

Montana Transportation Commission

March 27, 2014 Meeting
Helena, Montana

IN ATTENDANCE

Kevin Howlett, Transportation Commissioner, Chairman
Rick Griffith, Transportation Commissioner
Barb Skelton, Transportation Commissioner (by phone)
Carol Lambert, Transportation Commissioner (by phone)
John Cobb, Transportation Commissioner (by phone)
Michael Tooley, Director MDT
Pat Wise, Deputy Director MDT
Dwane Kailey, MDT Engineering
Tim Reardon, MDT
Kevin Christenson, MDT
Lynn Zanto, MDT
Dave Ohler, MDT
Lori Ryan, MDT
Jim Skinner, MDT
Kevin McLaury, FHWA
Chris Riley, FHWA
Chris Kelly, HDR
Kitty Clemens, Big Sky Montana Department

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. 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. 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.

Approval of Minutes

The minutes for the Commission Meetings of January 28, 2014, January 30, 2014, and March 11, 2014 were presented for approval.

Commissioner Griffith moved to approve the minutes for the Commission Meetings of January 28, 2014, January 30, 2014, and March 11, 2014. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Comment for the Record

Commissioner Howlett explained that this meeting originally was scheduled to be a conference call but after he gave it some thought he felt he needed to be in Helena and Commissioner Griffith felt that as well. He said he appreciated the other Commissioners being on the call. This is an official meeting.

Agenda Item 1: Local Construction Projects on State Urban Highway System – Mendenhall Street – Bozeman W Main Street - Helena

Lynn Zanto presented the Local Construction Projects on State Urban Highway System – Mendenhall Street, Bozeman, W Main Street, Helena to the Commission. Under MCA 60-2-111 “letting of contracts on state and federal aid highways,” all projects for construction or reconstruction of highways and streets located on highway systems and state highways, including those portions in cities and towns, must be let by the Transportation Commission. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination of state and local infrastructure improvements. MDT staff reaches out to local governments to solicit local projects on state systems to ensure compliance with this statute.

Summary: The cities of Bozeman and Helena are planning to design and build transportation improvement projects on the State Urban Highway System. The projects will be funded with local funds and will use contract labor. The projects will be designed with input and concurrence from MDT staff to the extent practicable.

On behalf of the local governments, as required by MCA 60-2-111, staff requests the Transportation Commission delegate authority to the cities of Bozeman and Helena to let and award contracts for the projects listed below.

| Location | Type of Work | Estimated Cost | Fiscal Year | Type of Labor |
|---|----------------|----------------|-------------|---------------|
| Mendenhall St. (U-1206), Between Rouse & 7 th Ave, Bozeman | Mill and Fill | \$200,000 | 2014 | Contract |
| W Main St. (U-5805), Between Reeders Village and Grizzly Gulch Drive, Helena | Reconstruction | \$1,345,000 | 2014 | Contract |

Staff recommends that the Commission delegate its authority to let, award, and administer the contract for these projects to the local governments, pending concurrence of MDT’s Chief Engineer.

Commissioner Griffith asked if they were using their own money. Lynn Zanto said they are using their own money but the Commission has the authority to let contracts on the state system and you can delegate to a local government.

Commissioner Griffith moved to approve the Local Construction Projects on the State Urban Highway System – Mendenhall Street, Bozeman; W Main Street, Helena. Commissioner Cobb seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 2: Rail/Highway Crossings
RR Xing – Montana Avenue – Helena
RR Xing – S 480 Poplar E 6-Mi
RR Xing – MT-23 Sidney S 2-Mi

Lynn Zanto presented the Rail/Highway Crossings: RR Xing – Montana Avenue, Helena; RR Xing – S 480 Poplar E 6-Mi; and RR Xing – MT 23 Sidney S 2-Mi to the Commission. Rail/Hwy Crossing–Protective Devices (RRP) and Rail/Hwy Crossing–Hazard Elimination (RRS) projects are funded under the Highway Safety Improvement Program set-aside. Projects are selected by inventorying railroad crossings and identifying hazardous sites.

MDT is asking the Transportation Commission to approve the following rail crossing projects:

| Project Name (Control No.) | Location | Description | Approx. Est. Cost | Funding Source |
|--|--|---|-------------------|----------------|
| RR Xing – Montana Ave. Helena (UPN 8674) | RP 0.25 on North Montana Ave. (N-128) in Helena | Install improved concrete crossing surface. | \$202,000 | RRS |
| RR Xing – S-480 – Poplar E 6-Mi (UPN 8675) | RP 0.029 on MT Secondary 480, 6 miles east of Poplar | Improve crossing surface and add gates to the existing signal system. | \$343,000 | RRP-RRS |
| RR Xing – MT-23 – Sidney S 2-Mi (UPN 8676) | RP 0.494 on MT-23 (P-26) 2 miles south of Sidney | Add gates to the existing signal system. | \$366,000 | RRP |

Summary: MDT is requesting Commission approval of the three railroad crossing projects shown above and on the attached maps. The total estimated cost for all three projects is approximately \$911,000. 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 features will be enhanced with the addition of these projects to the Railroad Crossing program.

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

Commissioner Lambert moved to approve the Rail/Highway Crossings: RR Xing – Montana Avenue, Helena; RR Xing – S-480 Poplar E 6-Mi; RR Xing – MT-23 Sidney S 2-Mi. Commissioner Cobb seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 3: Certificates of Completion
December, 2013 and January, 2014**

Dwane Kailey presented the Certificates of Completion for December, 2013 and January 2014 to the Commission. These are presented for your review and approval. Dwane said that Commissioner Cobb had submitted some questions and Kevin Christensen has the information.

Question 1: Why Riverside changed from the bid amount of \$7.5 million to \$8.8 million. Kevin Christensen said this project involved the median cable rail at the Moss Main Interchange in Billings. The median cable rail is to prevent cross-over crashes. It is a new item in the AASHTO Roadside Design Guide. After the project was let we noticed the structure of the Interstate from Moss Main to Laurel had the same characteristics, same traffic volume, and the same median configuration. We had additional safety funds so we wrote a change order that amounted to about one million dollars to extend the project limits about three miles west. That accounts for the difference.

Question 2: Regarding the difference in the DBE from what was awarded to the amount paid. We actually calculate the final number on what was actually paid. That is the same for the TERO fees. We pay on final amount paid

Question 3: Regarding the additional cost for work performed in the Butte District. That usually arises from additional work that affects the project’s critical path and warrants a time extension but the actual work is paid under existing bid items. It is usually under miscellaneous work but it can also be a major bid item like excavation. A major bid item has to overrun by 125% before we write a change order for the additional quantity. A lot of times it is just additional work that affects the project schedule but it doesn’t require a change order.

Commissioner Howlett said you guys do the technical work and do it very well. When this gets presented to us I have a great deal of confidence you have followed all

the rules and it has gone through legal review, so I don't ask a lot of questions because I'm not interested in that level of management. I leave that to the department. Certainly when other Commissioners have questions, they need to be answered and I appreciate you doing the research and coming up with those answers. Thank you for your effort in that regard. Commissioner Cobb said I also assume they know what they are doing but I'm just learning and I'm trying to get educated so I appreciate you answering my questions.

Commissioner Griffith moved to approve the Certificates of Completion for December 2013 and January 2014. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item No. 4: Project Change Orders December, 2013, January, 2014

Dwane Kailey presented the Project Change Orders for December 2013 and January 2014 to the Commission. If you have any questions please feel free to ask. The department recommends approval.

Commissioner Lambert moved to approve the Project Change Orders for December 2013 and January 2014. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 5: Liquidated Damages

Dwane Kailey presented the Liquidated Damages to the Commission. There are several projects with liquidated damages. None of the charges are being disputed by the contractors. No action is needed.

No action needed.

Agenda Item 6: Letting Lists March 13 through September 11, 2014

Dwane Kailey presented the Letting Lists for March 13, 2014 through September 11, 2014, to the Commission. Commissioner Cobb asked if these were acted upon on Tuesday. Dwane Kailey said they had already been approved and they are presented to show which projects went through the letting. They are brought before the Commission at every Commission Meeting. Commissioner Cobb asked if there are ever any projects presented that are different from the Red Book. Dwane Kailey said at times, as we approach the end of the year, we do have to bring in new projects but they are already in the Red Book. If and when I do that, I always try to highlight those projects and bring them to your attention. To date, we have not brought anything into federal fiscal year 2014 that was not approved by the Commission in the Red Book.

Commissioner Skelton moved to approve the Letting List. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Director Discussion & Commission Updates

Director Tooley presented these items in ascending order of funds.

Federal Funding Status

The Federal Funding picture continues to be of concern to us. The date of the insolvency of the Highway User Trust Fund continues to slip and now it is looking more like a July/August timeframe. When that occurs Federal Highways does have procedures they use – either slowing down payments or paying states proportionally. For example, we get about 1% of the highway funding so if there's a certain amount of money left, Montana will continue to receive 1% of what's left but that is up to the USDOT to do that. The important thing is we are in contact with Congress and with the federal agencies and we're coming up with contingency plans. Some states are pulling projects; Montana is not. Arkansas yesterday advertised the fact that they are putting off \$60 million in contract work. The amount of time this state and this Commission put into asset management and planning; that would be a terrible way of doing business. So we are not cancelling or pulling any bids or contracts at this time and we won't until we are absolutely convinced we have to. We're not convinced we have to.

In talking to Congress, we expect they will come up with a series of Continuing Resolutions and General Fund Transfers to keep the program somewhat viable until they deal with reauthorization. Although it's getting close, comments coming from congressional staff are they expect to do something when it gets really bad. I think there's some confidence at their level. We are still paying very close attention to that but we are not changing the way we do business right now. We're confident that Congress gets it and will find a way to make it work.

Commissioner Howlett said Congress will take care of it if it gets really bad. Are they going to reauthorize or are they going to do continuing resolutions under the existing authorization? Director Tooley said it would be under the existing authorization because there isn't full agreement on how to reauthorize. One chairman wants substantial changes to MAP 21, the other chairman just wants more money. That's the discussion and why I think we're going to be seeing continuing resolutions.

Kevin McLaury said there are two distinct and separate issues we are dealing with. One is the Highway Trust Fund which for about the last seven to eight years Congress has provided more outlays than income. It doesn't take long to be out of money and that's where we're at with the Highway Trust Fund. Something needs to be done with the Trust Fund because even a reauthorization, unless they re-infuse cash back into the checkbook, we're still not going to have money in the checkbook because at current outlays, the income and the outlays are divergent. The outlays are getting higher and the income is getting lower. So we need to fix the Trust Fund first to make sure we continue to stay solvent and then the reauthorization piece to continue us to be able to spend. They are both tied very closely together but one can happen without the other. You can reauthorize but if they don't fix the Trust Fund they will still be in a pretty tough situation. Congress is working toward solutions – there are a number of different thoughts as to how to fix it but none of that has come to light yet.

Commissioner Griffith said if it takes doing something to the Trust Fund, we can almost guarantee that will happen after the November elections. Kevin McLaury said in February there was about \$8.6 billion left in the Trust Fund checkbook. At current projected outlay levels the Trust Fund will be in a negative status in the July/August timeframe. At some point if we don't do something with the Highway Trust Fund, even if they don't do anything to the reauthorization which gives us the ability to spend, but if we have zero dollars in the checkbook to spend, it is a dynamic situation and changes by week depending on the income coming in. They are going to have to find another source of revenue from somewhere – either another infusion from the General Fund to shore up the Highway Trust Fund. I know when the Trust Fund gets to about \$4 billion that sends up red flags. They may reduce the spending rate to

more match income by either slowing payments down or other options. We ran into this situation in 2008 and the approach taken was that payments were slowed and done on more of a percentage approach.

Commissioner Howlett said we need to keep our eye on the ball and make some calls. It is sad that the infrastructure is held as a pawn when it's so important to every citizen in the country. It's truly sad but that's the state of politics.

Public Comment

Commissioner Howlett said there was a gentleman who expressed interest in speaking to the Commission but he is not here. Tim Reardon said he was aware of the gentleman because he had written to the department in the past and indicated a desire to come speak to the Commission about some issues in the Gallatin Canyon Bozeman area. Since he is not here at the time allotted for him to speak, I think you've fulfilled your obligation to provide that time.

Commissioner Howlett asked Dwane to give an update on the Ronan situation. Dwane Kailey said we are at logger-heads with this project. We have a number of issues, the biggest one is 4F. There is a city park in Ronan which we are impacting a minimal amount but there is a regulation within the environmental laws which says they can claim diminimus. That means there is an impact to the 4F but it ultimately does not affect the function of the 4F. That has to be declared by the park owner which is the city of Ronan and at this point in time they have indicated they are unwilling to claim diminimus. If they don't go with diminimus then that will require us to take another look at the SEIS and the Record of Decision and we may have to modify. We have identified that there is a way we can do a design exception and narrow up the roadway footprint and minimize the impact to that park, however, our concern is the impact that will have on our relationship with the city of Ronan.

Right after that we have another big hurdle with Ronan and that is in regards to the relocation of the water lines. We have identified that we are going to impact a fair number of their water lines. Under state law we are authorized to require them to participate in relocation. Given the number of connections, there cost share is 15%. Over and above that they have to pay for any associated engineering and they have to pay for any betterments associated with that water line. We've had some discussions with them and we believe there will be some betterments that they are going to look at doing because it is an old system and they need to improve it. To date they have disclosed that they have no funds. With that stated, we're trying to work through these issues. It is not having an impact on any other project at this time. However, it will because the resources dedicated for Ronan Urban are also the resources we are looking at using for Post Creek Hill. In the future, two or three months down the road, it will have an impact on which project we are prioritizing. Over the next couple of months we are going to continue working with Ronan and try to get this resolved if we can. If we can't then it is our plan to prioritize Post Creek Hill and begin to move on it as expeditiously as we can. Commissioner Howlett said that was the direction we gave you. Dwane Kailey said that's right but with that we're going to have to finalize the agreement with KLJ and Morrison-Maierle. Once that agreement is finalized then they have to go out and do some surveying. Then we're going to have that resource conflict that we're aware of.

Commissioner Howlett said he attended a couple of meetings with that group and made it very clear that we're not going to mess around with this project forever and we're not going to take those dollars now estimated at \$40 million and move out of that corridor. We need to get 93 done! If Ronan isn't a go, then let's move on. That's what we need to do and we need to make that decision relatively soon. We didn't plan this project three years ago to be in this stalemate. Ronan had ample opportunity as a city when this highway was being designed. That was their

opportunity to participate and for whatever reason they waited until the design phase and decide now they want to participate. That's not how things work. I know; I was a part of what was going on when this whole 93 project was being designed and planned. The three parties to this agreement are the Confederated Salish and Kootenai Tribes, the Federal Highway Administration, and the State of Montana. Ronan is not a party to the MOU. I think you have a clear understanding of my feelings on this subject.

Commissioner Griffith asked if there is a need to wait any further for them to respond. Dwane Kailey said I think there is a need in maintaining what relationship we currently have with Ronan. At this point in time making a decision that we're dropping Ronan and going solely onto Post Creek does not benefit us. We still have about one month to complete negotiations with the consultant to finalize the contract for Post Creek Hill and then we're anticipating about another two months of non-roadway design resources being expended by KLJ and Morrison-Maierle. So even if we said today we're taking all the resources from Ronan Urban and putting them on Post Creek Hill, it does not benefit us in any way. There is minimal benefit to us going that direction. So I think it behooves us a little bit to continue to work with Ronan because at some point in time we're going to have to get Ronan on board to deliver this entire corridor. Whether it's looking at a delivery date of 2018 or 2024 – regardless of what date that turns out to be, we're going to have to work through Ronan to get that job done. I think it's in everybody's best interest to look to that future. I totally respect what the Chairman is saying and I believe we are operating in the best interest of going that direction; I just want to minimize any damage to the relationship with Ronan. Once that resource becomes an issue, I'm very confident this department is going to go in the direction that benefits the traveling public, the Commission, and MDT the best.

Commissioner Griffith said his concern is that we've been dealing with this issue for a while and we've been suffering because we could have better expended resources if we had known up front that Post Creek was going to be a better fit. Now that we know, I'm compelled that the Commission give direction that at the next Commission meeting we have a decision. Dwane Kailey said I'd be a little concerned with that. I think the department should retain flexibility. We're listening loud and clear to the Commission's direction and where we want to go but I'd be concerned that we hamstring or tie the department's hands and force us to go one direction without allowing the flexibility to act in the best interest of everybody concerned.

Commissioner Howlett said we have given you optimum flexibility but if we're talking about having to redo the SEIS then that's all for naught; all the expenditures we've put into this thing thus far. I'm in agreement with Rick – let's cut bait and figure out what we're going to do because Ronan is a bottleneck, there's no question about it but it doesn't even come close as a traveler of that road 10 times per week to the safety issues posed on Post Creek Hill. Ronan slows you down but people aren't dying in Ronan as they are on Post Creek Hill or Nine Pipes. So, in my mind, in retrospect Post Creek and Nine Pipes should have come before Ronan but that's water over the dam. I'm not very patient anymore in stringing this out for another month, then three months, and then two months. No! That's not acceptable to me.

Commissioner Griffith said his passion on this hill is because my wife and I just about got killed in the Post Creel area by a person driving in the wrong lane and it was only for the Grace of God we didn't get killed but the car behind us did. So I have a passion for that area. The consequences for the action doesn't come to the community, it comes to the traveling public and somebody else getting killed on that road. The Commission bears that burden of not taking action soon enough. I'm flexible on the drop dead date but I think there ought to be a drop dead date and the Commission ought to set it. I don't want to hamstring the department but I think Ronan needs some incentive by this Commission to either fish or cut bait. Dwane Kailey said we agree with you but as I tried to communicate in the email I sent out

the other day I think that time is coming and is coming fairly soon. I don't believe it is by the next Commission meeting. Again I think that decision doesn't have to be prior to when we run into that resource conflict. So I'm asking for a little bit of leniency but I will absolutely agree with the Chairman about the higher safety issue with Post Creek; that is not arguable. He is correct. There is also a higher benefit to the environment. When they were doing their field review the other day, they walked into another Grizzly that had been killed on the highway. We are very aware of those issues and we totally agree that there are higher priorities. Again I want to be flexible enough to attempt to preserve what relationship we have with Ronan because at some point in time we are still going to have to work with Ronan to deliver Ronan in its entirety.

Director Tooley said on the layman's side of it, it comes down to two things: we don't have an agreement yet with the consultant and because we don't have an agreement with the consultant, we don't have a ready date for Post Creek which you need to have that before you can assign resources to it. You all understand that. When those two things are met, I think we're ready to move on. Commissioner Howlett asked Kevin McLaury for his thoughts. As I understand it, Ronan is asking for some things that Federal Highways won't approve.

Kevin McLaury said this has been a unique situation in that the city of Ronan obviously has some interest in the project and we are engaging them on the 4F issue. It involves a park where there was some research done on exactly where the park boundaries were and that has muddied the waters some. When it comes to NEPA, if an area is being used as a park then the use becomes an issue so it is unique. My staff Environmental Engineer Brian Hassleback is one of the best around. He has turned this box upside down, backwards, and every which way to try and get this thing moving. Gene Kaufman the Area Engineer for that area has been working diligently not only with MDT but with the locals to see how we can somehow come to an agreement that both meets the needs of the project but yet satisfies some of the wants of the community. At some point if what they want is more than what we can afford, a decision is going to have to be made.

Dwane Kailey said we also run another risk if we quit working on Ronan. Once we begin spending federal funds on any project we are required by FHWA to track inactive obligation. If we quit working on Ronan, we start running into FHWA because we have to show activity on that. If it's more than six months or a year, we really start getting sideways with FHWA and we have to respond to why we're not doing that. Commissioner Howlett said you are keeping a record of that all the way along. If it's stalemated, then it's stalemated. I think what we're saying, Dwane, is proceed but proceed knowing that there is an edge to this cliff and at some point we're either going to get moving in the right direction or we're moving to another project. That's coming very soon; patience is thin. If we need to do something else then we need to do something else. We are losing human lives and endangered species on that corridor. There is work to be done and this work can't get delayed because we don't want to hurt somebody's feelings. I understand the issue of relationships but I also understand the importance of those three parties coming to an agreement on this project and the prioritization of those projects. This has been 13 years in the making and it was originally supposed to be a four years.

Commissioner Griffith said theoretically the worst thing that can happen is that Post Creek bumps Ronan to the next slot available. It's not like we're taking it off-system or out of the Red Book; it's still in the Red Book. Commissioner Howlett said it should have been behind both Post Creek and Nine Pipes.

Dwane Kailey said I want to caution us a little bit. Until we have that schedule for the consultant, we don't know exactly what date this is deliverable so we may be losing a project for a year. Right now we've got Ronan slated for 2018. I can't tell you if we can deliver Post Creek in 2018. Commissioner Howlett said I'm

sympathetic to your idea that you need time to negotiate but at a minimum I'd like to have this discussion again at the next Commission meeting with the thought that if the one item comes together and the other hasn't made progress, then we want to make that happen. Director Tooley said they'd know more at that time. That was acceptable to the rest of the Commission.

Next Commission Meeting

The next Conference Calls were scheduled for April 8th and April 22nd. The next Commission Meeting was scheduled for May 29, 2014.

Adjourned

Meeting Adjourned

Commissioner Howlett, Chairman
Montana Transportation Commission

Mike Tooley, Director
Montana Department of Transportation

Lori K. Ryan, Secretary
Montana Transportation Commission