking to the contractors to try and get bids? Patti McCubbins said yes they are. Commissioner Cobb said if the subcontractors are not out there trying to get work then ... is there a way of finding out if they are actively talking to the contractors? Patti McCubbins said yes there is a way to find that out and we can include it in the next report. Commissioner Cobb said the reason he would like the information is because we don't want to blame the contractors for not getting DBE's if the DBE's are not even trying to get the work. Are they making the extra effort to talk to the contractors? If they are not trying then it defeats the program. Commissioner Howlett asked Patti McCubbins to go through the bid document to see what gets reported on every single bid regarding the DBE projects. Literally those things you're requesting about participation are reported on every single project, is that correct? Patti McCubbins said yes, we can see who bid and who didn't. Commissioner Howlett asked her if she'd seen any significant changes. Patti McCubbins said we have not but that is something we can watch. I can say that our

DBE's bid on jobs but they aren't always successful. They may attempt to look at the job but may not be equipped to do that job. We have a component that is called "ready, willing, and able" to do the job. That's why you'll see some of these contractors have moved beyond that. They've been a DBE a long time and have grown to be bigger and can compete and do more of the work as a whole than some of the smaller firms. Our challenge now is to take those and get them up to the same level as those folks. That's not something this program has always focused on. Commissioner Howlett said every single bid document has the information that Commissioner Cobb is requesting, and every contractor wanting to claim DBE has to fill it out and report on who was interested and who wasn't interested. Patti McCubbins said they could still look at that but at this point we can't enforce it because we don't have the race consciousness – it is race neutral but we can still track it. Commissioner Howlett thanked Commissioner Cobb for raising that issue. It will be interesting to see the results. We raised this issue yesterday on the tour with Senator Walsh's staff. There is widespread concern that some of these smaller companies are not getting the opportunity to bid because of the race neutral policy. We specifically addressed the issue in the Ninth Circuit decision and that is applied differently here than in other places. There needs to be some consistency with the application of DBE from the national level.

### *Digital Billboards*

On Monday I had a visit with a number of individuals who are interested in digital billboards. The last time this was raised was in 2007-08. Since that time 43 of the 46 states that allow billboards of any kind on their system have allowed some number of digital billboards. We are one of three states that don't. We had a pretty good discussion about digital billboards and, while that needs to be noticed before you take any type of action, the ARM's fall under your jurisdiction to change or not. I just wanted to bring it to your attention. If you're interested in pursuing something like this then I will instruct staff to begin drafting potential changes to ARM for your consideration in September or later. I was surprised because I was expecting some push-back from staff but they actually listed some potential benefits from this including the possibility that you might be able to reduce the number of overall billboards on our system and take away some of the clutter because these digital billboards can accommodate six or seven advertisers on one billboard. The concerns are going to be the same as they were before that we don't want Montana to look like Las Vegas. The industry is aware of that and they don't want that to occur either; they are more interested in the more urban centers and potentially reducing the number of billboards they have to service. If the Commissioner is so inclined, we'll start giving you some options for September to consider.

Commissioner Howlett said I was on the Commission when we last discussed it and one of the things that came up was the light pollution issue, the intensity of the lights. There were a number of unique advantages including the use of amber alerts that were a part of that discussion. I think we've reached an era in technology where things have become a whole lot more accessible. Of particular concern to me is the fact that billboard sign regulation in Montana doesn't try to enforce state law on Indian Reservations. I'm appalled at the number of signs as you drive through the Flathead Indian Reservation, they just permeate that beautiful scenery. I would encourage the state to work with the Tribes to see if there is common ground that whatever we might offer could be with Tribal consent to be enforced on the Reservations. That's really open range there for signs. I think the Tribe is reluctant to engage in that battle with the State although the State has already said they won't enforce our regulations on the Reservation but there are a number of people in the Tribal community that have expressed concerns about the signs that are all along Hwy 93 from border to border. It's obtrusive to say the least. If there were ways to limit that, multiple advertising with fewer signs, I know that would make the residents there a lot more comfortable and I would encourage that. I don't know the situation on other Reservations.

Commissioner Griffith said I also sat on the Commission during the billboard issue. At the time most of the protest was from the Missoula area about light pollution. I did not support doing electronic billboards at that point because of light pollution but also because of the number of billboards all the way through the system. I'll bet dollars to donuts that the number of billboards out there since I've been on the Commission has doubled and maybe tripled. While I'm sympathetic to electronic media having access to the billboard system, I am also personally at an impasse for another sign on the system. We still get into the problem of people wanting to advertise more than what the law allows and I know we've made a concerted effort to correct those but it's sort of getting away again. I see people advertising for things in town in their backyard and that's not the intent of the law. If we look at this, I would personally like a moratorium on all billboards. Maybe we could allow electronic to be a replacement for a billboard. I don't know how you do that but I think we're saturated with billboards. I'm not inclined to do additional billboards; I'd like to see a limit. I don't know if that is within our purview.

Tim Reardon said the statute gives no authority to simply blanket limit. There are statutes and regulations in place, both state and federal, as to where you can put billboards and the circumstances under which you can put them but there is no cap. Could the Legislature put a cap? Probably. Could the Legislature come back and put a moratorium in place permanently? Yes, I think they could do that. One of the problems you have with outdoor advertising is that if you try to get rid of a sign, through government action, you're likely looking at a "takings" argument and you're going to have to buy it. In the Gallatin Canyon a few years ago we had a considerable effort by the county to do that and the cost to purchase that sign and the contracted advertising was pretty high and the county backed away from it. It's another area of the state like the Flathead where it has certain pristine qualities and billboards run counter to the whole idea of the highway beautification laws that tried to clean things up. But that's the reality if you start trying to get rid of them, then the government is engaged in a "taking" process that you might have to compensate for it. Commissioner Griffith said other states have done that, Oregon being one of them. You hardly see a billboard in Oregon. Tim Reardon said it also depends on the route. For example in Helena the City has allowed an electronic billboard on Cedar Street. I believe there is also one or two in Billings off system. So they are out there. I don't know about Oregon whether they had a restrictive law to begin with or they had to buy them. Commissioner Griffith said for me it's bigger than electronic billboards. I don't like the clutter.

Commissioner Cobb asked what the Commission could do. Tim Reardon said when this issue first came up, there were alternate proposals in front of the Commission. One would have allowed signs and regulated the number of messages it could contain, how long the message could be displayed, how quickly the message would change. Then there was a proposal to ban electronic billboards altogether. Commissioner Cobb asked what authority the Commission had for regular billboards. Tim Reardon said they are regulated by statute and they are licensed and permitted through the Outdoor Advertising Program. If it would help maybe we could do a presentation to the Commission. Commissioner Cobb said I would like to know because you can always regulate something to death. You might have the final say-so on things but you can change the rules. If you don't like something you can regulate it to death. So you wonder if there are too many billboards out there and we have money being spent to get rid of billboards but they keep increasing. There should be some way to limit them. There are too many billboards out there and they keep increasing. What can we regulate? Can we have a moratorium on billboards or make it cost more to have them across Montana? Tim Reardon said they are presently regulated by spacing. Commissioner Cobb said we could regulate them by saying you couldn't have them within 20 miles of each other. Tim Reardon asked if the Commission wanted a presentation on the statutes and regulations. Commissioner Howlett said that would be good for the next meeting.

*FHWA*

Kevin McLaury said I'm also anxiously waiting to hear from Washington D.C. I just asked my folks in D.C. what they were hearing. They are hoping to hear something this afternoon. Director Tooley said the House has scheduled one hour of debate on the bill at 1 p.m. eastern time. They are expecting to vote on it this afternoon. They aren't going to allow any amendments; it's going to be an up or down vote and send it right back to the Senate. Commissioner Howlett asked about the amendments. Kevin said there were two amendments that passed from the floor. Director Tooley said they sent two over that were contradictory to each other. Lynn Zanto said one amendment was to change the time frame. So the House bill would have extended it through May 31<sup>st</sup>. One of the amendments reduces the funding so that it would only be through December 19<sup>th</sup>. That passed. The other was a different set of revenue funding options. Two other amendments failed – one was to phase out the Devolution Bill, reduce the federal gas tax to \$.036 per gallon from its current \$.184 and basically start reducing the federal program. That failed pretty significantly. The other amendment was to exempt projects during an emergency or disaster event from the federal permitting process. That also failed. Kevin McLaury said there is still hope for something today.

Commissioner Howlett said the House bill seems to have more stability than the Senate amendments. It's of a longer duration. Lynn Zanto said the Senate wants a shorter term because after December Congress changes with new members and it is like starting over. The Senate is very interested in getting a long-term fix so the shorter duration is with the hope that they will continue to try before the end of the calendar year.

Kevin McLaury said regarding the funding, I want to make clear that there are three different elements to the funding. We talked a little bit about the August Redistribution. That's affectionately called the "grab bag" in Montana. That is one funding piece. The second is the long-term funding bill going forward. As we approach the end of this month and the first part of next month, we are going into a cash management mode which is going to slow payments down. Essentially any project that hasn't been let and has been approved through our funding system, there is a promise from the federal government that we will pay our share. We are typically paying daily when things are good and sometimes twice a day. The Cash Management Act says we need to make payments at least every two weeks. So we'll see a slowing of payments. What that means to the department is that you're going to have to carry some payments that normally we would have paid already. I know the department has done a lot of work doing "what if" scenarios so I think you're pretty well positioned on that.

Commissioner Griffith asked if you are telling them "the checks in the mail." Kevin McLaury said if you want to look at it like that, sure but there is a commitment to pay. That is the third point I wanted to make clear – any projects that are let and the federal government says you have the obligation authority to do that and the money, there is a fiduciary responsibility on us to make those payments and we will make those payments, however, they will be made a lot slower than we have in the past. The Cash Management Act says we have to make payments every two weeks but there are some nuances there. Commissioner Howlett said every two weeks would be a welcome thing because the agency I deal with sometimes takes six months to two years before we see payments. That's an HHS program not a DOT program. Kevin McLaury said you can get into some cash management issues because you have contractors who are working and submitting bill and it's kind of a domino effect. Obviously we want to keep workers working and projects moving so we can employ those folks in the construction industry. Contractors will ultimately have to carry some of the load a little bit because obviously if the department doesn't have the cash to pay them then the contractors don't have the cash to buy supplies so it's a domino effect.

Commissioner Howlett asked Director Tooley how this encumbers relationships with contractors now. Do you visit with them upfront? How does it work? Director Tooley said I keep in touch with The Contractor's Association to let them know what's going on. We've made the commitment to them that we're going to pay our bills through this construction season for sure. It will draw down our state cash balance if FHWA has to go to cash management but we've positioned ourselves to do that in the short term.

#### *Fish Creek Bridge, South of Ryegate*

You may remember we lost a bridge south of Ryegate - Fish Creek Bridge. It's actually time to do something with that. Dwane asked if he could have a few minutes of my time to bring you up to speed on that.

Dwane Kailey said Fish Creek Bridge, South of Ryegate was washed out by ice in early March. We've got that project designed. We plan to go to contractor award and start letting toward the end of August. To expedite that Notice to Proceed and get the contractor out there as soon as possible, we'd like to award that contract August 22<sup>nd</sup>. So we'd let it on Thursday, award it on Friday, and try to get the contractor out there as soon as possible and get it replaced this winter so we can open the roadway back up. We're asking one of three options from the Commission: (1) you can choose to delegate authority to the Director to award; (2) you can choose to delegate authority to myself to award; or (3) we can set up a conference call for you on Friday afternoon, August 22<sup>nd</sup>, to award that contract. The value of the contract is about \$1 million. Commissioner Griffith said he would prefer a conference call on Friday afternoon. Commissioner Cobb said he was good with a conference call. The Commission agreed to do a conference call August 22<sup>nd</sup>.

#### **Public Comment**

No public comment given.

Commissioner Skelton said she was proud to be part of MDT because you are doing a wonderful job. She thanked Lori Ryan for all her help.

#### **Next Commission Meeting**

The next Conference Calls were scheduled for August 22<sup>nd</sup>, August 26<sup>th</sup>, and September 23<sup>rd</sup>. A Tentative Commission Meeting was scheduled for September 17<sup>th</sup>. The next regular Commission Meeting was scheduled for September 23<sup>rd</sup>.

#### **Adjourned**

Meeting Adjourned